

DESIGN-BUILD AGREEMENT

AMONG

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

- and -

BC TRANSPORTATION FINANCING AUTHORITY

- and -

EMIL ANDERSON CONSTRUCTION (EAC) INC.

July 31, 2024

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DESIGN-BUILD AGREEMENT

THIS DESIGN-BUILD AGREEMENT dated as of July 31, 2024 is entered into:

AMONG:

**HIS MAJESTY THE KING IN RIGHT OF THE PROVINCE OF
BRITISH COLUMBIA**, as represented by the **MINISTER OF
TRANSPORTATION AND INFRASTRUCTURE**

(the “**Province**”)

AND:

BC TRANSPORTATION FINANCING AUTHORITY

(“**BCTFA**”)

AND:

EMIL ANDERSON CONSTRUCTION (EAC) INC.

(the “**Design-Builder**”)

WHEREAS:

- A. The Design-Builder has been retained by the Province to carry out the Project and the Project Work;
and
- B. The rights and obligations among the parties with respect to the Project will be governed by the terms and conditions set forth in this Agreement.

NOW THEREFORE in consideration of the covenants and agreements of the parties contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby expressly acknowledged by each of the parties hereto, the parties hereto covenant and agree as follows:

**PART 1
INTERPRETATION**

1.1 Definitions and Interpretation

This Agreement will be interpreted and construed in accordance with the provisions set out in Schedule 1 [Definitions and Interpretation].

1.2 Schedules

The Schedules to this Agreement, and their Appendices and Attachments, are incorporated into and form part of this Agreement. Obligations of the parties set out in the Schedules are included in the obligations of the parties under this Agreement.

**PART 2
GENERAL PROJECT TERMS**

2.1 The Project

The Design-Builder will:

- (a) provide, perform and carry out the Project Work:
 - (i) in accordance with and subject to the terms and conditions of this Agreement; and
 - (ii) in accordance with the Proposal Extracts (and the Design-Builder acknowledges that the Proposal Extracts will be in addition to and not in substitution for any other terms, conditions, requirements, criteria and specifications set out in this Agreement); and
- (b) perform and observe all other obligations for which it is responsible under this Agreement,

(collectively, the “**Project**”) without recourse to the Province, BCTFA, public funds, or guarantees by the Province or any other Governmental Authority, except as expressly provided otherwise in, or to the extent the Design-Builder otherwise has rights arising out of or in respect of, this Agreement.

2.2 Term

This Agreement will take effect on the Effective Date and, except as expressly provided otherwise in this Agreement, will expire and terminate at the end of the Term.

2.3 Assumption of Risk and Responsibility

- (a) Except to the extent provided otherwise pursuant to the express provisions of this Agreement, all risks in relation to the performance by the Design-Builder of its obligations under this Agreement are allocated to, and accepted by, the Design-Builder as its entire and exclusive responsibility.
- (b) As between the parties, the Design-Builder will be solely responsible for the selection, pricing and performance of all Subcontractors and other persons for whom the Design-Builder is in law responsible, and for the acts, defaults, omissions, breaches and negligence of all Subcontractors and any other persons for whom the Design-Builder is in law responsible, as fully as if such acts, defaults, omissions, breaches and negligence were those of the Design-Builder.

2.4 *Financial Administration Act*

The Design-Builder acknowledges that it is aware of the provisions of the *Financial Administration Act* (British Columbia).

2.5 Use of Project Facilities and Project Marks

- (a) Except as otherwise agreed by the Province in its discretion, the Province reserves the right to all commercial and other opportunities for, or related to, the Project Facilities except for the commercial opportunity for the Design-Builder as represented by this Agreement.

- (b) There is hereby reserved exclusively to the Province all rights to:
 - (i) name and rename from time to time the Project and the Project Facilities, and parts thereof; and
 - (ii) determine the names, branding, logos, domain names and other marks associated with the Project Work, the Project, the Project Facilities, the Website or other components of the Project as designated by the Province from time to time (collectively, the “**Project Marks**”).
- (c) In accordance with Section 15.4(a)(iii) of this Agreement but without limiting the right of each of the Design-Builder and any Subcontractor to identify itself and its role in the Project using its own names, marks and logos reasonably and in accordance with standard industry practice, the Design-Builder:
 - (i) will, in association with the Project and all Project Work performed with respect to the Project, use only the Project Marks and will not use any other names, branding, logos, domain names or other marks in association with the Project Work, the Project, the Project Facilities, the Website or other components of the Project without the prior written consent of the Province in its discretion;
 - (ii) agrees that its use of the Project Marks will at all times be under the control of the Province;
 - (iii) acknowledges the validity of the Project Marks and the Province’s interest in the Project Marks and all goodwill associated with or appurtenant to the Project Marks, and the Design-Builder further acknowledges and agrees that all use of the Project Marks by the Design-Builder will be deemed to be use by the Province and all the benefit and goodwill associated with such use will at all times, as between the Design-Builder and the Province, enure entirely to the Province;
 - (iv) will not do anything or omit to do anything that might impair, jeopardize, violate or infringe the Project Marks or the Province’s interest in the Project Marks, including:
 - (A) opposing, contesting or in any other manner challenging the validity of the Project Marks or the Province’s interest in the Project Marks; and
 - (B) claiming, using, displaying, reproducing or applying to register any trade mark, trade name, copyright or design that is identical to or confusing with any of the Project Marks, or that is derived from or based on any of the Project Marks;

and the Design-Builder will not assist, permit or encourage any other person or entity to do any of the foregoing; and

- (v) will not use, display, reproduce, register or attempt to register any of the Project Marks, or any words, designs, characters or symbols that are confusing with or are derived from the Project Marks, as part of any internet domain name, universal resource locator, telephone number, address, firm name, corporate name or any other designator.

2.6 Title to Infrastructure and Improvements

Except to the extent that title to any Plant has not passed to the Province or BCTFA, as applicable, in accordance with Section 2.7(a) of this Agreement, and except for Project Intellectual Property or Background IP that is owned by the Design-Builder and licensed to the Province in accordance with Section 15.3 [Ownership of Intellectual Property and License to Province] of this Agreement:

- (a) the Design-Builder will not acquire or have any interest in land or any other property or proprietary interest in or title to the Project Site or any Project Infrastructure, or any other improvements on or to the Project Site from time to time; and
- (b) as between the Province and BCTFA, and the Design-Builder, title to and ownership of the Project Site and the Project Infrastructure and all other improvements on or to the Project Site from time to time will vest in the Province or BCTFA, such other person as the Province may direct, or the owner of the relevant lands, as applicable.

2.7 Transfer of Title

- (a) As between the Province and BCTFA, and the Design-Builder, title to all Plant will pass to and vest absolutely in the Province or BCTFA, such other person as the Province may direct or the owner of the relevant lands, as applicable, at the earlier of:
 - (i) title to the Plant being acquired by the Design-Builder; and
 - (ii) the Plant being affixed to or incorporated into the Project Site or the Project Infrastructure,

provided that all testing applicable to such Plant will have been completed in accordance with Schedule 7 [Quality Management] prior to such passing of title. The Design-Builder covenants that each of the Material Subcontracts will contain a provision that title to all Plant will pass to the Province or BCTFA (or such other person as the Province may direct, as applicable, under this Section 2.7(a)).

- (b) Title to any property (whether real or personal, tangible or intangible) not referred to in Section 2.7(a) of this Agreement that is or is to be transferred to or acquired by the Province or BCTFA or any other person from the Design-Builder pursuant to the terms of this Agreement will pass to the Province, BCTFA or such other person, as applicable, at the time of the transfer or acquisition as contemplated by this Agreement.
- (c) Without limiting the provisions of Section 17.8 [Further Assurances] of this Agreement, the Design-Builder will, at the written request of the Province from time to time, execute and deliver to the Province, BCTFA or to such other person as the Province may direct, and cause the Subcontractors with which the Design-Builder has contracted directly to execute and deliver to the Province, BCTFA or such other person as the Province may direct, all such bills of sale and other documents as the Province will reasonably request for transferring rights in or title to property (whether real or personal, tangible or intangible) or confirming the transfer of rights in or title to any such property, as contemplated by this Section 2.7.
- (d) The Design-Builder covenants that all Subcontracts to which the Design-Builder is a party will contain a provision imposing on the Subcontractor thereunder the same obligation to

execute and deliver bills of sale and other documents as is imposed on the Design-Builder under Section 2.7(c) of this Agreement.

- (e) Notwithstanding the passage to the Province, BCTFA or such other person as the Province may direct of rights in or title to Plant as provided above in this Section 2.7, the Design-Builder and Subcontractors will be entitled to make use of such Plant for the purposes of carrying out the Project Work subject to and in accordance with this Agreement.

2.8 Review, Approval, Inspection and Audit by the Province

- (a) If any review, approval, inspection, examination, audit, Quality Audit, testing, determination, acceptance, certificate, certification, permission, consent, comment or objection is provided, performed or made by or on behalf of the Province or BCTFA or the Province's Representative under, pursuant to, or in respect of, this Agreement or any of the other Project Documents, whether pursuant to the Review Procedure or the Consent Procedure or otherwise, or if no comment or objection is made by the Province, BCTFA or the Province's Representative pursuant to the Review Procedure or the Consent Procedure or otherwise:
 - (i) such review, approval, inspection, examination, audit, testing, determination, acceptance, certificate, certification, permission, consent, comment or objection, or lack of comment or objection, will be for assessment by the Province or BCTFA or the Province's Representative of general compliance by the Design-Builder with its obligations under this Agreement or the other Project Documents only;
 - (ii) no such review, approval, inspection, examination, audit, testing, determination, acceptance, certificate, certification, permission, consent, comment or objection, or lack of comment or objection, now or in the future, and whether or not involving any negligent act or negligent omission or error on the part of the Province or BCTFA or the Province's Representative or any person for whom the Province is in law responsible:
 - (A) will relieve or exempt or be deemed to relieve or exempt the Design-Builder or any other person for whom the Design-Builder is in law responsible from any of its obligations and liabilities under this Agreement or at law or in equity, except in the circumstances and to the extent expressly provided in Section 2.8(b) of this Agreement;
 - (B) will constitute a waiver or release or be deemed to be a waiver or release by the Province or BCTFA of any duty or liability owed by the Design-Builder or any other person to the Province or BCTFA, or of any indemnity given by the Design-Builder to the Province or any Province Indemnified Person under this Agreement, except in the circumstances and to the extent expressly provided in Section 2.8(b) of this Agreement;
 - (C) will create or impose or be deemed to create or impose any requirement, liability, covenant, agreement or obligation on the Province or BCTFA, except to the extent expressly set out in this Agreement as a consequence of the review, approval, inspection, examination, audit, testing, determination, acceptance, certificate, certification, permission, consent, comment or objection, or lack of comment or objection; or

- (D) will entitle or be deemed to entitle the Design-Builder to make any Claim against the Province or BCTFA for, or to recover from the Province or BCTFA, any Losses, except to the extent expressly set out in this Agreement; and
- (iii) any decision so made by the Province under the Review Procedure or the Consent Procedure will, once all applicable Disputes arising in respect thereof have been resolved in accordance with Schedule 2 [Review Procedure and Consent Procedure], be final, subject only to being opened up, reviewed or revised by the Province in its discretion if errors or further relevant facts are revealed after the decision has been made.
- (b) If any consent, approval, acceptance, certification, determination or other permission of, or review, inspection, examination, audit or testing by, the Province or BCTFA or the Province's Representative is expressly required under this Agreement in order for any specific act or conduct of the Design-Builder to be in compliance with (or not in breach of) any provision of this Agreement, and if such consent, approval, acceptance, certification, determination or other permission is given by, or review, inspection, examination, audit or testing is carried out by, the Province or BCTFA or the Province's Representative (as the case may be) in any particular circumstance, the Design-Builder will be relieved of the obligation under this Agreement to obtain the specific consent, approval, acceptance, certification, determination or other permission given, or to have the review, inspection, examination, audit or testing carried out, but only for the purposes and in the particular circumstances in which it was given or carried out and to which it applied.

2.9 Site Inspection and Investigations

- (a) The Design-Builder represents and warrants to the Province and BCTFA and agrees with the Province and BCTFA that the Design-Builder will be deemed to have:
 - (i) been afforded the opportunity prior to executing this Agreement to inspect and examine all lands that will become the Project Site and their surroundings, and all existing Infrastructure in, on, over or under such lands, and inspected and examined the same and to have satisfied itself with respect thereto;
 - (ii) satisfied itself prior to executing this Agreement as to:
 - (A) the structural, geotechnical, geological, climatic, hydrological, ecological, environmental and general condition of the lands that will become the Project Site and all Infrastructure thereon, the form and nature thereof, and the nature of the ground and subsoil thereof, the risk of injury or damage to property adjacent to or in the vicinity of such lands, and to occupiers of such property, the nature of the materials (whether natural or otherwise) to be excavated, and the nature of the design, work, plant and materials necessary for the execution of the Project Work;
 - (B) any effect the condition of soils, including the presence of weak and compressible soils underlying the lands that will become the Project Site, may have on the performance of the Design and the achievement of the Design Life of the Project Infrastructure (to the extent to be constructed, installed, altered, upgraded or augmented by the carrying out of the Project

Work) as contemplated by Schedule 4 [Design and Construction Technical Requirements];

- (C) the adequacy of the lands that will become the Project Site and the Land Rights in such lands for the performance of Project Work and the performance by the Design-Builder of all of its other obligations under this Agreement;
- (D) the means and methods of communication with the various parts of, and access to and through, the lands that will become the Project Site, the accommodation it may require and the adequacy and sufficiency of the rights of access and use and occupation provided by Schedule 8 [Lands] for the purposes of performing the Project Work, including the means and methods of coordination and implementation of such communication, access, use and occupation;
- (E) the possibility of interference by third parties, including members of the public, with access to or use of the lands that will become the Project Site, and the Infrastructure thereon, with particular regard to the Requirements of Interested Parties;
- (F) the precautions, times and methods of working necessary to minimize any nuisance or interference, whether public or private, being caused to any third parties in the performance of the Project Work; and
- (G) any other contingencies, restrictions, conditions or constraints which would or might interfere with, limit or affect the ability of the Design-Builder to carry out the Project Work in accordance with the terms of this Agreement;

(iii) reviewed and satisfied itself, prior to executing this Agreement, with respect to:

- (A) the Design-Builder's Environmental Obligations;
- (B) the Indigenous Requirements;
- (C) the Project Requirements, and that the Project Requirements are in compliance with the requirements of Sections 5.1(a) (save to the extent that the Project Requirements impose obligations on the Design-Builder to carry out and perform the Project Work to a higher standard than would be required to enable the Design-Builder to carry out and perform the Project Work in accordance with Good Industry Practice), 5.1(b), 5.1(c), 5.1(e) and 5.1(f) of this Agreement; and
- (D) the nature and extent (and that such nature and extent is adequate having regard to the Design-Builder's obligations under this Agreement) of all work that could reasonably have been anticipated from any analysis of all relevant information available to the Design-Builder (including the Disclosed Data) as at the Financial Submittal Date carried out or to be carried out by, or by other contractors on behalf of, the Province, BCTFA, Utility Suppliers, Railways or others in connection with the Project or the

Project Infrastructure or otherwise on or in the vicinity of the lands that will become the Project Site, and the impact of the conduct of such work on the carrying out of the Project Work;

- (iv) obtained for itself prior to executing this Agreement all necessary information as to:
 - (A) the risks, contingencies and all other circumstances which may influence or affect the Project Requirements, the Design-Builder's Environmental Obligations or the Indigenous Requirements or its obligation to carry out the Project Work in accordance with the provisions of this Agreement; and
 - (B) all other factors which would affect its decision to enter into this Agreement or the terms on which it would do so; and
- (v) conducted prior to executing this Agreement its own analysis and review of all materials, documents and data referred to in Section 2.10 [Disclosed Data] of this Agreement that bear on any of the matters referred to in Sections 2.9(a)(i) through (iv) inclusive of this Agreement.
- (b) The Design-Builder agrees with the Province and BCTFA that:
 - (i) the Design-Builder accepts and will accept the Project Site and all existing Infrastructure thereon on an "as is, where is" basis;
 - (ii) neither the Province nor BCTFA has made and does not hereby make any representation or warranty with respect thereto; and
 - (iii) except as otherwise expressly set out in this Agreement, the Province and BCTFA will have no responsibility or liability for the structural, geological, geotechnical, climatic, hydrological, ecological, environmental and general condition of the Project Site and all Infrastructure thereon, and the Design-Builder assumes and will assume any and all risk with respect to the structural, geotechnical, geological, climatic, hydrological, ecological, environmental and general conditions thereof and any and all risk that all or any part or parts thereof may not be suitable for the Project Infrastructure (to the extent to be constructed, installed, altered, upgraded or augmented by the carrying out of the Project Work) or any Project Work.
- (c) Except as otherwise expressly set out in this Agreement, the Design-Builder will be solely and wholly responsible for, and hereby accepts responsibility for, investigation, assessment and evaluation of and all risks associated with any and all surficial and sub-surface geotechnical and geological conditions or characteristics of the lands that will become the Project Site and any other lands, including any adjoining lands, or geotechnical or geological features which may in any way affect either directly or indirectly the design, construction, operation or use of the Project Infrastructure or any of its component parts.

The representations, warranties and agreements of the Design-Builder in this Section 2.9 will not constitute an actionable representation, warranty or agreement by the Design-Builder in favour of the Province or BCTFA or give rise to a right of termination on the part of the Province or BCTFA, but the Province and BCTFA may rely on such representations, warranties, and agreements for the purpose of defending any action brought against the Province and BCTFA, or either of them, or any Claim by the Design-Builder for

damages, Losses, extensions of time, additional compensation or any other relief, provided that no such representation, warranty or agreement will prejudice an otherwise valid Claim by the Design-Builder:

- (d) pursuant to any other express provision of this Agreement; or
- (e) in respect of any breach of any express obligation of the Province or BCTFA under this Agreement.

The provisions of any of paragraphs (a) to (c) of this Section 2.9 do not limit the provisions of any other such paragraph of this Section 2.9.

2.10 Disclosed Data

- (a) Except as otherwise expressly provided in any other provisions of this Agreement, including Section 2.10(d) of this Agreement, or as a result of any breach of any express obligation of the Province under this Agreement, neither the Province nor BCTFA will have any liability to the Design-Builder (whether in contract, tort, by statute or otherwise howsoever and whether or not arising out of any negligent act or negligent omission on the part of the Province or BCTFA or any person for whom the Province is in law responsible) in respect of any inaccuracy, error, omission, unfitness for purpose, defect or inadequacy of any kind whatsoever in the Disclosed Data.
- (b) Neither the Province nor BCTFA gives or makes, has given or made or will be deemed to have given or made, any representation, warranty or undertaking that the Disclosed Data represents or includes all of the information in its possession or control (either during the procurement process for the Project or at or after the date of execution of this Agreement) relevant or material to the Project, the Project Infrastructure, the Project Site or the obligations undertaken by the Design-Builder under this Agreement. Without limiting the generality of the foregoing, neither the Province nor BCTFA will have any liability to the Design-Builder (whether in contract, tort, by statute or otherwise howsoever and whether or not arising out of any negligent act or negligent omission on the part of the Province or BCTFA or any person for whom the Province is in law responsible) in respect of any failure to disclose or make available (whether before or after the execution of this Agreement) to the Design-Builder any information, documents or data, any failure to keep the Disclosed Data up to date, or any failure to inform the Design-Builder (whether before or after execution of this Agreement) of any inaccuracy, error, omission, unfitness for purpose, defect or inadequacy of any kind whatsoever in the Disclosed Data, except for any otherwise valid Claim by the Design-Builder:
 - (i) pursuant to any other express provision of this Agreement; or
 - (ii) in respect of any breach of any express obligation of the Province under this Agreement.
- (c) The Design-Builder acknowledges, represents, warrants and confirms that, without prejudice to its express rights under any other provisions of this Agreement, including Section 2.10(d) of this Agreement:
 - (i) the Design-Builder will be deemed to have conducted prior to executing this Agreement its own investigations, examinations, interpretations, analysis and review of the Disclosed Data and to have satisfied itself as to the accuracy,

completeness and adequacy of all such Disclosed Data which it has relied upon, adopted or made use of or intends to rely upon, adopt or make use of in carrying out the Project Work; and

- (ii) the Design-Builder will not be entitled to make, and will not make, any Claim against the Province or BCTFA, whether in damages or for Losses or for extensions of time, compensation or additional payments or other relief, and whether under this Agreement or otherwise, and will not be released from any risks or obligations imposed on or undertaken by it under this Agreement, on any grounds relating to the Disclosed Data, including:
 - (A) on the grounds of any misunderstanding or misapprehension in respect of the Disclosed Data or any of the matters referred to in Section 2.9 [Site Inspection and Investigations] or Section 2.10(c)(i) of this Agreement; or
 - (B) on the grounds that incorrect, insufficient or incomplete information relating to the Disclosed Data or to the Project Site or the Infrastructure thereon was given to it by any person (whether or not in the employ of the Province or BCTFA) including any person for whom the Province is in law responsible or any other Governmental Authority, except for an otherwise valid Claim by the Design-Builder:
 - (1) pursuant to any other express provision of this Agreement; or
 - (2) in respect of any breach of any express obligation of the Province or BCTFA under this Agreement.

The provisions of any paragraph of this Section 2.10(c) do not limit the provisions of any other paragraph of this Section 2.10(c).

- (d) Notwithstanding the foregoing provisions of this Section 2.10 or any other provision of this Agreement, if a delay is caused to the progress of the Project Work or any additional costs are incurred by the Design-Builder in performing the Project Work during the Term that in either case would not otherwise have been experienced or incurred by the Design-Builder in performing its obligations under this Agreement, and such delay and/or costs are a direct result of an error in the Factual Geotechnical Data (as at the currency date of the relevant Factual Geotechnical Data) upon which the Design-Builder has reasonably and in accordance with Good Industry Practice relied in the design and construction of the Project Infrastructure, then such error in the Factual Geotechnical Data will constitute a Compensation Event and the provisions of Part 8 [Supervening Events] will apply. For greater certainty, the Design-Builder will not be entitled to relief under this Section 2.10 if and to the extent that it was not, in all the relevant circumstances and having regard to any other information known to the Design-Builder at the relevant time, reasonable in accordance with Good Industry Practice for the Design-Builder to rely on the Factual Geotechnical Data containing the error or to rely on such Factual Geotechnical Data without further investigation or site examination.

2.11 Execution and Delivery of Project Documents

On or before the Effective Date:

- (a) the Design-Builder will deliver to the Province and BCTFA the documents described in Part 1 [Documents to be Delivered by the Design-Builder] of Schedule 22, executed and delivered by the signatories specified or contemplated in such Part; and
- (b) the Province and BCTFA will deliver to the Design-Builder the documents described in Part 2 [Documents to be Delivered by the Province and BCTFA] of Schedule 22, executed and delivered by the signatories specified or contemplated in such Part.

**PART 3
REPRESENTATIVES AND KEY INDIVIDUALS**

3.1 Province's Representative

- (a) The Province, by notice to the Design-Builder delivered pursuant to Schedule 22 [Closing Deliveries] will appoint the Province's Representative to act as its agent in relation to the Project, including in relation to all Design and Construction and all other aspects of the Project Work.
- (b) The Province may at any time and from time to time by notice to the Design-Builder terminate the appointment of any Province's Representative or appoint one or more substitute Province's Representatives. Any such notice will specify the effective date of such termination or substitution, and the Province will use all reasonable efforts to give reasonable advance notice of any such appointment to the Design-Builder where practicable.
- (c) Except as expressly stated in this Agreement, the Province's Representative does not have any authority to relieve the Design-Builder of any of its obligations under this Agreement.
- (d) The Design-Builder and the Design-Builder's Representative, except as otherwise notified by the Province to the Design-Builder and subject to Section 2.8 [Review, Approval, Inspection and Audit by the Province] of this Agreement, are entitled to treat any act of the Province's Representative which is authorized by this Agreement as being expressly authorized by the Province, and will not be required to determine whether any express authority has in fact been given.
- (e) Any decision by the Province's Representative is specific to the circumstances to which it relates, and will not be construed as binding on, or limiting any other decision to be made by, the Province's Representative, whether in the same or similar circumstances or otherwise.
- (f) The Province's Representative will work together with the Design-Builder's Representative in the spirit of partnering and cooperation.

3.2 Design-Builder's Representative

- (a) The Design-Builder will, subject to acceptance by the Province's Representative pursuant to the Consent Procedure, such acceptance not to be unreasonably withheld:
 - (i) appoint a competent and qualified person to act as the Design-Builder's Representative and its agent in connection with the Project; and

- (ii) a substitute Design-Builder's Representative to serve in the place and stead of the Design-Builder's Representative during any temporary absence of the Design-Builder's Representative,

to ensure that at all times during the Term there is an accepted Design-Builder's Representative available and, until the Total Completion Date, located at the Project Site.

- (b) The Design-Builder's Representative will be a Key Individual subject to the applicable requirements of Section 3.3 [Key Individuals] of this Agreement.
- (c) The appointment of the Design-Builder's Representative will not be terminated by the Design-Builder for any reason without prior notice to and the prior acceptance, not to be unreasonably withheld, of the Province's Representative pursuant to the Consent Procedure to both such termination and to the appointment of a substitute the Design-Builder's Representative, provided that, in the case of death or serious illness of the Design-Builder's Representative, such notice to and acceptance by the Province's Representative will take place as soon as practicable upon the Design-Builder's Representative ceasing to act.
- (d) The Design-Builder's Representative will:
 - (i) have extensive experience managing the development, design and construction phases of large, complex, design-build transportation projects comparable to the Project;
 - (ii) serve as the single point of contact for the Design-Builder to the Province, BCTFA and the Province's Representative for all purposes under this Agreement;
 - (iii) be an employee of, or an independent contractor directly engaged by, the Design-Builder;
 - (iv) be located in the Province of British Columbia or the Province of Alberta and be available to meet with the Province's Representative and work on the Project Site as required; and
 - (v) devote all working time, energy and skill to the Project and to carrying out the duties of the Design-Builder's Representative.
- (e) The Design-Builder's Representative will be directly responsible for and fully engaged in, and will not, except in accordance with this Section 3.2, abdicate or delegate to any other employee or representative of the Design-Builder the performance of the Design-Builder's obligations under this Agreement and all aspects of the Project Work, including:
 - (i) the stewardship of the Design-Builder and of the Project Work; and
 - (ii) the contract management of all Subcontractors contracting directly with the Design-Builder, and the oversight of the contract management of all other Subcontractors, including addressing and communicating to the Province's Representative any issues raised by the Subcontractors in respect of the Project Work.

- (f) The Design-Builder's Representative will have full authority to act on behalf of the Design-Builder for all purposes of the Project, and the Province, BCTFA and the Province's Representative:
 - (i) are entitled to treat any act of the Design-Builder's Representative in connection with this Agreement as being expressly authorized by the Design-Builder, and will not be required to determine whether any express authority has in fact been given; and
 - (ii) may refuse to recognize any act in connection with this Agreement of any employee or representative of the Design-Builder other than the Design-Builder's Representative.
- (g) The Design-Builder's Representative will work together with the Province's Representative in the spirit of partnering and cooperation.

3.3 Key Individuals

- (a) The Design-Builder represents and warrants to the Province that the Key Individuals for the Project as at the Effective Date are as set out in Schedule 21 [Key Individuals].
- (b) The Design-Builder will, by the applicable date for appointment set out in Schedule 21 [Key Individuals], submit to the Province's Representative, for acceptance in accordance with the Consent Procedure, the Design-Builder's proposed Key Individuals indicated in Schedule 21 [Key Individuals] with a date for appointment after the Effective Date.
- (c) Each of the Quality Director, the Design Manager, the Construction Manager, the Environmental Manager and the Operations/Traffic Manager will:
 - (i) be either an employee of, or an independent contractor directly engaged by, the Design-Builder;
 - (ii) be specifically designated for the purpose of such role; and
 - (iii) be instructed and enabled by the Design-Builder to act in a fair and impartial manner in carrying out such role,and the Design-Builder will not, without the prior acceptance of the Province's Representative pursuant to the Consent Procedure, such acceptance not to be unreasonably withheld:
 - (iv) change any such Key Individual's job specification or responsibilities;
 - (v) permit any such Key Individual to be employed or engaged, as the case may be, by any person in connection with the Project other than the Design-Builder;
- (d) Each of the Quality Director, the Design Manager, the Construction Manager and the Environmental Manager will report directly to the Design-Builder's Representative.
- (e) The Design-Builder will not, without the prior acceptance of the Province's Representative pursuant to the Consent Procedure, such acceptance not to be unreasonably withheld:

- (i) permit the Construction Manager to be located at any location other than the Project Site during periods of active Construction; and
 - (ii) permit the Lead Geotechnical Engineer to be located beyond a 10 hour travel radius from the Project Site, and will require the Lead Geotechnical Engineer to be available to respond to an Emergency or Geotechnical Event.
- (f) The Design-Builder will require the Key Individuals to perform their respective duties as set out in this Agreement and the Design-Builder will not, without the prior acceptance of the Province's Representative pursuant to the Consent Procedure, such acceptance not to be unreasonably withheld, permit any one individual to act as more than one Key Individual at any one time.
- (g) The Design-Builder's Representative will be required at all times throughout the Term. All other Key Individuals will be required at all times until the Total Completion Date. The Design-Builder will use all reasonable efforts to ensure that the Key Individuals remain available to perform their respective duties during the applicable periods of time required pursuant to this Section 3.3(g).
- (h) At the Province's written request, acting reasonably, such request to be accompanied by the Province's reasons for such request, the Design-Builder will remove and propose a replacement Key Individual within 45 days of receipt of the written request, subject to acceptance by the Province's Representative pursuant to the Consent Procedure, such acceptance not to be unreasonably withheld.
- (i) If for any reason a Key Individual (other than the Design-Builder's Representative, in which case the provisions of Section 3.2(c) of this Agreement will apply) resigns, becomes unavailable or otherwise needs to be replaced (other than for vacation or other reasonable temporary absence provided there is reasonable coverage of the Key Individual's duties during such vacation or other reasonable temporary absence) then the Design-Builder will use all reasonable efforts to appoint a replacement with equivalent qualifications and experience to the unavailable Key Individual and the Design-Builder will not replace such Key Individual without the prior acceptance of the Province's Representative, pursuant to the Consent Procedure, such acceptance not be unreasonably withheld.
- (j) On the replacement of any Key Individual pursuant to this Section 3.3, any replacement individual will, unless the Province otherwise agrees, be subject to a 90-day probationary period, at any time during which the Province, acting reasonably, may reject that individual and require replacement by another individual.
- (k) If the position of any Key Individual is unfilled for more than 5 weeks during the period when such Key Individual is required pursuant to Section 3.3(g) of this Agreement, the Province, at its election, may at any time deem the unfilled position of a Key Individual to be a Province Change that does not affect any requirements to otherwise comply with this Section 3.3 and upon such election the Province will be credited with the remaining portion of the total cost item amount allocated to such Key Individual in Appendix 10A [Form of Statement of Progress] to Schedule 10.
- (l) If at any time pursuant to the Project Requirements or otherwise as determined by the Province at its discretion, a Key Individual is required to attend a meeting related to the

Project and the Key Individual is not available to attend or does not attend, the Province may postpone the meeting and any resulting delay is at the sole risk of the Design-Builder.

**PART 4
GENERAL OBLIGATIONS OF PROVINCE**

4.1 Mitigation By Province

- (a) In all cases where the Province or BCTFA is entitled under this Agreement to receive from the Design-Builder any compensation (including pursuant to Schedule 14 [Compensation on Termination]), costs, damages or other Direct Losses incurred by the Province or BCTFA (including by way of indemnity), any extension of time or any relief from performance, or any combination thereof, but not in any other case, each of the Province and BCTFA will have a duty to use all reasonable efforts to mitigate and reduce the amount required to be paid by the Design-Builder to the Province or BCTFA, as the case may be, the length of the extension of time and/or the relief to be provided, provided that such duty will not require the Province or BCTFA to:
 - (i) take any action which is contrary to the public interest, as determined by the Province or BCTFA in its discretion;
 - (ii) exercise or refrain from exercising any power, authority, duty, function, right or discretion conferred on the Province or BCTFA under Laws as a consequence of its status as the Crown, Crown agent or Crown corporation or as a legislative or public body and that is not conferred on a private commercial party;
 - (iii) undertake any mitigation measure that might be available arising out of its status as the Crown, Crown agent or Crown corporation or as a legislative or public body that would not normally be available to a private commercial party;
 - (iv) alter the amount of any Province Payments or Performance Incentive Payments determined in accordance with Schedule 9 [Performance Mechanism] and Schedule 10 [Payment]; or
 - (v) breach or act in a manner that could be inconsistent with the obligations of the Province or BCTFA under this Agreement.
- (b) Neither the Province nor BCTFA will be entitled to receive those parts of any compensation, costs, damages or other Direct Losses incurred by the Province or BCTFA, as the case may be, or those parts of any extensions of time or other relief from performance, that the Province could have mitigated against, reduced or otherwise avoided by the exercise of all reasonable efforts, to the extent of the duty of the Province to do so in accordance with the provisions of Section 4.1(a) of this Agreement.
- (c) The Design-Builder will not be liable for any compensation, costs, damages or other Direct Losses to the extent suffered or incurred as a result of any Province Indemnified Person failing to mitigate to the same standard as is required of the Province under this Section 4.1.

4.2 Representations and Warranties of the Province and BCTFA

- (a) The Province represents and warrants to the Design-Builder, and acknowledges that the Design-Builder is relying upon such representations and warranties in entering into this Agreement, that, at the date of this Agreement, this Agreement has been duly authorized, executed and delivered on behalf of the Province by an authorized representative of the Minister of Transportation and Infrastructure.
- (b) BCTFA represents and warrants to the Design-Builder, and acknowledges that the Design-Builder is relying upon such representations and warranties in entering into this Agreement, that, at the date of this Agreement:
 - (i) all necessary corporate action has been taken by BCTFA to execute and deliver this Agreement; and
 - (ii) this Agreement has been duly authorized, executed, and delivered on behalf of BCTFA by an authorized representative of BCTFA.

4.3 Without Prejudice

Any covenant, representation, warranty or undertaking made or given by the Province or BCTFA under any provision of this Agreement is without prejudice to or limitation of any covenant, representation warranty or undertaking made or given by the Province or BCTFA under any other provision of this Agreement.

**PART 5
GENERAL OBLIGATIONS OF DESIGN-BUILDER**

5.1 Design-Builder to Carry Out Project Work

The Design-Builder will carry out and perform the Project Work, and cause such Project Work to be carried out and performed:

- (a) in an efficient, effective, safe and good and workmanlike manner, and in accordance with Good Industry Practice;
- (b) in a manner that is not injurious to health and does not cause damage to property or the environment, provided that damage to property or the environment to the extent such damage is a reasonable consequence of performing such Project Work in accordance with this Agreement and in compliance with all other obligations of the Design-Builder hereunder will not constitute a breach of the obligation in this Section 5.1(b);
- (c) in compliance with all Requirements of Interested Parties; and
- (d) in accordance with all Project Requirements,

in each case subject to and in accordance with the provisions of this Agreement, and otherwise:

- (e) in a manner so as not to prevent the Province from exercising rights, powers and discretions and discharging duties and functions as a transportation authority, and so as not to prevent

the Province, BCTFA or any other Governmental Authority from exercising any other rights, powers and discretions or discharging any other lawful duties and functions; and

- (f) in compliance with all applicable Laws and Permits, all lawful and other proper instructions of the Police and all lawful and other proper requirements of Relevant Authorities and other Governmental Authorities.

5.2 Monthly Progress Report and Other Informational Rights

- (a) No later than the fifth Business Days of each month, the Design-Builder will submit to the Province's Representative for information only a monthly progress report in form and content acceptable to the Province, which will describe the progress of the Design and Construction during the preceding month.
- (b) Without limiting any other obligation of the Design-Builder to provide notification to the Province of the occurrence of any event or circumstance in accordance with this Agreement, the Design-Builder will provide to the Province's Representative promptly, and in any event within five Business Days following the date on which the Design-Builder becomes aware of the same:
 - (i) true and complete copies of any notices, complaints or orders (including directives and work orders) of violation or non-compliance or liability received by the Design-Builder or any of its Subcontractors from any Governmental Authority or any other person in respect of any matter relating to the Project, the Project Work, the Project Site or the Project Infrastructure;
 - (ii) a notice describing any fact, development, event or other matter of which the Design-Builder has become aware that could reasonably be expected to prevent the achievement of either or both of the Substantial Completion Date on or before the Substantial Completion Target Date and the Total Completion Date on or before the Total Completion Target Date;
 - (iii) a notice describing any litigation or other proceeding or Claim which has been commenced or threatened, or any event or occurrence which is reasonably likely to give rise to a Claim against any of the Design-Builder, a Subcontractor or the Province in respect of or relating to the Project;
 - (iv) a notice describing any proposal to suspend or abandon the Project or the Project Work;
 - (v) a notice describing any material default or event of default of any party (including the Design-Builder) under any Project Document to which the Design-Builder is a party;
 - (vi) a notice describing any expropriation of any property or assets of the Design-Builder or comprising part of the Project Site or the Project Infrastructure; and
 - (vii) a notice of any discrepancy, error, omission, conflict, inconsistency or ambiguity in this Agreement, including the Project Requirements, of which the Design-Builder has become aware.

5.3 No Adverse Reflection

Without limiting the Design-Builder's obligations under Section 5.1 [Design-Builder to Carry Out Project Work], in the performance of the Project Work the Design-Builder will not knowingly do or omit to do, or suffer or permit to be done or omitted, anything that might reasonably be expected to detract, or that the Province gives notice to the Design-Builder would detract, from the image and reputation of the Province as a highway and/or transportation authority or otherwise or the reputation of the Province or BCTFA, provided that any action taken or not taken in the course of performing the Project Work that is expressly required to be taken or not taken pursuant to this Agreement, a direction or instruction issued by the Province or a specific provision of the Project Requirements, will not constitute a breach of the Design-Builder's obligations under this Section 5.3, and provided that this Section 5.3 will not prejudice an otherwise valid Claim by the Design-Builder:

- (a) pursuant to any other express provision of this Agreement; or
- (b) in respect of any breach of any express obligation of the Province or BCTFA under this Agreement.

5.4 No Conflicts of Interest

- (a) The Design-Builder will ensure that no conflict of interest arises between any other matter in which it may be interested whether directly or indirectly, and the Design-Builder's performance of the Project, the Project Work and the obligations of the Design-Builder under this Agreement.
- (b) The Design-Builder:
 - (i) will not knowingly admit to any share or part of this Agreement or any benefit to arise herefrom to any member of the Legislature of British Columbia or the House of Commons or the Senate of Canada;
 - (ii) will ensure that no person for whom the Design-Builder is in law responsible is a current or former public servant or public office holder to whom any post-employment, ethics and conflict of interest legislation, guidelines, codes or policies of Canada applies will derive any direct benefit from this Agreement unless the provisions or receipt of such benefits is in compliance with such legislation, guidelines, policies or codes; and
 - (iii) will not make any payment to any individual required to be registered under the *Lobbying Act* (Canada) that is, in whole or in part contingent on the outcome of arranging a meeting between a public office holder and any other person, or communicating with a public office holder in the awarding of any grant, contribution or other financial benefit by or on behalf of the Federal Government.

5.5 Prohibited Acts

- (a) The Design-Builder covenants that neither the Design-Builder nor any of its agents or Subcontractors nor the employees of any of the aforementioned persons, nor any person for whom the Design-Builder is in law responsible, will offer or give or agree to give any person in the service of the Province or BCTFA any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do

any act in relation to the obtaining or execution of this Agreement or for showing or forbearing to show favour or disfavour in relation to this Agreement.

- (b) The Design-Builder covenants that neither the Design-Builder nor any Material Subcontractor will enter into this Agreement or any other agreement with the Province or BCTFA in connection with which a commission, fee, payment or benefit has been paid or agreed to be paid by the Design-Builder or a Material Subcontractor or on behalf of the Design-Builder or a Material Subcontractor or to the knowledge of the Design-Builder or a Material Subcontractor, other than to any person for whom the Design-Builder is in law responsible, unless before such agreement is made particulars of any such commission, fee, payment or benefit and of the terms and conditions of any agreement for the payment thereof have been disclosed in writing to and consented to by the Province.
- (c) Without limiting Section 5.5(b) of this Agreement, the Design-Builder covenants that no person for whom the Design-Builder is in law responsible will enter into any agreement with the Province or BCTFA in relation to the Project in connection with which a commission, fee, payment or benefit has been paid or agreed to be paid by such person or on its behalf or to its knowledge, other than to any person for whom the Design-Builder is in law responsible, unless before such agreement is made particulars of any such commission, fee, payment or benefit and of the terms and conditions of any agreement for the payment thereof have been disclosed in writing to and consented to by the Province.

5.6 Mitigation By Design-Builder

- (a) Without limiting and in addition to all other obligations to mitigate required by this Agreement or at law, in all cases where the Design-Builder is entitled under this Agreement to receive from the Province any compensation (including for any Supervening Event or pursuant to Schedule 14 [Compensation on Termination]) or any other costs, damages or other Direct Losses incurred by the Design-Builder (including by way of indemnity), any extension of time or any relief from performance, or any combination thereof, the Design-Builder will have a duty to use all reasonable efforts to mitigate and reduce (which reasonable efforts may include by way of competitive procurement for expenditures (where appropriate in accordance with Good Industry Practice or otherwise required by Laws), rescheduling of works and deliveries, and reallocation or redeployment of labour forces and equipment, and pursuing recourse against insurers and third parties) the amount required to be paid by the Province to the Design-Builder, the length of the extension of time and/or the relief to be provided.
- (b) The Design-Builder will not be entitled to receive those parts of any compensation, costs, damages or other Direct Losses incurred by the Design-Builder, or those parts of any extensions of time or other relief from performance, that the Design-Builder could have mitigated against, reduced or otherwise avoided by the exercise of all reasonable efforts as required in accordance with the provisions of Section 5.6(a) of this Agreement.
- (c) Upon request from the Province, the Design-Builder will promptly submit a detailed description, supported by all such documentation as the Province may reasonably require, of the measures and steps taken by the Design-Builder to meet its obligations under Section 5.6(a) of this Agreement.

- (d) The Design-Builder will require, where practicable, Subcontractors with which the Design-Builder contracts directly, to assume and carry out the same duty to mitigate as is required of the Design-Builder under Section 5.6(a) of this Agreement, *mutatis mutandis*.
- (e) The Province will not be liable for any compensation, costs, damages or other Direct Losses to the extent suffered or incurred as a result of any Subcontractor or other Design-Builder Indemnified Persons failing to mitigate to the same standard as is required of the Design-Builder under this Section 5.6.

5.7 Representations and Warranties of Design-Builder

The Design-Builder represents and warrants to the Province and BCTFA, and acknowledges that the Province and BCTFA are relying upon such representations and warranties in entering into this Agreement, that at the Effective Date, based on the facts subsisting at the Effective Date:

- (a) the Design-Builder is a corporation duly created and validly existing under the laws of the Province of British Columbia and has full power and capacity to enter into and to carry out the transactions contemplated by, and to duly observe and perform all its obligations contained in, this Agreement and the other Project Documents to which it is a party, and all other documents, instruments and agreements required to be executed and delivered by the Design-Builder pursuant to this Agreement or such other Project Documents, and to carry out the Project Work;
- (b) the information set out in Schedule 20 [Design-Builder Ownership Information] is true and correct;
- (c) the execution and delivery by the Design-Builder of this Agreement and the other Project Documents to which it is a party, and all other documents, instruments and agreements required to be executed and delivered by it pursuant to this Agreement or such other Project Documents, and the completion of the transactions contemplated by this Agreement and such other Project Documents, have been duly authorized by all necessary corporate action on the part of the Design-Builder, and this Agreement, and each other Project Document to which the Design-Builder is a party and to be executed and delivered on or before the Effective Date, has been duly executed and delivered by the Design-Builder and constitutes a legal, valid and binding obligation of the Design-Builder enforceable in accordance with its terms, except to the extent that the effectiveness of any enforcement action may be limited by bankruptcy, insolvency, liquidation, reorganization or similar laws of general application affecting creditors' rights generally and except that equitable remedies are in the discretion of the court;
- (d) the entry into and performance of this Agreement by the Design-Builder do not and will not:
 - (i) conflict with its constating documents; or
 - (ii) conflict with any document which is binding upon it or any of its assets to the extent that such conflict would have or be reasonably likely to have a material adverse effect on the performance by the Design-Builder of its obligations under this Agreement;

- (e) all agreements and consents of third parties required for the execution by the Design-Builder of, and performance of its obligations under, this Agreement and the other Project Documents to which it is a party, have been received, other than the Permits contemplated in this Agreement to be obtained in connection with the Project Work, agreements with Governmental Authorities to be entered into as contemplated by Section 9.2 [Agreements with Governmental Authorities] of Schedule 3 and agreements with Utility Suppliers to be entered into as contemplated by Section 5.10 [New and Amended Utility Agreements] of Schedule 3;
- (f) since the Financial Submittal Date:
 - (i) there has been no material reduction in the collective qualifications and expertise of the Design-Builder and the Material Subcontractors to perform the Project Work; and
 - (ii) there has been no material adverse change in the financial condition of the Design-Builder;
- (g) all statements, representations and information provided in the Proposal are correct and accurate in all material respects and did not omit any information required to make such statements, representations and information not misleading when taken as a whole, except to the extent the Design-Builder has in writing expressly advised the Province of any incorrectness or inaccuracy prior to the date of execution of this Agreement;
- (h) the Design-Builder has no knowledge of any fact that materially adversely affects or, so far as it can reasonably foresee, could reasonably be expected to materially adversely affect, either the financial condition of the Design-Builder or its ability to fulfil its obligations under this Agreement or any of the other Project Documents to which it is a party;
- (i) the Design-Builder is not a party to or, to its knowledge, threatened with any litigation or Claims that, if successful, would materially adversely affect the financial condition of the Design-Builder or its ability to fulfil its obligations under this Agreement or any of the other Project Documents to which it is a party;
- (j) the copies of the Material Subcontracts provided by the Design-Builder are true and accurate;
- (k) all of the Material Subcontractors and the Key Individuals are available to carry out their obligations under this Agreement in respect of the Project Work in accordance with this Agreement;
- (l) each of the Project Documents has been executed and delivered by all parties thereto other than the Province and BCTFA, the copies of the Project Documents that the Design-Builder has delivered to the Province and BCTFA are true and complete copies of such documents, and there are not in existence any other agreements or documents replacing or relating to any of the Project Documents which would materially affect the interpretation or application of any of the Project Documents;
- (m) neither the Design-Builder nor any of the Subcontractors, nor the employees of any of them, nor any other person for whom the Design-Builder is in law responsible, has, prior

to the Effective Date, done or caused to be done any of the matters or things referred to in Section 5.4 [No Conflicts of Interest] or Section 5.5 [Prohibited Acts] of this Agreement; and

- (n) the Design-Builder is not currently subject to any charge, conviction, ticket, notice of defect or non-compliance, work order, pollution abatement order, pollution prevention order, remediation order or any other order or proceeding under any Environmental Laws that might reasonably be expected to have a material adverse effect on the performance by the Design-Builder of its obligations under this Agreement.

5.8 Without Prejudice

Any covenant, representation, warranty or undertaking made or given by the Design-Builder under any provision of this Agreement is without prejudice to or limitation of any covenant, representation warranty or undertaking made or given by the Design-Builder under any other provision of this Agreement.

5.9 Design-Builder's Environmental Obligations

The Design-Builder will carry out the Design-Builder's Environmental Obligations in accordance with Schedule 6 [Environmental Obligations].

5.10 Indigenous Requirements

The Design-Builder will carry out the Indigenous Requirements in accordance with Schedule 12 [Indigenous Requirements].

5.11 Community Benefits Requirements

The Design-Builder will carry out the Community Benefits Requirements in accordance with Schedule 13 [Community Benefits Requirements].

PART 6 INSURANCE, DAMAGE AND DESTRUCTION

6.1 Insurance Coverages

The Design-Builder will take out, maintain in force, pay for and renew, or cause to be taken out, maintained in force, paid for and renewed, from Qualified Insurers, insurance for the Project as set out in Schedule 5 [Insurance Requirements] and in accordance with this Part 6, such insurance to be taken out at least five Business Days before, and so that it is in effect from, the commencement of the applicable period of time during which the insurance is required (and for clarity the insurance need not take effect until such commencement). The Design-Builder will also take out, maintain in force, pay for and renew, or cause to be taken out, maintained in force, paid for and renewed, throughout the Term, from Qualified Insurers, all other insurance as may be required to be taken out from time to time in respect of all or any of the Project Work, the Project Site and/or the Project Infrastructure in accordance with any Laws or any Project Site Agreements and Project Site Encumbrances.

6.2 Province's Right to Insure

If the Design-Builder fails or refuses to obtain or maintain in force any Required Insurance, or to provide evidence of such insurance and renewals in relation thereto as and when required and in accordance

with this Part 6, the Province will, without prejudice to any of its other rights under this Agreement or otherwise, have the right (but not the obligation) itself to procure such insurance, in which event the Design-Builder will pay to the Province on demand any amounts paid by the Province for that purpose together with an administrative fee equal to 15% of such amounts. Any administrative fee charged under this Section 6.2 will not be in duplication of any administrative fee charged under Section 12.3(b) of this Agreement in respect of the same costs and expenses.

6.3 Particular Requirements of Policies

In addition to the requirements of Schedule 5 [Insurance Requirements] and without limiting the generality of the other provisions of this Part 6, the policies for the insurance required by Section 6.1 [Insurance Coverages] of this Agreement must comply with the following:

- (a) all policies of insurance must comply with Section 6.17 [Application of Proceeds of Insurance] and Schedule 5 [Insurance Requirements] as to the named insureds, additional named insureds, additional insureds and loss payees under such policies, as applicable;
- (b) all policies must be issued in the English language and governed by the laws of British Columbia and the laws of Canada applicable therein, or such other laws as may be acceptable to the Province in its discretion; and
- (c) all policies of insurance under which the Province or BCTFA is insured or is required to be insured must contain an endorsement to the effect that the policies will not be invalidated and coverage thereunder will not be denied for the Province or BCTFA or any other insureds (other than the Design-Builder, the Design-Builder Indemnified Persons and persons for whom the Design-Builder is in law responsible) by reason of any breach or violation of warranties, representations, declarations or conditions contained in the policies by the Design-Builder, any of the Design-Builder Indemnified Persons, or any person for whom the Design-Builder is in law responsible.

6.4 Deductibles

If any policies for the Required Insurance or any other insurance required to be taken out by Section 6.1 [Insurance Coverages] of this Agreement provide that the amount payable in the event of any claim, loss or liability will be reduced by a deductible amount or subject to a waiting period, then

- (a) subject to Section 6.4(b) of this Agreement, the Design-Builder will be responsible for any such deductible amount and/or waiting period and, in the event of any claim, loss or liability, the Design-Builder will be responsible for and will pay, and will indemnify and hold harmless the Province and the Province Indemnified Persons and each of them in respect of, the amount not paid by the insurer to any of them as a result of any such deductible amount and/or waiting period; and
- (b) the Province will be responsible for any such deductible amount and/or waiting period:
 - (i) for any claim made as a result of a Province Non-Excusable Event; and
 - (ii) to the extent provided in Sections 8.10A(b) and 8.10A(c), damage caused by Landslides (other than Excluded Landslides).

6.5 Design-Builder Insurance Primary

The Design-Builder must ensure that all the Required Insurance is primary and not excess to any insurance of the Province or BCTFA, or any of the other additional named insureds, and does not require the sharing of any loss by the Province or BCTFA, or by any insurance of the Province or BCTFA.

6.6 Release of the Province for Insured Loss

(a) Subject to Section 6.6(b) of this Agreement, the Design-Builder, for itself and its successors and assigns, hereby releases the Province and BCTFA and those persons for whom the Province is in law responsible, and their successors and assigns, from any and all financial liability for:

(i) damage to any property or any other loss required to be insured by the Required Insurance or actually insured by the Design-Builder or any Subcontractor (whether or not required to be insured by the Required Insurance); and

(ii) any delay in start up, business interruption, extra expense, loss of income and loss of profit related thereto;

caused by any of the perils against which the Design-Builder or any Subcontractor has insured or against which by the terms of this Agreement the Design-Builder is required to insure or to procure insurance, and whether or not such loss or damage may have arisen out of any act, omission or negligence of the Province or BCTFA or any person for whom the Province is in law responsible.

(b) The release in Section 6.6(a) of this Agreement will not apply to the extent that both:

(i) the Province would, but for Section 6.6(a) of this Agreement, be liable under this Agreement in respect of the damage to property or other loss required to be insured by the Required Insurance; and

(ii) the amount of the relevant loss exceeds the amount of insurance required to be obtained under Schedule 5 [Insurance Requirements] in respect of such property or other loss.

6.7 Compliance with Policies

(a) The Design-Builder will comply with the terms, conditions and requirements of all policies for the Required Insurance, will not do or omit to do, or permit to be done or omitted by any person for whom the Design-Builder is in law responsible or, insofar as it is within its power or the power of any of its Subcontractors, any other person (other than the Province, BCTFA and persons for whom the Province is in law responsible), anything on or with respect to the Project Site or the Project Infrastructure or with respect to the Project Work that could result in or could reasonably be expected to result in the cancellation of any Required Insurance or that would entitle any insurer to refuse to pay any claim under the policy for any Required Insurance or that would diminish the value of any claim under the policy of Required Insurance.

(b) Provided the Province has been provided with copies of the policies of Required Insurance, neither the Province nor BCTFA will do, or permit to be done by any person for whom the

Province is in law responsible, anything on or with respect to the Project Site or the Project Infrastructure (excluding lawful acts of the Province or BCTFA required or permitted under this Agreement) that could result in or reasonably be expected to result in the cancellation of any Required Insurance or that would entitle any insurer to refuse to pay any claim under the policy for any Required Insurance or that would diminish the value of any claim under the policy of Required Insurance.

6.8 Evidence of Insurance

- (a) The Design-Builder will provide to the Province's Representative certified copies of all policies of insurance, certified by the insurer or its agent, within 90 days after the date the insurance is required to be in effect under this Agreement.
- (b) The Design-Builder will provide such additional evidence of compliance with this Part 6 as may be requested by the Province from time to time.

6.9 Renewal

- (a) At least 10 Business Days before the expiration or cancellation of any policy for any Required Insurance, unless such policy is no longer required by the terms of this Part 6 and Schedule 5 [Insurance Requirements], the Design-Builder will provide to the Province's Representative drafts of a cover note and a certificate of insurance for the renewal or replacement of such policy. Each cover note and certificate of insurance must be in a form and to be signed by an authorized signatory of the insurers or of the insurers' insurance broker or insurance intermediary satisfactory to the Province, and must be sufficient to confirm the insurance and terms and conditions thereof, as required by this Agreement, and, for such purposes, the Design-Builder will cause the cover note and the certificate of insurance to be revised as the Province may require.
- (b) At least five Business Days before the expiration or cancellation of any policy to be renewed or replaced as provided in Section 6.9(a) of this Agreement, the Design-Builder will deliver to the Province's Representative, for each such policy, the cover note and certificate of insurance for the renewal or replacement of the policy, as provided in draft to the Province's Representative pursuant to Section 6.9(a) of this Agreement, and as revised as required by the Province pursuant to Section 6.9(a) of this Agreement, signed by an authorized signatory of the insurers or of the insurers' insurance broker or insurance intermediary satisfactory to the Province, confirming that the insurance has been obtained and will be in full force and effect at or before the time of expiry or cancellation of the policy being renewed or replaced, in each case together with:
 - (i) evidence satisfactory to the Province that the deposit premiums payable therefor have been paid; and
 - (ii) where the premium for the renewal or replacement of any policy is not fully paid prior to the expiration or cancellation of any policy to be renewed or replaced, a statement to that effect certified by the Design-Builder setting out the due dates for payment of the remaining premiums and the amount payable on each due date.
- (c) Not later than five Business Days after each due date referred to in Section 6.9(b)(ii) of this Agreement, the Design-Builder will provide to the Province's Representative evidence satisfactory to the Province that the premiums due on that due date have been paid and that

the insurance has not been cancelled and is not susceptible to cancellation for non-payment of such premiums.

6.10 Copies of Communications

At the time the Design-Builder provides to the Province's Representative any submittal, notice or other communication with respect to insurance under this Part 6 or Schedule 5 [Insurance Requirements], the Design-Builder will at the same time provide a copy of such submittal, notice or other communication and a copy of all documents and enclosures therewith, to "The Corporate Insurance and Securities 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).

6.11 Review of Insurance by Province

Without limiting Section 2.8 [Review, Approval, Inspection and Audit by the Province] of this Agreement, the submission or delivery to the Province's Representative, and the receipt, review, approval or acceptance by the Province or the Province's Representative of any insurance policy or any draft or certified copy of an insurance policy or any certificate of insurance, cover note or other evidence of compliance with this Part 6 and Schedule 5 [Insurance Requirements], will not, irrespective of whether any objection is made thereto by the Province:

- (a) imply any acceptance by the Province or BCTFA that the extent of the insurance coverage is sufficient or that the terms and conditions thereof are satisfactory, in either case for the purposes of the Project or this Agreement; or
- (b) relieve or exempt or be deemed to relieve or exempt the Design-Builder or any other person from any of its obligations and liabilities under this Agreement or at law or in equity including its obligations to insure as provided in this Part 6 and Schedule 5 [Insurance Requirements]; or
- (c) derogate from, limit or prejudice any rights of the Province under this Agreement.

6.12 Claims

- (a) The Design-Builder will maintain a written register of all claims and incidents which might result in a claim under any of the policies of Required Insurance and will allow the Province to inspect such register at any time on reasonable notice.
- (b) The Design-Builder will in addition notify the Province within five Business Days after making any claim under any of the policies for the Required Insurance where the value of the claim exceeds \$25,000 or (regardless of the value of the claim) the claim involves bodily injury or death, accompanied by full particulars of the incident giving rise to the claim.
- (c) In the event of any claim or loss to which any Required Insurance may apply, the Design-Builder will, and will ensure that the relevant insured (other than the Province and BCTFA) will, promptly and diligently notify all applicable insurers, file all required proofs of claim, supply to the insurers and adjusters all required documents and information, and generally execute and deliver all documents and do all acts and things that may be required to obtain

the benefit of the insurance for the insureds thereunder including the additional named insureds and additional insureds.

- (d) Each party will have the right, as its interest may appear, to be a party to and to participate in any claims settlement under any policy of property insurance insuring the Project Infrastructure or any part thereof required by this Agreement to be part of the Required Insurance, and to make and submit its own claim with respect to any loss or damage separately from any claim of any other party or any other person.

6.13 Insurance Not to Prejudice

Neither full compliance by the Design-Builder nor a failure to comply by the Design-Builder with the requirements of this Part 6 will derogate from, limit or prejudice any rights of the Province under this Agreement or relieve the Design-Builder from any of its other obligations or liabilities under this Agreement.

6.14 Restoration and Reinstatement of Damage or Destruction

Unless this Agreement is terminated in accordance with its terms (including under Section 8.6 [Termination for Force Majeure Event] or Section 8.7 [Termination for Damage or Destruction] of this Agreement), if all or any part of the Project Infrastructure or the Project Site is damaged or destroyed prior to the Substantial Completion Date, the Design-Builder will restore, replace and reinstate such damage or destruction (the “**Reinstatement Work**”) promptly and in any event as soon as practicable in the circumstances. Except as otherwise expressly provided in this Agreement, damage to or destruction of all or any part of the Project Infrastructure or the Project Site will not terminate this Agreement or relieve the Design-Builder of any of its obligations under this Agreement or entitle the Design-Builder to any compensation from the Province or BCTFA.

6.15 Reinstatement Plan

If all or any part of the Project Infrastructure or the Project Site is damaged or destroyed prior to the Substantial Completion Date, in addition to the requirements of Section 8.6 [Termination for Force Majeure Event] or Section 8.7 [Termination for Damage or Destruction] of this Agreement, if the Reinstatement Work is reasonably estimated to cost more than \$5,000,000 or in any other case where the Province, having regard to the nature of the damage or destruction, notifies the Design-Builder that a Reinstatement Plan is required (excluding where the damage or destruction occurs before the Total Completion Date and the Province considers that the continued application of the Design and Certification Procedure would be able to adequately address the Reinstatement Work without the need for a separate Reinstatement Plan), the Design-Builder will, as soon as practicable and in any event within 20 Business Days after the occurrence of the damage or destruction or receipt of notification from the Province, as the case may be, (or if, with the exercise of all due diligence, more than 20 Business Days is reasonably required for such purposes, then within such longer period of time after the occurrence of such damage or destruction or receipt of notification from the Province, as the case may be, as may be reasonably required with the exercise of all due diligence, provided the Design-Builder exercises and continues to exercise all such due diligence) submit to the Province’s Representative pursuant to the Consent Procedure a plan (a “**Reinstatement Plan**”) prepared by the Design-Builder for carrying out the Reinstatement Work setting out, in reasonable detail, *inter alia*:

- (a) a description of the Reinstatement Work required to restore, replace and reinstate the damage or destruction (in accordance, where applicable, with any Province Change issued in respect thereof);

- (b) an estimate of the cost to carry out the Reinstatement Work and confirmation of whether or not there are sufficient funds available to the Design-Builder from all sources, including letters of credit, construction or other security, insurance proceeds, deductibles for which the Design-Builder is responsible in accordance with this Agreement, recourse against third parties, amounts required to be paid by the Province to the Design-Builder pursuant to Section 8.3(b) of this Agreement or otherwise under this Agreement, to allow the Design-Builder to complete the Reinstatement Work;
- (c) the Design-Builder's proposed schedule for the execution of the Reinstatement Work;
- (d) the proposed terms upon which the Reinstatement Work is to be effected and, if the Reinstatement Work is to be effected by a third party, the procurement procedure which the Design-Builder proposes to implement to procure the execution of the Reinstatement Work, provided that, if required by the Province in order to comply with applicable Competitive Procurement Requirements, the execution of the Reinstatement Work will be procured through a competitive procedure designated by the Province and conducted under the supervision of the Province;
- (e) the Design-Builder's proposal for any amended Project Schedule and/or Works Schedule necessary to accommodate the proposed schedule for the execution of the Reinstatement Work (which proposal will be dealt with in accordance with the provisions of Part 3 [Project Schedule] of Schedule 3, as applicable); and
- (f) the Design-Builder's proposal for any related amendment to the Traffic Management Plan required in connection with the execution of the Reinstatement Work;

and except to the extent necessary to address any emergency or public safety needs, the Reinstatement Work must not be commenced until the Reinstatement Plan has been accepted by the Province in accordance with the Consent Procedure.

6.16 Conduct of Reinstatement Work

The Design-Builder will carry out the Reinstatement Work in accordance with the Project Requirements and all other applicable requirements under this Agreement and, where applicable, in accordance with the Reinstatement Plan accepted by the Province in accordance with the Consent Procedure. All designs, plans and specifications in respect of the Reinstatement Work will be subject to the Design and Certification Procedure.

6.17 Application of Proceeds of Insurance

The Design-Builder will ensure that the insurers under any of the policies of Required Insurance pay the proceeds of insurance under such policies as follows:

- (a) in the case of any policy for the insurance referred to in any of Sections 1.1 [Third Party Liability Insurance - Construction], 1.3 [Automobile Insurance] and 2.1 [Insurance – Operation and Maintenance] of Schedule 5, the proceeds of insurance will be paid directly to the third party or, where any insured party has discharged the relevant liability to the third party prior to the payment of any relevant insurance proceeds, to the insured party who discharged the relevant liability;

- (b) in the case of any policy for the insurance referred to in Section 1.4(a) of Schedule 5 [Insurance Requirements] (excluding any delay in start up, extra expense, business interruption, loss of income or loss of profits insurance proceeds payable under any such policy), the proceeds of insurance will be paid to the Province as first loss payee, except where:
 - (i) the Design-Builder has already Totally Completed the Reinstatement Work in respect of the damage or destruction that gave rise to the proceeds; or
 - (ii) the insurance proceeds payable in respect of any single claim made under the relevant insurance policy is equal to or less than \$15,000,000;

in either of which cases the Province will direct that the proceeds be paid directly to the Design-Builder or the relevant insured; provided that, where the proceeds of any such insurance policy (other than any delay in start up, extra expense, business interruption or loss of profits insurance policy proceeds payable to the Design-Builder) are paid to the Design-Builder in respect of any single claim equal to or less than \$15,000,000, the Design-Builder will ensure that such proceeds are applied to the Reinstatement Work in respect of the damage or destruction that gave rise to the proceeds and not for any other purpose; and provided further that, where the proceeds of such policies of insurance are payable in whole or in part to the Province pursuant to this Section 6.17(b) (such proceeds, together with any interest, distribution or other gain from time to time received by the Province in respect thereof are called the “**Property Damage Insurance Proceeds**”), then either Section 6.17(c) or Section 6.17(d) of this Agreement, as applicable, will apply;

- (c) if the Design-Builder has, in accordance with the provisions of the relevant Reinstatement Plan, entered into a contract with a third party for the purpose of carrying out the Reinstatement Work in respect of the damage or destruction that gave rise to Property Damage Insurance Proceeds being paid by insurers to the Province:
 - (i) if, in accordance with such contract, the Design-Builder is required to make a payment to such third party for such purpose, and if the Design-Builder submits to the Province’s Representative pursuant to the Review Procedure:
 - (A) a copy of an invoice from such third party to the Design-Builder for payment of the cost of such Reinstatement Work;
 - (B) such supporting documentation and detail as may be required by the Province with respect to the Reinstatement Work that is the subject of the invoice and the cost thereof including documents and information to establish and verify the applicable matters for consideration in accordance with Section 3.4 [General Grounds for Objection or Rejection] of Schedule 2 in respect of the Reinstatement Work and the Property Damage Insurance Proceeds;
 - (C) standard Ministry evidence (or other evidence satisfactory to the Province) that the provisions of Section 4.1 [Workers’ Compensation Coverage] of Schedule 5 and Section 4.8 [Compliance with *Builders Lien Act* and Payments to Subcontractors] of Schedule 8 have been complied with in respect of the Reinstatement Work and that there are no outstanding

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builders' liens or claims therefor in respect of such Reinstatement Work;
and

- (D) written confirmation of the Design-Builder addressed to the Province that the amount of the invoice is justly due and payable in accordance with the relevant contract and that the Design-Builder requires such invoice to be discharged out of the Property Damage Insurance Proceeds,

then the Province will, not later than the later of:

- (E) the date that is five Business Days after the date on which there has been (or deemed to have been) no objection by the Province under the Review Procedure to the submittal referred to in Sections 6.17(c)(i)(A) to (D) inclusive of this Agreement; and
- (F) the date that is seven Business Days prior to the due date for payment of such invoice by the Design-Builder under the terms of the relevant contract,

pay to the relevant third party, out of the Property Damage Insurance Proceeds paid to the Province on account of the damage or destruction to which the Reinstatement Work relates, an amount equal to the lesser of the amount of such Property Damage Insurance Proceeds paid to the Province and the amount of such invoice; and

- (ii) upon the issuance of a Certificate of Total Completion in respect of the Reinstatement Work pursuant to the Design and Certification Procedure, if the Design-Builder submits to the Province's Representative pursuant to the Review Procedure:

- (A) a copy of the Certificate of Total Completion in respect of such Reinstatement Work;
- (B) an invoice for payment to the Design-Builder of the balance (if any) of any such Property Damage Insurance Proceeds; and
- (C) standard Ministry evidence (or other evidence satisfactory to the Province) that the provisions of Section 4.1 [Workers' Compensation Coverage] of Schedule 5 and Section 4.8 [Compliance with *Builders Lien Act* and Payments to Subcontractors] of Schedule 8 have been complied with in respect of the Reinstatement Work and that there are no outstanding builders' liens or claims therefor in respect of such Reinstatement Work,

the Province will, subject to any specific requirements of the insurers, within five Business Days after the date on which there has been (or deemed to have been) no objection by the Province under the Review Procedure to the submittal referred to in Sections 6.17(c)(ii)(A) to (C) inclusive of this Agreement, pay to the Design-Builder the balance (if any) of the Property Damage Insurance Proceeds paid to the Province on account of the damage or destruction to which the Reinstatement Work relates;

- (d) if the Design-Builder itself, in accordance with the provisions of the relevant Reinstatement Plan, carries out the Reinstatement Work in respect of which the Insurance Proceeds have been paid to the Province, then:
 - (i) if the Design-Builder submits to the Province's Representative pursuant to the Review Procedure:
 - (A) a certificate from the Design-Builder addressed to the Province confirming in writing the amount of the Property Damage Insurance Proceeds claimed by the Design-Builder, based on the value of the Reinstatement Work carried out by the Design-Builder;
 - (B) such supporting documentation and detail as may be required by the Province with respect to the Reinstatement Work that is the subject of the invoice and the cost thereof (which may include a Mark-up for overhead and profit in accordance with Section 2.5 [Design-Builder's Estimate of Change in Costs] of Schedule 11) including documents and information to establish and verify the applicable matters for consideration in accordance with Section 3.4 [General Grounds for Objection or Rejection] of Schedule 2 in respect of the Reinstatement Work and the Property Damage Insurance Proceeds;
 - (C) standard Ministry evidence (or other evidence satisfactory to the Province) that the provisions of Section 4.1 [Workers' Compensation Coverage] of Schedule 5 and Section 4.8 [Compliance with *Builders Lien Act* and Payments to Subcontractors] of Schedule 8 have been complied with in respect of the Reinstatement Work and that there are no outstanding builders' liens or claims therefor in respect of such Reinstatement Work; and
 - (D) written confirmation from the Design-Builder addressed to the Province that the amount of the certificate is justly due and payable in accordance with this Agreement and that the Design-Builder requires such certificate to be discharged out of the Property Damage Insurance Proceeds,
 - then the Province will, within five Business Days after the date on which there has been (or deemed to have been) no objection by the Province under the Review Procedure to the submittal referred to in Section 6.17(d)(i)(A) to (D) inclusive of this Agreement, pay to the Design-Builder, out of the Property Damage Insurance Proceeds paid to the Province on account of the damage or destruction to which the Reinstatement Work relates, an amount equal to the lesser of the amount of such Property Damage Insurance Proceeds paid to the Province and the amount claimed in such certificate; and
- (ii) upon the issuance of a Certificate of Total Completion in respect of the Reinstatement Work pursuant to the Design and Certification Procedure, if the Design-Builder submits to the Province's Representative pursuant to the Review Procedure:
 - (A) a copy of the Certificate of Total Completion in respect of such Reinstatement Work;

- (B) an invoice for payment to the Design-Builder of the balance (if any) of any such Property Damage Insurance Proceeds; and
- (C) standard Ministry evidence (or other evidence satisfactory to the Province) that the provisions of Section 4.1 [Workers' Compensation Coverage] of Schedule 5 and Section 4.8 [Compliance with *Builders Lien Act* and Payments to Subcontractors] of Schedule 8 have been complied with in respect of the Reinstatement Work and that there are no outstanding builders' liens or claims therefor in respect of such Reinstatement Work,

the Province will, subject to any specific requirements of the insurers, within five Business Days after the date on which there has been (or deemed to have been) no objection by the Province under the Review Procedure to the submittal referred to in Sections 6.17(d)(ii)(A) to (C) inclusive of this Agreement, pay to the Design-Builder the balance (if any) of the Property Damage Insurance Proceeds paid to the Province on account of the damage or destruction to which the Reinstatement Work relates; and

- (e) in the case of any insurance other than that referred to in Sections 6.17(a) and (b) of this Agreement, proceeds will be paid so as to ensure the performance by the Design-Builder of its obligations under this Agreement. Proceeds of delay in start up insurance and business interruption insurance may be used to pay the Design-Builder's debt service and other costs incurred by the Design-Builder covered by such insurance and if so paid will be deemed to have been paid to ensure the performance by the Design-Builder of its obligations under this Agreement.

6.18 Repayment of Insurance Proceeds

The Design-Builder hereby undertakes that if, following payment to the Design-Builder or to a third party at the request of or on behalf of the Design-Builder as contemplated by Sections 6.17(c) and (d) of this Agreement, the Province receives a *prima facie* valid demand from the relevant insurer for all or any part of the Property Damage Insurance Proceeds, the Design-Builder will, if and to the extent that such demand arises or results (directly or indirectly) from any Design-Builder Non-Excusable Event, pay to the insurer the amount demanded within the time period stated in the demand.

6.19 Proceeds of Property Insurance if Agreement Terminated

If this Agreement is terminated, all proceeds of any property insurance that is required as part of the Required Insurance (excluding the insurance required by Section 1.4(b) of Schedule 5 [Insurance Requirements]), to the extent such proceeds have not been used to pay the cost of, or are not owed in respect of, Reinstatement Work in respect of the loss or damage in respect of which such proceeds were payable, will be paid to and retained by the Province as its sole property, and for such purposes the Province and the Design-Builder will sign all such documents and do all such things as may be reasonably required for such proceeds to be paid to the Province by insurers.

6.20 Alternate Risk Financing Measures

From time to time during the Term, the Province may, but will not be obliged to, pursue and implement, subject to and in accordance with the provisions of Part 7 [Changes] of this Agreement and Schedule 11 [Changes], alternate risk financing measures for the Project if the Province considers in its discretion that such alternate measures would result in coverage substantially similar to the insurance

coverages described in Schedule 5 [Insurance Requirements] being obtained in a more cost efficient manner.

PART 7 CHANGES

7.1 Province Changes and Value Engineering Proposals

The Province may, at any time during the Term, require Province Changes and Value Engineering Proposals in accordance with the provisions of Schedule 11 [Changes].

PART 8 SUPERVENING EVENTS

8.1 Supervening Events

- (a) If, in the case of:
 - (i) the Design-Builder, a Compensation Event or Relief Event occurs; or
 - (ii) either the Province or the Design-Builder, a Force Majeure Event occurs,then if and to the extent that such event:
 - (iii) in the case of the Design-Builder:
 - (A) interferes adversely with, or causes a failure of, or prevents, the performance of the Project Work; or
 - (B) is a Compensation Event and results in Direct Losses; or
 - (iv) in the case of the Province, interferes adversely with, or causes a failure of, or prevents, the performance of any obligation under this Agreement,then, subject to Section 8.1(b) of this Agreement and to Section 3 [Hazard to the Highway] of Appendix 4C to Schedule 4, the affected or entitled party (the “**Applicant**”) may apply for relief from its obligations, apply for extensions of time, claim compensation and/or claim a termination right under this Agreement to the extent provided in this Part 8.
- (b) Notwithstanding any other provision of this Part 8, an Applicant will only be entitled to relief from its obligations, extensions of time, compensation and/or a termination right under this Agreement in accordance with this Part 8 in respect of a Supervening Event:
 - (i) if and to the extent that such Supervening Event is not caused by, could not reasonably have been prevented by and is beyond the reasonable control of the Applicant or any person for whom the Applicant is in law responsible;
 - (ii) in the case of any claim of a Supervening Event by the Design-Builder, if and to the extent that such Supervening Event and/or the effect thereof is not required by the Project Requirements to be contemplated or taken into account in the Design of the Project Infrastructure (other than in respect of Compensation Event (o));

- (iii) if and to the extent that such Supervening Event and/or the effect thereof does not result from or is not contributed to by, directly or indirectly:
 - (A) in the case of a claim of any Supervening Event by the Design-Builder, any Design-Builder Non-Excusable Event; or
 - (B) in the case of a claim of a Force Majeure Event by the Province, any Province Non-Excusable Event; and
- (iv) if the Applicant provides a Supervening Event Notice in respect of such Supervening Event pursuant to Section 8.2(a) of this Agreement no more than 12 months after the date of the occurrence or commencement of such Supervening Event.
- (c) Nothing in this Part 8 will limit the Province's right to request a Province Change pursuant to Section 7.1 [Province Changes and Value Engineering Proposals] in response to the occurrence of any Supervening Event, including a Province Change to give to the Design-Builder instructions to accelerate construction or take other steps to avoid any delay or impediment, or reduce the period of any future delay or mitigate the effect of any future impediment, resulting from such Supervening Event. Subject to a cancellation of such request for a Province Change as a result of the successful exercise by the Design-Builder of its rights in accordance with Section 2.2 [Design-Builder Objection] of Schedule 11, in the event that the Province requests such a Province Change the procedures in respect of such Supervening Event set out in this Part 8 will terminate and the matter will be fully determined in accordance with Part 8 [Changes] and Schedule 11 [Changes], provided that the Supervening Event and its consequences (as such consequences may be affected by the Province Change) will be dealt with as part of the resulting Province Change.

8.2 Procedures Upon Occurrence of a Supervening Event

The following procedures will apply if a Supervening Event occurs:

- (a) as soon as practicable, and in any event within five Business Days after the Applicant has knowledge that the Supervening Event has caused, or is reasonably likely to cause, an entitlement under this Part 8, the Applicant will give to the Province, where the Applicant is the Design-Builder, or the Design-Builder, where the Applicant is the Province, a notice ("**Supervening Event Notice**") identifying the particular Supervening Event and summarizing, to the extent the Applicant has knowledge thereof, the consequences and the nature of the Applicant's claim;
- (b) following the delivery of a Supervening Event Notice:
 - (i) as soon as practicable, and in any event within 30 Business Days after the delivery of the Supervening Event Notice, the Applicant will give to the Province, where the Applicant is the Design-Builder, or the Design-Builder, where the Applicant is the Province:
 - (A) any additional details or information, including available supporting documentation, in support of its claim in respect of the occurrence of the Supervening Event; and

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- (B) if applicable, a detailed breakdown of all estimated Direct Losses that have been, will be or are reasonably likely to be incurred by the Applicant as a result of the Supervening Event;
 - (C) details of the contemporary records which the Design-Builder will thereafter maintain and make available to the Province to substantiate its claim if the Supervening Event will form the basis of a claim for an extension of time; and
 - (D) all other relevant information which would be required to be included in a Change Report under Section 2.4 [Preparation of Change Report] of Schedule 11 if such Supervening Event was a Province Change; and
- (ii) as soon as practicable, and in any event within three Business Days of the Applicant receiving, or becoming aware of, any supplemental information pertaining to the Supervening Event, the Applicant will give to the other party further particulars based on such supplemental information;
- (c) if a Supervening Event for which a Supervening Event Notice has been delivered ceases, the Applicant will give to the Province, where the Applicant is the Design-Builder, or the Design-Builder, where the Applicant is the Province, as soon as practicable notice thereof and of when performance of its affected obligations can be resumed;
- (d) a party may not make multiple or duplicative claims in respect of any Supervening Event, and the relief, extensions of time, compensation and/or termination right in respect of a Supervening Event as is agreed to by the parties or otherwise determined in accordance with the Dispute Resolution Procedure pursuant to 8.2(h)(i)(B) of this Agreement will be the only relief, extensions of time, compensation and/or termination right to which the Applicant will be entitled in respect of such Supervening Event;
- (e) the other party will provide the Applicant any information reasonably requested by the Applicant in order for the Applicant to make its claim;
- (f) where the claim in respect of a Supervening Event includes Claims to which Section 9.9 [Conduct of Claims Indemnified by the Province] of this Agreement applies, such Claims will be subject to the provisions of Section 9.9 [Conduct of Claims Indemnified by the Province] of this Agreement and otherwise the claim in respect of such Supervening Event will be subject to the provisions of this Part 8;
- (g) the Applicant will demonstrate to the reasonable satisfaction of the Province, where the Applicant is the Design-Builder, or the Design-Builder, where the Applicant is the Province, that:
 - (i) the applicable criteria required under Section 8.1(b) of this Agreement have been met;
 - (ii) the Supervening Event has caused or will cause the Applicant to suffer the effects from which or for which the Applicant seeks relief, extensions of time, compensation and/or a termination right under this Part 8; and

- (iii) it has complied with its mitigation obligations under Section 4.1 [Mitigation By Province] or Section 5.6 [Mitigation By Design-Builder] of this Agreement, as applicable; and
- (h) following the delivery of a Supervening Event Notice under Section 8.2(a) of this Agreement:
 - (i) the Province and the Design-Builder will consult and seek to agree to the effect of the relevant Supervening Event, provided that either of them may submit for resolution in accordance with the Dispute Resolution Procedure the question of:
 - (A) whether such Supervening Event has occurred, if within 10 Business Days following the delivery of the Supervening Event Notice the Province and the Design-Builder have not agreed to the occurrence of such Supervening Event; and/or
 - (B) the extent of relief, extensions of time and/or compensation to which the Applicant is entitled, if within 20 Business Days following the exchange of all relevant information required under this Section 8.2, the Province and the Design-Builder have not agreed to the extent of such relief, extensions of time and/or compensation; and
 - (ii) without limiting the obligations set out in Section 5.6 [Mitigation By Design-Builder], if the Applicant is the Design-Builder and while the relevant Supervening Event is continuing, the Design-Builder will:
 - (A) consult and meet with the Province at all times as may be required by the Province in the circumstances to review and discuss matters pertaining to the ongoing Supervening Event;
 - (B) promptly provide to the Province for its review, comment and input, and then implement, and update as necessary in the circumstances, detailed contingency plans addressing worker health and safety, general site safety, site security, compliance with any Law (including any special orders or regulations imposed by Governmental Authorities) and any other matters the Province reasonably requires to be addressed as a consequence of the ongoing Supervening Event;
 - (C) promptly advise and seek the input of the Province in respect of the Design-Builder's actions, plans and strategies to mitigate the effects of the ongoing Supervening Event; and
 - (D) work collaboratively and in good faith with the Province promptly to seek to identify opportunities to advance the conduct of the Project Work and the delivery of the Project.

8.3 Design-Builder's Entitlements Upon Occurrence of a Compensation Event

Subject to Sections 8.1(b) and 8.12 [Delay in Notification] of this Agreement and to the Design-Builder's obligations under Section 5.6 [Mitigation By Design-Builder] of this Agreement, if at any time a Compensation Event occurs:

- (a) to the extent that, and for so long as, the performance of any obligation under this Agreement by the Design-Builder is negatively affected by the Compensation Event (other than those obligations arising as a result of the Compensation Event, including the Design-Builder's obligations under Section 6.14 [Restoration and Reinstatement of Damage or Destruction] of this Agreement), the Design-Builder will be relieved from any liability or consequence under this Agreement (including termination by the Province other than as expressly provided for in Section 8.7 [Termination for Damage or Destruction] of this Agreement and without limiting the Province's right to terminate this Agreement pursuant to Section 14.1 [Termination for Convenience] of this Agreement) arising from its affected performance, including that:
 - (i) no NCE Points or Default Points will be assigned in respect of any such affected performance; and
 - (ii) no Non-Compliance Event Payments will be applied in respect of any such affected performance;
- (b) subject to Section 8.7 [Termination for Damage or Destruction], Section 8.9 [Allocation of Risks of Participants and Trespassers] and Section 8.11 [Effect of Insurance] of this Agreement, and save to the extent that the Design-Builder is entitled to be indemnified therefor pursuant to Section 9.6 [Limited Province Indemnities] in respect of a Compensation Event falling within paragraph (k) of the definition thereof in Section 1.1 [Definitions] of Schedule 1, the Design-Builder will be compensated through a lump sum payment from the Province for the amount of any Direct Losses incurred, or to be incurred, by the Design-Builder from the occurrence of the Compensation Event, provided that:
 - (i) in the case of a Compensation Event referred to in paragraph (m) of the definition of Compensation Event in Section 1.1 [Definitions] of Schedule 1, such amount will not include the first \$250,000 of the aggregate amount of the Direct Losses incurred by the Design-Builder to mitigate the effects of all Protest Actions during the Term; and
 - (ii) in the case of a Compensation Event (or a Force Majeure Event in the circumstances set out in Section 8.6(a)(ii) of this Agreement) that causes damage to or destruction of all or any part of the Project Infrastructure or the Project Site, the Province will make payment of the portion of the amount that is payable for the Reinstatement Work in respect of such damage or destruction based on the same criteria and subject to satisfaction of all the same conditions as are set out in Sections 6.17(c) and 6.17(d) of this Agreement for the disbursement of Property Damage Insurance Proceeds under Section 6.17(b) of this Agreement;
- (c) subject to Section 8.9 [Allocation of Risks of Participants and Trespassers], if it has been agreed or determined that the Compensation Event has resulted or will result in a delay to the occurrence of the Substantial Completion Date and/or the Total Completion Date, then if the Compensation Event occurs:
 - (i) prior to the Substantial Completion Date, then the Substantial Completion Target Date and the Total Completion Target Date will be postponed; or
 - (ii) after the Substantial Completion Date but prior to the Total Completion Target Date, then the Total Completion Target Date will be postponed,

in each case by or for, as the case may be, such time as is reasonable in the circumstances to take account solely of the effect of the delay caused, or that will be caused, by the Compensation Event to the achievement of the relevant date or dates, and in each case the Project Schedule will be amended accordingly to reflect such postponement, including any resulting postponement of other related milestone dates set out therein.

8.4 Design-Builder's Entitlements Upon Occurrence of a Relief Event

Subject to Sections 8.1(b) and 8.12 [Delay in Notification] of this Agreement and to the Design-Builder's obligations under Section 5.6 [Mitigation By Design-Builder] of this Agreement, if a Relief Event occurs:

- (a) to the extent that, and for so long as, the performance of any obligation under this Agreement by the Design-Builder is negatively affected by the Relief Event (other than those obligations arising as a result of the Relief Event, including the Design-Builder's obligations under Section 6.14 [Restoration and Reinstatement of Damage or Destruction] of this Agreement):
 - (i) without limiting the Province's right to terminate this Agreement pursuant to Section 14.1 [Termination for Convenience] of this Agreement, the Province will not exercise any right it would otherwise have under this Agreement to terminate this Agreement arising from the Design-Builder's inability to perform such obligation (other than as expressly provided for in this Section 8.4 or Section 8.7 [Termination for Damage or Destruction] of this Agreement);
 - (ii) no NCE Points or Default Points will be assigned in respect of any such affected performance; and
 - (iii) no Non-Compliance Event Payments will be applied in respect of any such affected performance; and
- (b) if it has been agreed or determined that the Relief Event has resulted or will result in a delay to the occurrence of the Substantial Completion Date and/or the Total Completion Date, then if the Relief Event occurs:
 - (i) prior to the Substantial Completion Date, then the Substantial Completion Target Date and the Total Completion Target Date will be postponed; or
 - (ii) after the Substantial Completion Date but prior to the Total Completion Target Date, then the Total Completion Target Date will be postponed,

in each case by or for, as the case may be, such time as is reasonable in the circumstances to take account of the effect of the delay solely caused, or that will be solely caused, by such Relief Event to the achievement of the relevant date or dates, and in each case the Project Schedule will be amended accordingly to reflect such postponement, including any resulting postponement of other related milestone dates set out therein.

8.5 Parties' Entitlements Upon Occurrence of a Force Majeure Event

Subject to Sections 8.1(b) and 8.12 [Delay in Notification] of this Agreement and to the Applicant's obligations under Section 4.1 [Mitigation By Province] or Section 5.6 [Mitigation By Design-Builder] of this Agreement, as applicable, if at any time a Force Majeure Event occurs:

- (a) to the extent that, and for so long as, the performance of any obligation under this Agreement by the Applicant is negatively affected by the Force Majeure (other than (A) those obligations arising as a result of the Force Majeure Event, including the Design-Builder's obligations under Section 6.14 [Restoration and Reinstatement of Damage or Destruction] of this Agreement, and (B) any obligations of the Province under this Agreement to make payment to the Design-Builder):
 - (i) the Applicant will be relieved of performance of such obligations;
 - (ii) without limiting the Province's right to terminate this Agreement pursuant to Section 14.1 [Termination for Convenience] of this Agreement, neither party will exercise any right that it would otherwise have under this Agreement to terminate this Agreement arising from the Applicant's inability to perform such obligation (other than as expressly provided for in Section 8.6 [Termination for Force Majeure Event] or Section 8.7 [Termination for Damage or Destruction] of this Agreement); and
 - (iii) if the Applicant is the Design-Builder:
 - (A) no NCE Points or Default Points will be assigned in respect of any such affected performance; and
 - (B) no Non-Compliance Event Payments will be applied in respect of any such affected performance; and
- (b) if it has been agreed or determined that the Force Majeure Event has resulted or will result in a delay to the occurrence of the Substantial Completion Date and/or the Total Completion Date, then if the Force Majeure Event occurs:
 - (i) prior to the Substantial Completion Date, then the Substantial Completion Target Date and the Total Completion Target Date will be postponed; or
 - (ii) after the Substantial Completion Date but prior to the Total Completion Target Date, then the Total Completion Target Date will be postponed,

in each case by or for, as the case may be, such time as is reasonable in the circumstances to take account of the effect of the delay solely caused, or that will be solely caused, by the Force Majeure Event to the achievement of the relevant date or dates, and in each case the Project Schedule will be amended accordingly to reflect such postponement, including any resulting postponement of other related milestone dates set out therein.

8.6 Termination for Force Majeure Event

- (a) If the occurrence of a Force Majeure Event frustrates or renders impossible for a continuous period of more than 180 days the performance by the Province or the Design-Builder of its

respective obligations with respect to all or a material portion of the Project or the Project Work, as the case may be, so as to frustrate the overall purpose and intent of the Project, then either the Province or the Design-Builder may at any time, provided that such frustration is then continuing, terminate this Agreement by notice to the other party having immediate effect, subject to Sections 8.1(b) and 14.4 [Notice of Intention to Terminate and Dispute] of this Agreement, provided that, if the Design-Builder exercises such right to terminate, the Province may, by notice to the Design-Builder reject such termination of this Agreement by the Design-Builder and upon such rejection by the Province:

- (i) the parties, insofar as they are able to do so, will continue to perform their respective obligations under this Agreement in accordance with the provisions of this Agreement;
 - (ii) without prejudice to the other relief available to the parties in respect of such Force Majeure Event pursuant to Section 8.5 [Parties' Entitlements Upon Occurrence of a Force Majeure Event] of this Agreement, the Design-Builder will, for so long as the effects of the relevant Force Majeure Event continue, be compensated in accordance with Section 8.3(b) of this Agreement, but only in respect of the Direct Losses incurred by the Design-Builder as a result of the Force Majeure Event as and from the date of the exercise by the Design-Builder of its termination right; and
 - (iii) the Province may at any time thereafter, provided that such frustration is then continuing, terminate this Agreement by notice to the Design-Builder having immediate effect, subject to Section 14.4 [Notice of Intention to Terminate and Dispute] of this Agreement.
- (b) If this Agreement is terminated by either the Province or the Design-Builder pursuant to Section 8.6(a) of this Agreement, compensation on termination will be payable in accordance with Part 1 [Compensation on Termination other than for Design-Builder Default] of Schedule 14.

8.7 Termination for Damage or Destruction

If all or any substantial part of the Project Infrastructure or the Project Site is damaged or destroyed as a result of the occurrence of:

- (a) any event (other than a Compensation Event referred to in paragraph (o) of the definition of Compensation Event in Section 1.1 [Definitions] of Schedule 1) and:
 - (i) the information provided by the Design-Builder and consented to by the Province as part of the Reinstatement Plan pursuant to Section 6.15 [Reinstatement Plan] of this Agreement, or as otherwise provided by the Design-Builder to the satisfaction of the Province if there is no Reinstatement Plan required under Section 6.15 [Reinstatement Plan] of this Agreement, establishes that there are insufficient funds available to the Design-Builder from all sources to allow the Design-Builder to complete the Reinstatement Work (the deficiency being called the **"Reinstatement Funds Deficiency"**); and
 - (ii) no party has agreed to fund the Reinstatement Funds Deficiency,

then:

(iii) in the event that it is agreed or established that either:

- (A) such damage or destruction of all or a substantial part of the Project Infrastructure or Project Site results from or is contributed to by a Design-Builder Non-Excusable Event, including as a result of a failure by the Design-Builder to comply with and implement all design requirements specified in the Project Requirements applicable to the damaged Project Infrastructure or Project Site; or
- (B) the cause of the Reinstatement Funds Deficiency is a breach by the Design-Builder of any of its obligations with respect to the Required Insurance set out in Part 6 [Insurance, Damage and Destruction] and Schedule 5 [Insurance Requirements], including a failure by the Design-Builder to fund any deductibles and/or waiting periods for which it is responsible under this Agreement,

the Province may terminate this Agreement by notice to the Design-Builder having immediate effect, subject to Section 14.4 [Notice of Intention to Terminate and Dispute] of this Agreement, in which event compensation on termination will be payable in accordance with Part 2 [Compensation on Termination for the Design-Builder Default] of Schedule 14; or

(iv) in any case where Section 8.7(a)(iii) of this Agreement does not apply, either the Province or the Design-Builder may terminate this Agreement by notice to the Province having immediate effect, subject to Section 14.4 [Notice of Intention to Terminate and Dispute] of this Agreement, in which event compensation on termination will be payable in accordance with Part 1 [Compensation on Termination other than for Design-Builder Default] of Schedule 14; or

(b) a Compensation Event referred to in paragraph (o) of the definition of Compensation Event in Section 1.1 [Definitions] of Schedule 1, the Province will elect, by notice to the Design-Builder having immediate effect, either:

- (i) to compensate the Design-Builder in accordance with Section 8.3(b) of this Agreement, and this Agreement will continue; or
- (ii) subject to Section 14.4 [Notice of Intention to Terminate and Dispute] of this Agreement, to terminate this Agreement, in which event compensation on termination will be payable in accordance with Part 1 [Compensation on Termination other than for Design-Builder Default] of Schedule 14,

provided that the Province may not in such case elect to terminate this Agreement pursuant to Section 8.7(b)(ii) of this Agreement if the Design-Builder releases the Province from all obligations under Section 8.7(b)(i) of this Agreement and deposits with the Province an amount equal to the estimated amount to complete the Reinstatement Work as set out in the Reinstatement Plan pursuant to Section 6.15 [Reinstatement Plan] of this Agreement. Such amount will be held and disbursed based on the same criteria as are provided in Sections 6.17(c) and 6.17(d) of this Agreement for the disbursement of Property Damage Insurance Proceeds under Section 6.17 [Application of Proceeds of Insurance] of this

Agreement (subject to satisfaction of all conditions to such disbursement provided for in that Section).

8.8 Responsibility for Participants and Trespassers

- (a) Except as otherwise expressly provided in this Agreement, neither the Province nor BCTFA will be responsible for the presence on or around or entry onto or around the Project Site or the Project Infrastructure, or any other interference with or affecting the Project Site or the Project Infrastructure or the vicinity of them or the Project Work by or caused by, any participants (“**Participants**”) in a Labour Dispute or a Protest Action, or any persons other than Participants, but excluding participants in an Indigenous Protest Action, not entitled to be on the Project Site or the Project Infrastructure (“**Trespassers**”), nor for any act, omission or default of any Participant or Trespasser (in any such case whether before or during the Term). The presence on or around or entry onto or around the Project Site or the Project Infrastructure of, or any other interference with or affecting the Project Site or the Project Infrastructure or the vicinity of them or the Project Work by or caused by, any Participant, Trespasser or participant in an Indigenous Protest Action and any lawful or unlawful activities of any such person will not be a breach of the obligation of the Province hereunder to permit the Design-Builder to have access to the Project Site, nor a breach of any other obligation or representation or warranty of the Province under this Agreement.
- (b) The management of Participants and Trespassers in respect of the Project Site and the Project Infrastructure will be the responsibility of the Design-Builder until the Substantial Completion Date. If at any time prior to the Substantial Completion Date any part of the Project Site or the Project Infrastructure is occupied by any Participants or Trespassers, then as soon as reasonably practicable the Design-Builder will notify the Province of such occurrence and of the action which the Design-Builder proposes to take to deal with such Participants or Trespassers. The Design-Builder may exercise any legal remedies available to it to remove Participants and/or Trespassers (including the obtaining of injunctions and enforcement orders in respect thereof), provided that the Design-Builder will give the Province’s Representative reasonable (and in any event not less than 24 hours’) notice prior to commencing any legal proceedings for that purpose and provided further that the Design-Builder will not give directly or indirectly to any Participant or Trespasser any inducement, monetary or otherwise, with a view to avoiding, limiting or influencing the manner of protest activities by that Participant or Trespasser or by other Participants or Trespassers, provided that the Design-Builder will not by virtue of this Section 8.8 be prevented from entering into bona fide settlements of Claims brought against it by Participants or Trespassers which provide for reasonable payments in satisfaction of such Claims or agreeing to any reasonable cost orders in any proceedings.
- (c) The Design-Builder may request the assistance of the Province to remove Participants where the Design-Builder demonstrates to the Province’s reasonable satisfaction that it has exercised all legal remedies available to it to remove the Participants (provided that for this purpose the Design-Builder may but will not be obligated to prosecute injunctive or other judicial remedies beyond the Court of first instance) and that the continued presence of the Participants is having a material adverse effect on the conduct of the Project Work that the Design-Builder is unable to mitigate. Following such request, the Province will notify the Design-Builder whether the Province can lawfully provide any assistance in relation to the removal of the Participants that is not independently available to the Design-Builder and, to the extent that such assistance can be lawfully provided, the Province will provide such

assistance to the extent it is, in the discretion of the Province, reasonable and appropriate in the circumstances to do so.

8.9 Allocation of Risks of Participants and Trespassers

- (a) In the event of any Protest Action, the Design-Builder will be entitled to compensation, extensions of time and other relief in respect thereof as a Compensation Event in accordance with this Part 8 and the following additional parameters:
 - (i) the Design-Builder will only be entitled to extensions of time in respect of Protest Actions pursuant to Section 8.3(c) of this Agreement if and to the extent that the Design-Builder establishes that the Participants in such Protest Action continue to occupy any part of the Project Site or the Project Infrastructure after the Design-Builder has exhausted all legal remedies available to it to seek injunctive relief or other interim judicial remedies from a Court of first instance to remove them and to enforce any injunction or other interim remedy granted by such Court to remove them (provided that for this purpose the Design-Builder may but will not be obligated to prosecute injunctive or other interim judicial remedies beyond the Court of first instance); and
 - (ii) the Design-Builder will only be entitled to compensation in respect of Protest Actions pursuant to Section 8.3(b) of this Agreement if and, subject to Section 8.11 [Effect of Insurance] of this Agreement, to the extent that the Design-Builder establishes that it has incurred during the Term Direct Losses to mitigate the effects of Protest Actions, including:
 - (A) the costs of exercising any legal remedy available to the Design-Builder in respect of Protest Actions (including in accordance with its obligations under Section 8.8 [Responsibility for Participants and Trespassers] of this Agreement);
 - (B) the increased costs attributable to any extension of time to which the Design-Builder is entitled; and
 - (C) the cost of remedying any damage caused by Protest Actions,which aggregate (excluding amounts referred to in Section 8.11 [Effect of Insurance] of this Agreement) more than \$250,000,
- provided that the limitations on the compensation and extensions of time available to the Design-Builder from that otherwise available to the Design-Builder in the event of a Compensation Event, as set out in Sections 8.9(a)(i) and 8.9(a)(ii) of this Agreement, will not apply to the extent that such Protest Action arose, directly or indirectly, as a result of any Province Non-Excusable Event or as a result of actions taken or threatened to be taken by the Employees (as defined in the BCIB-Contractor Agreement).
- (b) Except as expressly provided in Section 8.9(a), and subject to Section 8.3 [Design-Builder's Entitlements Upon Occurrence of a Compensation Event], Section 8.4 [Design-Builder's Entitlements Upon Occurrence of a Relief Event], Section 8.5 [Parties' Entitlements Upon Occurrence of a Force Majeure Event] and Section 8.10(c), as between

the Province and the Design-Builder the Design-Builder will bear, without recourse to the Province:

- (i) any Losses suffered by the Design-Builder, its agents and Subcontractors or employees of any of them;
- (ii) any Direct Losses suffered by the Province or any of the Province Indemnified Persons arising:
 - (A) from any interference, obstruction, or other hindrance to the Project or to the conduct of the Project Work, including the presence of any Participant or Trespasser on the Project Site or the Project Infrastructure;
 - (B) from any damage caused to the Project Infrastructure;
 - (C) as a result of any measures taken by or on behalf of or at the request or direction of the Design-Builder; and/or
 - (D) as a result of the failure by the Design-Builder to take or cause to be taken measures which should have been taken,

that are caused by any Participant or Trespasser, including any damage to property, any bodily injury or death, and any loss of income.

- (c) Nothing in this Section 8.9 will affect:
 - (i) any right of the Province or BCTFA to make or recover any Claim against any Participant or Trespasser for public nuisance or for damage suffered by the Province or BCTFA or their respective agents, contractors or subcontractors of any tier or any employees of any of them; or
 - (ii) any right of the Design-Builder to make or recover any Claim against any Participant or Trespasser for damage suffered by the Design-Builder, its agents or Subcontractors or any employees of any of them.

8.10 Sharing of Increased Costs in Specified Circumstances

- (a) In the event that the discovery of any Undisclosed Utilities causes the Design-Builder to incur additional Recoverable Expenditures in order to carry out the Project Work and otherwise comply with the Project Requirements as a result of the existence or actual location of such Utilities which the Design-Builder would not have incurred but for such discovery, then the Design-Builder will be entitled, subject to the Design-Builder's obligations under Section 5.6 [Mitigation By Design-Builder] of this Agreement and except to the extent that any such Recoverable Expenditures result from or are contributed to, directly or indirectly, by any Design-Builder Non-Excusable Event, to receive compensation through a lump sum payment from the Province in respect of such additional aggregate Recoverable Expenditures incurred by the Design-Builder as a direct consequence of the discovery of all such Undisclosed Utilities during the Term (the "**Additional Utilities Recoverable Expenditures**") in an amount calculated in accordance with Table 8.10(a) set forth below.

Table 8.10(a) Sharing of Additional Utilities Recoverable Expenditures

Additional Utilities Recoverable Expenditure	Province Share of Additional Utilities Recoverable Expenditure	Design-Builder Share of Additional Utilities Recoverable Expenditure	Maximum Cumulative Design-Builder Share of Additional Utilities Recoverable Expenditure during Term
Applicable to first \$250,000			
Applicable to amount over \$250,000			

- (b) In the event that the existence of any Non-Foreseeable Contamination causes the Design-Builder to incur additional Recoverable Expenditures in order to carry out the Project Work and otherwise comply with the Project Requirements in accordance with this Agreement which the Design-Builder would not have incurred but for such existence, then the Design-Builder will be entitled, subject to the Design-Builder's obligations under Section 5.6 [Mitigation By Design-Builder] and except to the extent that any such Recoverable Expenditures result from or are contributed to, directly or indirectly, by any Design-Builder Non-Excusable Event, to receive compensation through a lump sum payment from the Province in respect of such additional aggregate Recoverable Expenditures incurred by the Design-Builder as a direct consequence of the existence of all such Non-Foreseeable Contamination during the Term (the "**Additional Contamination Recoverable Expenditures**") in an amount calculated in accordance with Table 8.10(b) set forth below.

Table 8.10(b) Sharing of Additional Contamination Recoverable Expenditures

Additional Contamination Recoverable Expenditure	Province Share of Additional Contamination Recoverable Expenditure	Design-Builder Share of Additional Contamination Recoverable Expenditure	Maximum Cumulative Design-Builder Share of Additional Contamination Recoverable Expenditure during Term
Applicable to first \$250,000			
Applicable to amount over \$250,000			

- (c) In the event that the occurrence of a TAMS Event causes the Design-Builder to incur additional costs and expenses in order to carry out the Project Work and otherwise comply with the Project Requirements in accordance with this Agreement which the Design-Builder would not have incurred but for such occurrence, then the Design-Builder will be entitled, subject to the Design-Builder's obligations under Section 5.6 [Mitigation By Design-Builder] and except to the extent that any such costs and expenses result from or are contributed to, directly or indirectly, by any Design-Builder Non-Excusable Event, to receive compensation through a lump sum payment from the Province in respect of such additional aggregate costs and expenses reasonably incurred by the Design-Builder as a direct consequence of the occurrence of such TAMS Events during the Term (the

“Additional TAMS Event Recoverable Costs”) in an amount calculated in accordance with Table 8.10(c) set forth below.

Table 8.10(c) Sharing of Additional TAMS Event Recoverable Costs

Additional TAMS Event Recoverable Costs	Province Share of Additional TAMS Event Recoverable Costs	Design-Builder Share of Additional TAMS Event Recoverable Costs	Maximum Cumulative Design-Builder Share of Additional TAMS Event Recoverable Costs during Term
Applicable to first \$100,000			
Applicable to amount over \$100,000			

8.10A Landslides

- (a) Subject to Sections 8.10A(b), 8.10A(c) and 8.10A(d), the Design-Builder, at its expense, will be responsible, until the Substantial Completion Date, for all Landslide Repair Work resulting from Landslides affecting the Project Infrastructure or the Project Site, and thereafter for all Landslide Repair Work resulting from Excluded Landslides.
- (b) The Province will by payment to the Design-Builder contribute towards the Landslide Repair Costs in connection with any one or more Landslides caused by or attributable to a single Landslide Event in accordance with the following Table:

Table 8.10A Sharing of Landslide Repair Costs

Landslide Repair Costs	Design-Builder Share	Province Share
Applicable to the first \$25,000		
Applicable to the next \$25,000		
Applicable to the next \$25,000		
Applicable to amounts over \$75,000		

provided that:

- (i) the Province will have no obligation to contribute towards Landslide Repair Costs that exceed a reasonable estimate of the cost of carrying out the relevant work taking into account the Design-Builder’s general duty to mitigate such costs pursuant to Section 4.10 [Mitigation by Design-Builder] or that directly or indirectly result from or are attributable to any of the matters referred to in Section 9.6(c), and such Landslide Repair Costs will not be taken into account in determining the Qualifying Landslide Repair Costs incurred by the Design-Builder in any Contract Year for purposes of Section 8.10A(c);
- (ii) prior to claiming from the Province any contribution towards Landslide Repair Costs in accordance with Table 8.10A, the Design-Builder will provide evidence satisfactory to the Province, acting reasonably, of the Landslide Event giving rise to the Landslide(s) to which such Landslide Repair Costs relate; and

- (iii) for greater certainty, the Design-Builder will be solely responsible for all costs of Landslide Repair Work resulting from, and all deductible amounts and waiting periods provided for in any policies of Required Insurance in the event of damage caused by, an Excluded Landslide.
- (c) Without limiting the Province's contribution obligations set out in Table 8.10A, if the Design-Builder incurs aggregate Qualifying Landslide Repair Costs in any Contract Year of \$100,000, then the Province will bear all Landslide Repair Costs in connection with any subsequent Landslide Events occurring during that Contract Year.
- (d) Where:
 - (i) the Province is obliged to contribute towards Landslide Repair Costs in connection with any one or more Landslides caused by or attributable to a single Landslide Event pursuant to Section 8.10A(b) and the total Landslide Repair Costs in connection with such Landslide(s) are reasonably estimated to exceed \$150,000; or
 - (ii) the Province is obliged to bear all of the Landslide Repair Costs in connection with any Landslide Events pursuant to Section 8.10A(c),

the Province may in its discretion determine who will carry out the Landslide Repair Work and, if the Province determines to retain an independent contractor to carry out such Landslide Repair Work, the procurement method to be employed in selecting and retaining such contractor. Without limiting the generality of the foregoing, the Province may in the exercise of such discretion determine to have any such Landslide Repair Work carried out by its own labour forces (including day labour retained by the Province) or by a Third Party Contractor or by the Design-Builder (any determination to have such works carried out by the Design-Builder will be a Province Change and the provisions of Part 7 [Changes] will apply accordingly), provided that, for greater certainty, the Design-Builder will not, by reason only of the Province exercising its discretion in accordance with this Section 8.10A(d), be relieved of its obligation to pay its portion (if any) of Landslide Repair Costs, as determined by reference to Table 8.10A and by reference to Section 8.10A(c).

- (e) Where further development of the Design is required as a result of the occurrence of a Landslide, other than an Excluded Landslide, then the Design-Builder will initiate a value engineering process for the further joint collaborative development of the Design by the Province and the Design-Builder. Potential solutions will be priced by the Design-Builder and the most cost effective option selected for construction, with the consent of the Province, and such circumstances will constitute a Compensation Event and the provisions of Part 8 [Supervening Events] will apply.

8.11 Effect of Insurance

Notwithstanding anything to the contrary in this Part 8, the Design-Builder will not be entitled to any compensation under this Part 8 in respect of any Supervening Event or Landslide to the extent, in respect of the Supervening Event or Landslide, as applicable:

- (a) that:
- (i) the Design-Builder recovers or is entitled to recover under any Required Insurance, or would have been entitled to recover under any Required Insurance if such Required Insurance had been taken out and maintained in accordance with this Agreement; or
 - (ii) the Supervening Event or Landslide, as the case may be, or any aspect thereof is insured against, or required to be insured against, under any Required Insurance, or would have been insured against under any Required Insurance if such Required Insurance had been taken out and maintained in accordance with this Agreement,
- whether or not such Required Insurance was in fact effected or, if effected, was vitiated, and whether vitiated as a result of any act or omission of the Design-Builder (or any person for whom the Design-Builder is in law responsible) (including, but not limited to, by reason of non-disclosure or under-insurance or failure or insolvency of the insurer), or for any other reason (excluding only vitiation caused by any act or omission of the Province or any person for whom the Province is in law responsible, but only to the extent non-vitiation terms protecting against vitiation in the case of such act or omission are not required by the terms of this Agreement to be included in the applicable insurance policies);
- (b) that the Design-Builder recovers or is entitled to recover under any policy of insurance that is not Required Insurance but that the Design-Builder has in fact taken out and maintained;
 - (c) that there are proceeds of insurance held by the Province that are (subject to the Design-Builder fulfilling all conditions to the disbursement thereof) available for satisfaction of the Claims or Direct Losses arising as a result of such Supervening Event or Landslide, as applicable, in whole or in part;
 - (d) that the Province makes or authorizes, or is obligated under this Agreement (subject to the Design-Builder fulfilling all conditions thereto) to make or authorize, payment to or for the account of or on behalf of the Design-Builder under Section 6.17 [Application of Proceeds of Insurance] of this Agreement; or
 - (e) of any amounts in respect of deductibles and waiting periods under any insurance referred to in either of Sections 8.11(a) and (b) of this Agreement for which the Design-Builder is responsible;

provided that, in the case of a Compensation Event described in paragraph (m) of the definition of Compensation Event in Section 1.1 [Definitions] of Schedule 1, the Province will not reduce pursuant to this Section 8.11 the compensation it would otherwise have paid under this Part 8 by reason of proceeds of insurance that the Design-Builder recovers or is entitled to recover up to, in the case of all Compensation Events described in paragraph (m) of the definition of Compensation Event, an aggregate limit over the Term of \$250,000.

8.12 Delay in Notification

- (a) If a Supervening Event Notice is provided by an Applicant to the other party more than 12 months after the date of the occurrence or commencement of such Supervening Event contrary to Section 8.1(b)(iv) of this Agreement, then the Applicant will not be entitled to

any compensation, extension of time or relief from its obligations under this Agreement in respect of the Supervening Event that was the subject of such Supervening Event Notice.

- (b) If a Supervening Event Notice or any required information is provided by an Applicant to the other party after the relevant dates referred to in Section 8.2 [Procedures Upon Occurrence of a Supervening Event] of this Agreement, then the Applicant will not be entitled to any compensation, extension of time or relief from its obligations under this Agreement in respect of the Supervening Event that was the subject of such Supervening Event Notice to the extent that the amount thereof would (but for this Section 8.12(b)) have increased as a result of such delay in providing such notice or information.

PART 9 INDEMNITIES AND LIMITATIONS ON LIABILITY

9.1 Indemnification by Design-Builder

- (a) The Design-Builder will indemnify and hold harmless the Province and the Province Indemnified Persons, and each of them, from and against any and all Claims and Direct Losses at any time suffered or incurred by, or brought or made against, the Province and the Province Indemnified Persons, or any of them, in respect of:
 - (i) bodily injury, including death, of any person;
 - (ii) any damage to or loss of property, whether real or personal, including damage to or loss of:
 - (A) all or any part of the Project Infrastructure or any other property belonging to the Province or BCTFA or for which either of them is responsible;
 - (B) Infrastructure or property of any Governmental Authority or other Relevant Authority or of any Utility Supplier, Railway or other third party;
 - (C) lands (and improvements thereon) forming part of or adjacent to the Project Site;
 - (D) Plant or Construction Plant; or
 - (E) property or assets of any third party (including Third Party Contractors); or
 - (iii) any other loss or damage of any third party (including Third Party Contractors), arising, directly or indirectly, out of, or in consequence of, or involving or relating to, any breach of this Agreement by, or any act or omission of the Design-Builder or any person for whom the Design-Builder is in law responsible.
- (b) The Design-Builder will indemnify and hold harmless the Province and the Province Indemnified Persons, and each of them, from and against any and all Claims and Direct Losses at any time suffered or incurred by, or brought or made against, the Province and the Province Indemnified Persons, or any of them, in respect of Nuisance Claims made by third parties, arising, directly or indirectly, out of, or in consequence of, or involving or

relating to, any breach of this Agreement, wilful misconduct, negligent act or omission by the Design Builder or any person for whom the Design-Builder is in law responsible.

- (c) The Design-Builder will indemnify and save harmless the Province and the Province Indemnified Persons from and against any and all Direct Losses which may be suffered, sustained, incurred or brought against them as a result of, in respect of, arising out of, or involving or relating to any breach of a representation or warranty by the Design-Builder herein.
- (d) The Design-Builder will indemnify and save harmless the Province and the Province Indemnified Persons from and against any and all Claims and Direct Losses which may be suffered, sustained, incurred or brought against them as a result of, in respect of, arising out of, or involving or relating to any one or more of the following:
 - (i) any Contamination, or any remediation, handling or legal requirement of a Governmental Authority in respect of Contamination;
 - (ii) any repair, correction or warranty obligations of the Design-Builder under this Agreement, including the obligation to correct Project Work Defects under Section 7.4 [Correction of Project Work Defects] of Schedule 3; or
 - (iii) any non-compliance with Law by the Design-Builder or any person for whom the Design-Builder is in law responsible.
- (e) The Design-Builder will indemnify and save harmless the Province and the Province Indemnified Persons from and against any and all Claims and Direct Losses which may be suffered, sustained, incurred or brought against them as a result of, in respect of, arising out of, or involving or relating to any one or more of the following:
 - (i) any infringement or misappropriation or alleged infringement or misappropriation of any other person's Intellectual Property Rights; or
 - (ii) breach or alleged breach of obligations of confidentiality by the Design-Builder or any person for whom the Design-Builder is in law responsible.
- (f) The Design-Builder will indemnify and save harmless the Province and the Province Indemnified Persons from and against any and all Claims and Direct Losses which may be suffered, sustained, incurred or brought against them as a result of, in respect of, arising out of, or involving or relating to any one or more of the following:
 - (i) any adoption, reliance, use, interpretation or application by or on behalf of the Design-Builder, any Subcontractor, or any other person for whom the Design-Builder is in law responsible in relation to any Project Work, of any or all of or any part of the Design Data, Disclosed Data or other data or documents provided or made available by or on behalf of the Province or BCTFA, whether before or after execution of this Agreement, except as expressly provided in Section 2.10(d) of this Agreement;
 - (ii) anything done or omitted to be done by or on behalf of the Design-Builder, any Subcontractor, or any other person for whom the Design-Builder is in law

responsible, or any of them, in connection with or pursuant to or under any of the Conditions of Access;

- (iii) any breach of Section 5.5 [Prohibited Acts] or anything done or omitted to be done by or on behalf of the Design-Builder or any Subcontractor or any other person in connection with Sections 12.3(b)(ii) or 12.3(b)(iii) of this Agreement, inclusive;
 - (iv) any wrongful act, wrongful omission, negligent act, negligent omission, or wilful misconduct of the Design-Builder or persons for whom the Design-Builder is in law responsible in connection with the Project Work, or during the Term; or
 - (v) in respect of the amount not paid by the insurer as a result of any deductible amount and/or waiting period which is the responsibility of the Design-Builder in accordance with Section 6.4 [Deductibles] of this Agreement.
- (g) The Design-Builder will indemnify and save harmless the Province and the Province Indemnified Persons from and against any and all Claims and Direct Losses in respect of which the Design-Builder has otherwise expressly provided an indemnity to the Province in this Agreement.

9.2 Exceptions to Indemnification by Design-Builder

Subject to Section 9.3(f) of this Agreement, the obligations of the Design-Builder to indemnify under Section 9.1 [Indemnification by Design-Builder] of this Agreement (and, to the extent this Section 9.2 (or any paragraph of this Section 9.2) is expressly made applicable thereto, under other indemnities under this Agreement) will not apply to any Claims or Direct Losses to the extent:

- (a) the Province is obligated to indemnify the Design-Builder in respect of Claims and Direct Losses arising out of the same events or circumstances pursuant to Section 9.5 [Indemnification by the Province] or Section 9.6 [Limited Province Indemnities] of this Agreement;
- (b) caused or contributed to by any breach in the observance or performance of any of the obligations of the Province or BCTFA under this Agreement, by the Province, BCTFA or any person for whom the Province is in law responsible;
- (c) in respect of Sections 9.1(a)(i), 9.1(a)(ii), 9.1(a)(iii) or 9.1(d) of this Agreement, caused or contributed to by any negligent act, negligent omission or wilful misconduct of or by the Province or any Province Indemnified Person;
- (d) the Claims or Direct Losses:
 - (i) consist of payments that the Province has made or is obligated to make to the Design-Builder pursuant to Schedule 11 [Changes];
 - (ii) consist of compensation that the Province has paid or is obligated to pay to the Design-Builder pursuant to Section 8.3(b) or Section 8.6(a)(ii) of this Agreement to the extent that the relevant Compensation Event, Relief Event or Force Majeure Event, as the case may be, does not arise or result (directly or indirectly) from any Design-Builder Non-Excusable Event; or

- (iii) are directly attributable to a Province Change, Compensation Event, Relief Event or a Force Majeure Event (save that this exception will not apply to the extent that the Design-Builder would otherwise be responsible for any such Claims or Direct Losses pursuant to Section 8.9(b) of this Agreement), and provided that such Claims or Direct Losses do not arise or result (directly or indirectly) from any Design-Builder Non-Excusable Event;
- (e) the Province and/or the Province Indemnified Persons, as the case may be, have received or are entitled to receive insurance proceeds in respect of such Claims and Direct Losses under the Required Insurance;
- (f) the Claims or Direct Losses relate to rent, user fees, property taxes (if any) or occupancy costs that are or become payable by the Province or BCTFA under Project Site Agreements or Project Site Encumbrances to the extent that the Design-Builder is not obligated to pay such amounts pursuant to Section 4.2 [Exception to the Design-Builder Responsibilities for Project Lands] of Schedule 8;
- (g) the Claims or Direct Losses consist of compensation that the Province has paid or is obligated to pay to the Design-Builder under Section 8.10 [Sharing of Increased Recoverable Expenditures in Specified Circumstances], to the extent that such Claims or Direct Losses do not arise or result (directly or indirectly) from any Design-Builder Non-Excusable Event; or
- (h) the Claims or Direct Losses arise as a result of or in connection with any Non-Foreseeable Contamination or Province Subsequent Contamination, and do not arise as a result of or in connection with:
 - (i) a Design-Builder Non-Excusable Event in the performance or non-performance of the Design-Builder's Environmental Obligations with respect to such Contamination; or
 - (ii) the Design-Builder or any person for whom the Design-Builder is in law responsible causing, contributing to or exacerbating any such Non-Foreseeable Contamination or Province Subsequent Contamination.

9.3 Effect and Limitation of Design-Builder's Indemnities and Liabilities

- (a) Subject to Section 9.12 [No Double Compensation] of this Agreement:
 - (i) the Design-Builder's liability to the Province and the Province Indemnified Persons, or any of them, under any indemnity in this Agreement is without prejudice to any other right or remedy available to the Province and the Province Indemnified Persons, or any of them, provided that any Claim of the Province against the Design-Builder in respect of the subject matters of the indemnity in Section 9.1 [Indemnification by Design-Builder] of this Agreement, if made in tort or for breach of contract rather than for indemnification under Section 9.1 [Indemnification by Design-Builder] of this Agreement, will be subject to the exceptions set out in Section 9.2 [Exceptions to Indemnification by Design-Builder] of this Agreement to the same extent as if the Claim had been made under Section 9.1 [Indemnification by Design-Builder] of this Agreement; and

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- (ii) any obligation of the Design-Builder to indemnify and hold harmless under any provision of this Agreement:
 - (A) is in addition to and not in substitution for or in limitation of any other obligation of the Design-Builder to indemnify and hold harmless under any other provision of this Agreement; and
 - (B) does not limit the duties, obligations and liabilities of the Design-Builder under Section 2.3 [Assumption of Risk and Responsibility].
- (b) Subject to Sections 9.3(c) and 9.3(d) of this Agreement, but notwithstanding any other provision of this Agreement, the maximum liability of the Design-Builder for Delay Liquidated Damages will not exceed _____ in the aggregate.
- (c) The limitation of liability set out in Section 9.3(b) of this Agreement will not apply to liabilities that arise out of any of the following:
 - (i) abandonment, gross negligence, fraud and fraudulent misrepresentations or wilful default or wilful misconduct of the Design-Builder or any person for whom the Design-Builder is in law responsible; and
 - (ii) any Claim or sum actually recovered by the Design-Builder through the Required Insurance, or which could have been so recovered if the Design-Builder had maintained the Required Insurance as required in accordance with this Agreement.
- (d) Subject to Section 9.3(e) of this Agreement, but notwithstanding any other provision of this Agreement:
 - (i) the maximum aggregate liability of the Design-Builder to the Province arising under or relating to this Agreement, including in relation to delay, any indemnity or as a consequence of termination of this Agreement, will not exceed 50% of the Contract Price in the aggregate; and
 - (ii) as a sublimit of the maximum aggregate liability set out in Section 9.3(d)(i), the maximum aggregate liability of the Design-Builder for Traffic Management Payments, to be included in the Performance Incentive Payment payable by the Design-Builder pursuant to Section 5.1 [Obligation to make Performance Incentive Payments] of Schedule 10, will not exceed \$10,000,000.
- (e) The limitations of liability set out in Section 9.3(d) of this Agreement are not intended to limit or otherwise detract from the obligation of the Design-Builder to perform the Project Work for the Contract Price, and will not apply to liabilities that arise out of any of the following:
 - (i) Claims by third parties (other than the Province, the Province Indemnified Persons or any Subcontractor) in respect of:
 - (A) damage to or destruction of real property or tangible personal property;
 - (B) bodily injury or death; or

- (C) infringement of Intellectual Property Rights;
 - (ii) abandonment, gross negligence, fraud and fraudulent misrepresentations or wilful default or wilful misconduct of the Design-Builder or any person for whom the Design-Builder is in law responsible;
 - (iii) in respect of breach of statutory duty or non-compliance with Law by the Design-Builder or any person for whom the Design-Builder is in law responsible which results in a fine or statutory penalty to the Province or Province Indemnified Persons;
 - (iv) in respect of any breach by the Design-Builder of Section 15.1 [Confidentiality] of this Agreement;
 - (v) in respect of the indemnity in Section 9.1(d)(ii) of this Agreement;
 - (vi) in respect of any costs or expenses incurred by the Province in enforcing a claim under this Agreement or in relation to any insurance or performance security; and
 - (vii) any Claim or sum actually recovered by the Design-Builder through the Required Insurance, or which could have been so recovered if the Design-Builder had maintained the Required Insurance as required in accordance with this Agreement.
- (f) The parties acknowledge and agree that any failure by the Province or any Province Indemnified Person to discharge a non-delegable duty of care arising out of, relating to or resulting from or in connection with any negligent act or negligent omission of the Design-Builder or any person for whom the Design-Builder is in law responsible, will not, for the purposes of Sections 9.2(c) and 9.5 of this Agreement, constitute a negligent act or negligent omission of the Province or any Province Indemnified Person.

9.4 Conduct of Claims Indemnified by Design-Builder

- (a) If the Province or any Province Indemnified Person (in this Section 9.4 individually referred to as an “**Indemnified Party**” and collectively referred to as the “**Indemnified Parties**”) receives any notice, demand, letter or other document concerning any Claim from which it appears that the Indemnified Party is or may become entitled to indemnification by the Design-Builder under this Agreement, the Indemnified Party will give notice to the Design-Builder as soon as reasonably practicable and in any event within 30 days after receipt thereof, provided that a failure by an Indemnified Party to give such notice and particulars of a Claim within such time will not adversely affect the rights of the Indemnified Party under the applicable indemnity except to the extent that the Design-Builder establishes that such failure has materially and adversely affected or prejudiced the ability of the Design-Builder to defend or contest the Claim.
- (b) Subject to Sections 9.4(c), 9.4(d), 9.4(e), 9.4(f) and 9.4(g) of this Agreement, on the receipt of a notice delivered by an Indemnified Party pursuant to Section 9.4(a) of this Agreement the Design-Builder will, in its discretion, be entitled to resist the Claim that is the subject of the notice, in the name of the Indemnified Party or the Indemnified Parties at the Design-Builder’s own expense, and have the conduct of any defence, dispute, compromise or appeal of the Claim (including any arbitration proceedings in respect thereof) and of any incidental negotiations. The Indemnified Parties will give the Design-Builder and its

counsel all reasonable cooperation, access and assistance for the purposes of considering and resisting such Claim including providing or making available to the Design-Builder and its counsel documents and information and witnesses for attendance at examinations for discovery and trials, subject always to any and all applicable Laws and solicitor and client privilege, and the Design-Builder will pay all costs and expenses incurred by the Indemnified Parties in providing such cooperation, access and assistance.

- (c) The defence and any other legal proceedings in respect of any Claim which the Design-Builder exercises its discretion to resist in accordance with Section 9.4(b) of this Agreement will be undertaken through legal counsel, and will be conducted in a manner, acceptable to the Indemnified Party and the Design-Builder, acting reasonably. If:
- (i) the Design-Builder and an Indemnified Party are or become parties to the same Claim and the representation of all parties by the same counsel would be inappropriate due to differing interest or a conflict of interest;
 - (ii) a conflict of interest or a perceived conflict of interest exists between the interests of an Indemnified Party and the Design-Builder or some other person who may be represented by counsel retained by the Design-Builder;
 - (iii) it appears that an Indemnified Party might not be entitled to indemnification by the Design-Builder in respect of all of the liability arising out of the Claim, unless the Design-Builder agrees on a with prejudice basis that all liability of the Indemnified Party arising out of the Claim is covered by the applicable indemnity; or
 - (iv) the Design-Builder fails to comply in any material respect with the provisions of Section 9.4(d) of this Agreement,

then the Indemnified Party will be represented by separate counsel selected by the Indemnified Party and the indemnity obligations of the Design-Builder with respect to the Claim (including with respect to the cost of such separate legal representation) will continue to apply and all reasonable costs and expenses (including reasonable actual legal fees and expenses) of the Indemnified Party doing so will be included in the indemnity from the Design-Builder. An Indemnified Party may retain separate counsel to act on its behalf in respect of the Claim in circumstances other than those described in the immediately preceding sentence, in which event the indemnity obligations of the Design-Builder with respect to the Claim will continue to apply but the fees and disbursements of such separate counsel will be paid by the Indemnified Party. In any case where an Indemnified Party is represented by separate counsel, the Design-Builder and its counsel will (at the cost of the Design-Builder) give the Indemnified Party and its counsel all reasonable cooperation, access and assistance including providing or making available to the Indemnified Party and its counsel documents and information and witnesses for attendance at examinations for discovery and trials, subject always to any and all applicable Laws and solicitor and client privilege. For greater certainty, the representation of an Indemnified Party by separate counsel as contemplated in this Section 9.4(c) and actions taken by such separate counsel in the course of such representation, including attendance at examinations, hearings and trials, will not constitute a taking over of the conduct of the relevant legal proceedings by the Indemnified Party for the purposes of Section 9.4(f) of this Agreement.

- (d) With respect to any Claim which the Design-Builder exercises its discretion to resist in accordance with Section 9.4(b) of this Agreement:
 - (i) the Design-Builder will keep the Indemnified Parties fully informed and consult with the Indemnified Parties about the conduct of the Claim;
 - (ii) to the extent that an Indemnified Party is not entitled to be indemnified by the Design-Builder for all of the liability arising out of the subject matter of the Claim, no action will be taken pursuant to Section 9.4(b) of this Agreement that increases the amount of any payment to be made by the Indemnified Party in respect of that part of the Claim that is not covered by the indemnity from the Design-Builder;
 - (iii) the Design-Builder will not pay or settle or make any admission of liability in respect of such Claim, whether before or after a suit, if any, is commenced, without the prior written consent of the Indemnified Party, such consent not to be unreasonably withheld or delayed;
 - (iv) the Design-Builder will not bring the name of the Indemnified Party into disrepute; and
 - (v) the Design-Builder will resist the Claim with all due diligence and in a timely manner.
- (e) If:
 - (i) within 30 days after the notice from the Indemnified Party under Section 9.4(a) of this Agreement the Design-Builder fails to notify the Indemnified Party of its intention to resist a Claim pursuant to Section 9.4(b) of this Agreement; or
 - (ii) the Design-Builder exercises its discretion under Section 9.4(b) of this Agreement not to resist a Claim,

the Indemnified Party will be entitled to resist such Claim in the name of the Indemnified Party or the Indemnified Parties or in the name of the Design-Builder and have the conduct of any defence, dispute, compromise or appeal of the Claim (including any arbitration proceedings in respect thereof) and of any incidental negotiations, and to pay or settle the Claim on such terms as it may think fit, without prejudice to its right to indemnification by the Design-Builder (including with respect to the costs and expenses of resisting the Claim) and its other rights and remedies under this Agreement, but subject to the other provisions of this Agreement including Sections 4.1 [Mitigation By Province] and 9.10 [Costs and Expenses] of this Agreement. If the Indemnified Party has conduct of the Claim pursuant to this Section 9.4(e), the Indemnified Party will keep the Design-Builder fully informed and consult with the Design-Builder about the conduct of the Claim.
- (f) The Indemnified Party will be free at any time to give notice to the Design-Builder that the Indemnified Party is taking over the conduct of any defence, dispute, compromise or appeal of any Claim that is subject to Section 9.4(b) of this Agreement or of any incidental negotiations. Upon receipt of such notice the Design-Builder will promptly take all steps necessary to transfer the conduct of such Claim to the Indemnified Party and will provide the Indemnified Party with all reasonable cooperation, access and assistance (including providing or making available to the Indemnified Party and its counsel documents and

information and witnesses for attendance at examinations for discovery and trials, subject always to any and all applicable Laws and solicitor and client privilege) for the purposes of considering and resisting such Claim. If the Indemnified Party gives any notice pursuant to this Section 9.4(f) of this Agreement, then, except as otherwise expressly provided by this Agreement, the Design-Builder will be released from its indemnity in favour of such Indemnified Party in respect of such Claim except where such notice was given by the Indemnified Party as a consequence of the failure of the Design-Builder to resist the Claim with all due diligence and in a timely manner or to otherwise perform its obligations in accordance with this Section 9.4.

- (g) Notwithstanding the foregoing, all parties will comply with the requirements of any insurer who may have an obligation to indemnify any of the parties in respect of a Claim, and the rights of any party to have conduct of any Claim will be subject to the rights of such insurer under the applicable policy of insurance.

9.5 Indemnification by the Province

Subject to Sections 6.4 [Deductibles], 6.6 [Release of the Province for Insured Loss], 9.3(f) and 9.7 [Exceptions to Indemnification by the Province] of this Agreement, the Province will indemnify and hold harmless the Design-Builder and Design-Builder Indemnified Persons, and each of them, from and against any and all Claims and Direct Losses at any time suffered or incurred by, or brought or made against, the Design-Builder and Design-Builder Indemnified Persons, or any of them, to the extent resulting from any negligent act or negligent omission of the Province or BCTFA or any person for whom the Province is in law responsible in relation to the Project Work, the Project Site or the Project Infrastructure, other than Claims and Direct Losses caused by, arising out of, relating to or resulting from or in connection with:

- (a) any negligent act or negligent omission of the Province or BCTFA or any person for whom the Province is in law responsible referred to in either of Sections 2.8(a)(ii) or 2.10 [Disclosed Data] of this Agreement;
- (b) any negligent acts or negligent omissions occurring prior to the Effective Date or after the Termination Date;
- (c) any Contamination, or any migration or leaching of Contamination, or any remediation, handling or legal requirement of any Governmental Authority in respect of Contamination, provided this exclusion will not prejudice the Design-Builder's rights under Section 9.6 [Limited Province Indemnities] of this Agreement; and
- (d) any negligent acts or negligent omissions of the Province or any person for whom the Province is in law responsible in the course of taking action under any of Sections 11.2(a), 11.2(b) and 11.2(a) of this Agreement, provided the Province or any Third Party Contractor engaged by the Province for the purpose of exercising the Province's rights under any of those Sections does so in compliance with all applicable Laws and Permits.

9.6 Limited Province Indemnities

Subject to Sections 6.4 [Deductibles], 6.6 [Release of the Province for Insured Loss] and 9.7 [Exceptions to Indemnification by the Province] of this Agreement, the Province will:

- (a) solely for the purpose of holding the Design-Builder and Design-Builder Indemnified Persons harmless against any Relevant Third Party claim (but not so as to give rise to or

constitute any separate or new cause of action against the Province aside from any cause of action for recovery of such losses or damages awarded by a court to such Relevant Third Party against the Design-Builder or Design-Builder Indemnified Persons pursuant to such Relevant Third Party claim), indemnify and hold harmless the Design-Builder and Design-Builder Indemnified Persons in respect of any Claims and Direct Losses arising from any damage, injury or other harm suffered by such Relevant Third Party and/or Relevant Property that was caused by Existing Contamination or Province Subsequent Contamination that migrated or leached into or onto the Relevant Property, except to the extent such migration or leaching of such Existing Contamination or Province Subsequent Contamination (and/or damage, injury or other harm suffered) was caused or contributed to by the Design-Builder or any person for whom the Design-Builder is in law responsible failing to carry out Project Work strictly in accordance with the Design-Builder's obligations under this Agreement after the Design-Builder had knowledge of the Existing Contamination or Province Subsequent Contamination, as the case may be;

- (b) in the event that the Design-Builder suffers any Losses (including legal fees, court costs, expert witness fees and other disbursements) as a result of a Nuisance Claim, the Design-Builder will be solely responsible for all such Losses (including legal fees, court costs, expert witness fees and other disbursements) with the exception only that the Province will indemnify the Design-Builder for its Legal Expenses in connection with a Successful Defence, provided that:
 - (i) subject to Sections 9.6(b)(ii) and 9.6(b)(iii) of this Agreement, the Province will only be liable to indemnify the Design-Builder for such Legal Expenses with respect to the trial and any appeals after the later of, as applicable:
 - (A) the exhaustion of any and all appeals in respect of the applicable Nuisance Claim; and
 - (B) the expiry of the periods for the filing of any and all appeals in respect of the applicable Nuisance Claim and no appeal having been filed;
 - (ii) in the event that the Claim in which the Nuisance Claim is brought includes causes of action and/or the plaintiff seeks relief in addition to that sought in respect of the Nuisance Claim, the Province will only be liable to indemnify the Design-Builder in respect of Legal Expenses and, where the Design-Builder's reasonable and actually incurred legal fees, court costs, expert witness fees and other disbursements relate to both the Nuisance Claim and other causes of action and/or relief sought in addition to the Nuisance Claim, the Province's obligation to indemnify the Design-Builder in respect of Legal Expenses will be determined on an equitable basis; and
 - (iii) notwithstanding the foregoing, all parties will comply with the requirements of any insurer who may have an obligation to indemnify any of the parties in respect of a Nuisance Claim, and the rights of any party to have conduct of any Nuisance Claim will be subject to the rights of such insurer under the applicable policy of insurance; and
- (c) the Province will indemnify and save harmless the Design-Builder against all Losses resulting from third party Claims for personal injury or death or loss of or damage to property caused by Landslides onto the Project Lands, provided that the indemnity under

this Section will not extend or apply to any Losses directly or indirectly resulting from or attributable to:

- (i) any Excluded Landslides;
- (ii) the negligence of the Design-Builder or any person for whom the Design-Builder is responsible in closing Highway 1 or implementing the initial response to open Highway 1 following any Landslide;
- (iii) any other failure of the Design-Builder to design or construct the Project Infrastructure and perform the Operation and Maintenance in accordance with the Design-Builder's obligations under this Agreement; or
- (iv) any other act or omission of the Design-Builder or any person for whom the Design-Builder is responsible, or the conduct of the Project Work or any activity in connection therewith (except only to the extent such Losses or Claims result directly from a Province Non-Excusable Event).

9.7 Exceptions to Indemnification by the Province

The obligations of the Province to indemnify under Section 9.5 [Indemnification by the Province] or Section 9.6 [Limited Province Indemnities] of this Agreement will not apply to any Claims or Direct Losses to the extent that:

- (a) the Claims or Direct Losses are directly attributable to any Design-Builder Non-Excusable Event; or
- (b) the Claims or Direct Losses are otherwise compensated for or eligible for compensation or other relief under the terms of this Agreement (including Part 7 [Changes] and Part 8 [Supervening Events] of this Agreement, Schedule 10 [Payment] and Schedule 14 [Compensation on Termination]).

9.8 Limitation of Province Liability

Neither the Province nor BCTFA will under any circumstances be liable to the Design-Builder or any of the Design-Builder Indemnified Persons or any persons for whom the Design-Builder is in law responsible, whether in contract, tort, by statute or otherwise, and whether or not arising from any negligent act or negligent omission on the part of the Province or BCTFA or any persons for whom the Province is in law responsible, for any Claims or Losses of any person caused by, arising out of, relating to or resulting from or in connection with the Project Work or any Contamination. The foregoing limitation of liability will not apply in relation to any liability of the Province for:

- (a) Claims and Direct Losses to the extent the Province must indemnify the Design-Builder or any of the Design-Builder Indemnified Persons therefor under Sections 9.5 [Indemnification by the Province] or 9.6 [Limited Province Indemnities] of this Agreement;
- (b) any failure by the Province or BCTFA to make proper payment to the Design-Builder in accordance with the terms of this Agreement; or

- (c) any breach in the observance or performance of any of its obligations under this Agreement (other than payment obligations) by the Province or BCTFA, except where the Design-Builder has an express remedy under this Agreement in respect of such breach, which remedy will be exhaustive of the Design-Builder's rights in respect of such breach.

9.9 Conduct of Claims Indemnified by the Province

- (a) If the Design-Builder or any Design-Builder Indemnified Person (in this Section 9.9 individually referred to as an **"Indemnified Party"** and collectively referred to as the **"Indemnified Parties"**) receives any notice, demand, letter or other document concerning any Claim from which it appears that the Indemnified Party is or may become entitled to indemnification by the Province under this Agreement, or to compensation by the Province in respect of a Supervening Event under Part 8 [Supervening Events] of this Agreement, the Indemnified Party will give notice to the Province as soon as reasonably practicable and in any event within 30 days after receipt thereof or in accordance with Part 8 [Supervening Events] of this Agreement, if applicable, provided that, subject to Section 8.12 [Delay in Notification] of this Agreement, a failure by an Indemnified Party to give such notice and particulars of a Claim within such time will not adversely affect the rights of the Indemnified Party under the applicable indemnity or compensation provision except to the extent that the Province establishes that such failure has materially and adversely affected or prejudiced the ability of the Province to defend or contest the Claim.
- (b) Subject to Sections 9.9(c), 9.9(d), 9.9(e) and 9.9(f) of this Agreement, on the receipt of a notice delivered by an Indemnified Party pursuant to Section 9.9(a) of this Agreement the Province will, in its discretion, be entitled to resist the Claim that is the subject of the notice, in the name of the Indemnified Party or the Indemnified Parties at the Province's own expense, and have the conduct of any defence, dispute, compromise or appeal of the Claim (including any arbitration proceedings in respect thereof) and of any incidental negotiations. The Indemnified Parties will give the Province and its counsel all reasonable cooperation, access and assistance for the purposes of considering and resisting such Claim including providing or making available to the Province and its counsel documents and information and witnesses for attendance at examinations for discovery and trials, subject always to any and all applicable Laws and solicitor and client privilege, and the Province will pay all costs and expenses incurred by the Indemnified Parties in providing such cooperation, access and assistance.
- (c) The defence and any other legal proceedings in respect of any Claim which the Province exercises its discretion to resist in accordance with Section 9.9(b) of this Agreement will be undertaken through legal counsel, and will be conducted in a manner, acceptable to the Indemnified Party and the Province, acting reasonably. If:
 - (i) the Province and/or BCTFA and an Indemnified Party are or become parties to the same Claim and the representation of all parties by the same counsel would be inappropriate due to differing interest or a conflict of interest;
 - (ii) a conflict of interest or a perceived conflict of interest exists between the interests of an Indemnified Party and the Province and/or BCTFA or some other person who may be represented by counsel retained by the Province and/or BCTFA;
 - (iii) it appears that an Indemnified Party might not be entitled to indemnification or compensation by the Province in respect of all of the liability arising out of the

Claim, unless the Province agrees on a with prejudice basis that all liability of the Indemnified Party arising out of the Claim is covered by the applicable indemnity or compensation provision; or

- (iv) the Province fails to comply in any material respect with the provisions of Section 9.9(d) of this Agreement,

then the Indemnified Party will be represented by separate counsel selected by the Indemnified Party and the indemnity or compensation obligations of the Province, as applicable, with respect to the Claim (including with respect to the cost of such separate legal representation) will continue to apply and all reasonable costs and expenses (including reasonable actual legal fees and expenses) of the Indemnified Party doing so will be included in the indemnity or compensation from the Province. An Indemnified Party may retain separate counsel to act on its behalf in respect of the Claim in circumstances other than those described in the immediately preceding sentence, in which event the indemnity or compensation obligations of the Province, as applicable, with respect to the Claim will continue to apply but the fees and disbursements of such separate counsel will be paid by the Indemnified Party. In any case where an Indemnified Party is represented by separate counsel, the Province and BCTFA and its or their counsel will (at the cost of the Province) give the Indemnified Party and its counsel all reasonable cooperation, access and assistance including providing or making available to the Indemnified Party and its counsel documents and information and witnesses for attendance at examinations for discovery and trials, subject always to any and all applicable Laws and solicitor and client privilege.

- (d) With respect to any Claim which the Province exercises its discretion to resist in accordance with Section 9.9(b) of this Agreement:
 - (i) the Province will keep the Indemnified Parties fully informed and consult with the Indemnified Parties about the conduct of the Claim;
 - (ii) to the extent that an Indemnified Party is not entitled to be indemnified or compensated by the Province for all of the liability arising out of the subject matter of the Claim, no action will be taken pursuant to Section 9.9(b) of this Agreement which increases the amount of any payment to be made by the Indemnified Party in respect of that part of the Claim that is not covered by the indemnity or compensation provision from the Province;
 - (iii) the Province will not pay or settle or make any admission of liability in respect of such Claim, whether before or after a suit, if any, is commenced, without the prior written consent of the Indemnified Party, such consent not to be unreasonably withheld or delayed;
 - (iv) the Province will not bring the name of the Indemnified Party into disrepute; and
 - (v) the Province will resist the Claim with all due diligence and in a timely manner.

- (e) If:
 - (i) within 30 days after the notice from the Indemnified Party under Section 9.9(a) of this Agreement the Province fails to notify the Indemnified Party of its intention to resist a Claim pursuant to Section 9.9(b) of this Agreement; or
 - (ii) the Province exercises its discretion under Section 9.9(b) of this Agreement not to resist a Claim,

the Indemnified Party will be entitled to resist such Claim in the name of the Indemnified Party or the Indemnified Parties or in the name of the Province and have the conduct of any defence, dispute, compromise or appeal of the Claim (including any arbitration proceedings in respect thereof) and of any incidental negotiations, and to pay or settle such Claim on such terms as it may think fit, without prejudice to its right to indemnification or compensation by the Province and its other rights and remedies under this Agreement, but subject to the other provisions of this Agreement including Sections 5.6 [Mitigation By Design-Builder] and 9.10 [Costs and Expenses] of this Agreement. If the Indemnified Party has conduct of the Claim pursuant to this Section 9.9(e), the Indemnified Party will keep the Province fully informed and consult with the Province about the conduct of the Claim.

- (f) Notwithstanding the foregoing, all parties will comply with the requirements of any insurer who may have an obligation to indemnify any of the parties in respect of a Claim, and the rights of any party to have conduct of any Claim will be subject to the rights of such insurer under the applicable policy of insurance.

9.10 Costs and Expenses

Where in accordance with any provision of this Agreement a party is entitled to claim indemnification or reimbursement from another party for any costs, expenses or other amounts, the indemnifying or reimbursing party will be obligated to provide indemnification or reimbursement only to the extent that the costs, expenses or other amounts claimed were reasonably incurred having regard to all relevant circumstances at the time.

9.11 No Liability for Irrecoverable Losses

Notwithstanding any other provision of this Agreement, no party to this Agreement will be obligated to pay to any other party to this Agreement, or liable to any other party to this Agreement for, whether in contract or in tort or on any other basis whatsoever, any Irrecoverable Losses suffered or incurred by such other party to this Agreement.

9.12 No Double Compensation

Notwithstanding any other provision of this Agreement, but without prejudice to the rights of a party to terminate this Agreement in accordance with its terms, no party will be entitled to recover compensation or make a Claim under this Agreement in respect of any Loss that it has incurred (or any failure of another party) to the extent that it has already been compensated in respect of that Loss or failure pursuant to this Agreement or otherwise, and, for the purposes of this Section 9.12, Performance Incentive Payments and Non-Compliance Event Payments will only be considered compensation to the Province or BCTFA in respect of the breaches or failures by the Design-Builder or other events or circumstances that give rise thereto to the extent such payments or deductions are made, and such payments or deductions will

be without prejudice to the right of the Province to claim and recover from the Design-Builder, subject to the other provisions of this Agreement, Direct Losses to the extent any such payment or deduction does not compensate the Province in full for such Direct Losses, and such right of the Province is hereby expressly preserved.

9.13 No Compensation Where Insured

Notwithstanding anything to the contrary in this Agreement, except in the case of compensation for Claims and Direct Losses under Part 8 [Supervening Events] of this Agreement (in which case Section 8.11 [Effect of Insurance] of this Agreement applies), and in the case of compensation on termination under Schedule 14 [Compensation on Termination] (in which case Section 3.1 [No Compensation to Extent of Insurance] of Schedule 14 applies), neither the Province nor BCTFA will be liable to the Design-Builder, whether in contract or in tort or on any other basis whatsoever, for any Claims or Direct Losses, and any amounts payable by the Province or BCTFA will be reduced, to the extent, in respect of such Claims or Direct Losses:

- (a) that:
 - (i) the Design-Builder recovers or is entitled to recover under any Required Insurance, or would have been able to recover under any Required Insurance if such Required Insurance had been taken out and maintained in accordance with this Agreement; or
 - (ii) the Claims or Direct Losses are insured against, or required to be insured against under any Required Insurance, or would have been insured against under any Required Insurance if such Required Insurance had been taken out and maintained in accordance with this Agreement;

whether or not such Required Insurance was in fact effected or, if effected, was vitiated, and whether vitiated as a result of any act or omission of the Design-Builder (or of any person for whom the Design-Builder is in law responsible) including, but not limited to, by reason of non-disclosure or under-insurance or failure or insolvency of the insurer, or for any other reason (excluding only vitiation caused by any act or omission of the Province or any person for whom the Province is in law responsible, but only to the extent non-vitiation terms protecting against vitiation in the case of such act or omission are not required by the terms of this Agreement to be included in the applicable insurance policies);

- (b) that the Design-Builder recovers or is entitled to recover under any policy of insurance that is not Required Insurance but that the Design-Builder has in fact taken out and maintained;
- (c) that there are proceeds of insurance held by the Province that are (subject to the Design-Builder fulfilling all conditions to the disbursement thereof) available for satisfaction of such Claims or Direct Losses, in whole or in part;
- (d) that the Province makes or authorizes, or is obligated under this Agreement (subject to the Design-Builder fulfilling all conditions thereto) to make or authorize, payment to or for the account of or on behalf of the Design-Builder, under Section 6.17 [Application of Proceeds of Insurance] of this Agreement; or

- (e) of any amounts in respect of deductibles and waiting periods under any insurance referred to in either of Sections 9.13(a) and (b) of this Agreement for which the Design-Builder is responsible.

PART 10 PAYMENTS

10.1 Payments

Payments under this Agreement will be made in accordance with Schedule 9 [Performance Mechanism] and Schedule 10 [Payment].

10.2 Taxes on Payments

- (a) For the purposes of this Section 10.2:
 - (i) **“Change in Tax Law”** means a Change in Law relating to GST or PST, including the imposition of any successor or replacement tax for GST or PST;
 - (ii) **“Irrecoverable Tax”** means GST or PST:
 - (A) incurred by the Design-Builder in respect of the supply of any property or service to the Design-Builder which is consumed, used or supplied or to be consumed, used or supplied exclusively by the Design-Builder in the course of carrying out the Project Work; or
 - (B) required to be collected and remitted to any Governmental Authority by the Design-Builder in respect of the supply of any property or service by the Design-Builder to the Province made exclusively in the course of carrying out the Project Work,in each case to the extent that the Design-Builder is unable to collect or obtain any Recovery;
 - (iii) **“Recipient”** means a party to which a taxable supply is provided under this Agreement;
 - (iv) **“Recovery”** in relation to any GST or PST means recovery or elimination of liability for such GST or PST in any way, including by way of input tax credits, refunds, rebates, exemptions, remissions or any similar recovery for such GST or PST; and
 - (v) **“Supplier”** means a party providing a taxable supply under this Agreement.
- (b) Subject to this Section 10.2, including the provisions relating to a Change in Tax Law herein, all payments (including payments in kind) to be made by a party under this Agreement are:
 - (i) exclusive of GST; and
 - (ii) inclusive of all Taxes (including PST) other than GST.

- (c) If any GST is imposed on a Recipient in connection with the provision of any taxable supply under this Agreement by a Supplier, the Recipient will pay the GST to the Supplier and the Supplier will remit the GST, all in accordance with the obligations of the Recipient and the Supplier under the *Excise Tax Act* (Canada).
- (d) The Design-Builder acknowledges and agrees that as and from the Effective Date it will levy, collect and remit GST on the supply of the Project Work provided that if, following the Effective Date, the Province provides to the Design-Builder certification that according to Laws or agreement between the Province and the Federal Government it is no longer required to pay GST, the Design-Builder will, in accordance with a Change Certificate or Change Directive issued by the Province in respect or such change, cease levying and collecting GST on the supply of the Project Work.
- (e) Following receipt of an invoice therefor from the Design-Builder, the Province will pay to the Design-Builder from time to time amounts equal to any Irrecoverable Tax if and to the extent such Irrecoverable Tax results solely from a Change in Tax Law as any such Irrecoverable Tax is incurred by the Design-Builder or required to be collected and remitted to any Governmental Authority, as the case may be, with the intent that the Design-Builder will be placed in a position under this Agreement neither better nor worse than it would have been in had the Change in Tax Law not occurred, provided that all amounts paid under this Section 10.2(e) of this Agreement will be grossed up by an amount equal to the amount of income tax actually payable in a Contract Year by the Design-Builder that can be demonstrated by the Design-Builder results from being subjected to the Irrecoverable Tax and/or receipt of the payment under this Section 10.2(e) of this Agreement after taking into account any other income tax credits, deductions or relief to which the Design-Builder may be eligible.
- (f) If, solely as a result of a Change in Tax Law, the Design-Builder becomes entitled to a Recovery in respect of GST or PST which was, prior to such Change in Tax Law, an Irrecoverable Tax that had been paid to the Design-Builder by the Province pursuant to Section 10.2(e) of this Agreement then the Design-Builder will pay to the Province from time to time the amount or amounts of such Recovery to which the Design-Builder becomes entitled, to the extent required to place the Design-Builder in a position under this Agreement neither better nor worse than it would have been in had the Change in Tax Law not occurred.
- (g) Any payment required to be made by the Province to the Design-Builder pursuant to Section 10.2(e) of this Agreement, or by the Design-Builder to the Province pursuant to Section 10.2(f) of this Agreement, will be paid by the relevant party within 10 Business Days following the delivery by the other applicable party of an invoice or debit note for such payment, provided that the Province will not be required to pay any amount to the Design-Builder pursuant to Section 10.2(e) of this Agreement until the Design-Builder has delivered to the Province's Representative written details of the amount claimed and the grounds for and computation of the amount claimed and such further information, calculations, computations and documentation as the Province may reasonably require.
- (h) The Design-Builder will provide to the Province's Representative any information, calculations, computations and documentation reasonably requested by the Province from time to time in relation to the amount of any GST or PST chargeable in accordance with this Agreement and payable by the Province to the Design-Builder or by the Design-Builder to the Province in accordance with this Agreement.

**PART 11
PROVINCE'S MONITORING AND STEP-IN RIGHTS**

11.1 Increased Monitoring

- (a) Without prejudice to any other rights of the Province under this Agreement, if at any time during the Term:
 - (i) the Design-Builder is assigned 10 or more Default Points in any 12 calendar month period;
 - (ii) a Design-Builder Default occurs; or
 - (iii) any material discrepancy, inaccuracy or error (including error by omission or incompleteness) is discovered by the Province or the Province's Representative in respect of any monthly report delivered by the Design-Builder to the Province in accordance with Part 6 [Periodic Reports and Payment Applications] of Schedule 10,

then the Province may by notice to the Design-Builder increase the level of its monitoring of the Design-Builder above that otherwise carried out by the Province under this Agreement, including pursuant to Section 4.4 [Province Monitoring] of Schedule 7, until such time as the Design-Builder has demonstrated to the reasonable satisfaction of the Province that it will perform and is capable of performing its obligations under this Agreement.

- (b) A notice to the Design-Builder provided by the Province's Representative pursuant to Section 11.1(a) of this Agreement will specify the additional measures to be taken by the Province in monitoring the Design-Builder in response to the matters which led to such notice being sent.
- (c) If the Province carries out increased monitoring pursuant to this Section and requires the Design-Builder to pay the Province's costs and expenses in respect thereof pursuant to Section 11.1(d) of this Agreement, and it is subsequently agreed or finally determined pursuant to the Dispute Resolution Procedure that the Province was not entitled to require the Design-Builder to pay the Province's costs and expenses in respect of such increased monitoring in accordance with this Section, then the payment by the Design-Builder of such Province costs and expenses will constitute a Compensation Event and the provisions of Part 8 [Supervening Events] will apply.
- (d) The Design-Builder will pay to the Province on demand all costs and expenses incurred by the Province in carrying out increased monitoring under this Section 11.1, together with an administration fee equal to _____ of such costs and expenses, and all without prejudice to any other rights of the Province.

11.2 Province's Emergency Rights

- (a) Without limiting any other rights of the Province under this Agreement or at Law, and whether or not the Province has then given notice of default or notice of termination in accordance with any provisions of this Agreement entitling it to do so or the Design-Builder has then given notice of termination in accordance with any provisions of this

Agreement entitling it to do so, and regardless of any Dispute with respect to whether or not there is a valid right or obligation to terminate, if at any time during the Term the Province reasonably believes that it needs to take action in relation to the Project Facilities or the Project Work or any part thereof due to the occurrence of an Emergency, then the Province may in its discretion do either or both of the following (but this will not obligate the Province to mitigate, rectify or protect against, or attempt to mitigate, rectify or protect against, such Emergency or, after having commenced to mitigate, rectify or protect against or attempt to mitigate, rectify or protect against such Emergency, to continue to do so):

- (i) upon notice from the Province to the Design-Builder (which notice will not be required to be in writing and will not be required where it is impracticable in the circumstances for the Province to give prior notice) take or cause to be taken all such steps and actions as the Province considers, in its discretion, are required to mitigate, rectify or protect against such Emergency and, to the extent and for the period necessary for such purposes, enter upon the Project Site and the Project Infrastructure or any part thereof to carry out or cause to be carried out any work, provided that the Province will, and will cause any applicable third parties engaged by it for the purposes of exercising the Province's rights under this Section 11.2 to, comply with all applicable Laws and Permits and to carry out any action under this Section expeditiously; or
 - (ii) by written notice from the Province to the Design-Builder, require the Design-Builder to take such steps as the Province considers, in its discretion, necessary or expedient to mitigate, rectify or protect against such Emergency including, if such Emergency has been caused or contributed to by a breach of any Subcontract, taking all action in respect of such Subcontract as the Province considers, in its discretion, necessary or expedient, and the Design-Builder will use all reasonable efforts to comply with the Province's requirements as soon as reasonably practicable.
- (b) If the Province gives notice to the Design-Builder pursuant to Section 11.2(a)(ii) of this Agreement and the Design-Builder either:
- (i) does not confirm, within the time period specified by the Province in the notice given pursuant to Section 11.2(a)(ii) of this Agreement (or, if no such time period is specified, within five Business Days), that it is willing to take such steps as are referred to or required in such notice or present an alternative plan to the Province to mitigate, rectify and protect against such Emergency that the Province may accept or reject, in its discretion; or
 - (ii) fails to take the steps as are referred to or required in such notice or accepted alternative plan within such time as set out in such notice or accepted alternative plan or within such time as the Province, in its discretion, will stipulate,

then the Province may, in addition to the ability to take the actions set out in Section 11.2(a) of this Agreement, without further notice to the Design-Builder, to the extent and for the period necessary for such purpose, suspend the progress of the relevant Project Work, and suspend in whole or in part the relevant rights of the Design-Builder under this Agreement (including the rights of the Design-Builder under Schedule 8 [Lands] as applicable to the relevant Project Work), provided that any such suspension of the Design-Builder's rights will cease on the date upon which the Province has completed mitigating, rectifying or

protecting against such Emergency or notifies the Design-Builder that such suspension will cease.

- (c) No action taken by the Province under Section 11.2(a) or 11.2(b) of this Agreement will be deemed to be a termination of this Agreement or relieve the Design-Builder from any of its obligations under this Agreement (except to the extent any such obligation is fully performed by the Province or cannot reasonably be performed due to such action taken by the Province), and, subject to Section 11.2(d) of this Agreement, the Province will not incur any liability to the Design-Builder for any act or omission of the Province or any other person in the course of taking such action, except to the extent of any failure by the Province or any Third Party Contractor engaged by the Province for the purposes of exercising the Province's rights under this Section 11.4 to comply with all applicable Laws and Permits in the course of exercising the Province's rights under Section 11.2(a) or 11.2(b) of this Agreement.
- (d) Except to the extent that an Emergency has been caused by a Design-Builder Non-Excusable Event, any actions of the Province under this Section 11.2 in respect of such Emergency will constitute a Compensation Event and the provisions of Part 8 [Supervening Events] will apply.
- (e) If the Province carries out actions under this Section 11.2 in the event of an Emergency caused by a Design-Builder Non-Excusable Event, the Design-Builder will pay to the Province on demand all costs and expenses incurred by the Province in carrying out such actions under this Section 11.2, including any costs paid by the Province to the Design-Builder in accordance with Section 11.4 [Availability of Certain Assets on Step-In], together with an administration fee equal to _____ of such costs and expenses, and all without prejudice to any other rights of the Province.
- (f) If the Province takes action under Section 11.2(a) of this Agreement and it is subsequently agreed or finally determined pursuant to the Dispute Resolution Procedure that the Province was not entitled to take such action in accordance with this Section, then the taking of any such action will constitute a Compensation Event and the provisions of Part 8 [Supervening Events] will apply.

11.3 Province's Other Step-In Rights

- (a) Without limiting any other rights of the Province under this Agreement or at Law, and whether or not the Province has then given notice of default or notice of termination in accordance with any provisions of this Agreement entitling it to do so or the Design-Builder has then given notice of termination in accordance with any provisions of this Agreement entitling it to do so, and regardless of any Dispute with respect to whether or not there is a valid right or obligation to terminate, if at any time during the Term any one or more of the following events occurs:
 - (i) the Design-Builder has been assigned one or more Default Points pursuant to Section 2.4(b) or 2.4(c) of Schedule 9 [Performance Mechanism] and the matter or matters giving rise to the assignment of such Default Point(s) has not or have not been remedied within a reasonable time to the satisfaction of the Province, acting reasonably;

- (ii) a Design-Builder Default occurs and the Province reasonably believes that such Design-Builder Default remains unremedied; or
- (iii) the Province receives a Notice of Failure to Comply from the Design-Builder pursuant to Section 8.7(b) of Schedule 3 [Design and Construction General Requirements],

then the Province may in its discretion do either or both of the following (but this will not obligate the Province to remedy such matter or attempt to do so, or, after having commenced to remedy such matter or attempt to do so, to continue to do so):

- (iv) by five Business Days' notice to the Design-Builder, to the extent and for the period necessary to remedy such matter or matters, suspend the progress of any or all of the Project Work, and suspend in whole or in part the rights of the Design-Builder under this Agreement (including the rights of the Design-Builder under Schedule 8 [Lands]), provided that any such suspension of the Design-Builder's rights will cease on the earlier of the date upon which the Province has completed remedying such matter or notifies the Design-Builder that such suspension will cease; and
 - (v) upon notice to the Design-Builder, take or cause to be taken all such steps and actions as may be reasonably required to remedy such matter or matters and, to the extent and for the period necessary for such purpose, enter upon the Project Site and the Project Infrastructure or any part thereof to carry out any work, provided that the Province will, and will cause any Third Party Contractors engaged by the Province for the purposes of exercising the Province's rights under this Section 11.3 to, comply with all applicable Laws and Permits and to carry out any action under this Section expeditiously.
- (b) No action taken by the Province under Section 11.3(a) of this Agreement will be deemed to be a termination of this Agreement or relieve the Design-Builder from any of its obligations under this Agreement (except to the extent any such obligation is fully performed by the Province or cannot reasonably be performed due to such action taken by the Province), and, subject to Section 11.3(c) of this Agreement, the Province will not incur any liability to the Design-Builder for any act or omission of the Province or any other person in the course of taking such action, except to the extent of any failure by the Province or any Third Party Contractor engaged by the Province for the purposes of exercising the Province's rights under this Section 11.3 to comply with all applicable Laws and Permits in the course of exercising the Province's rights under Section 11.3(a) of this Agreement.
 - (c) If the Province takes action under Section 11.3(a) of this Agreement and it is subsequently agreed or finally determined pursuant to the Dispute Resolution Procedure that the Province was not entitled to take such action in accordance with this Section 11.3, then the taking of any such action will constitute a Compensation Event and the provisions of Part 8 [Supervening Events] will apply.
 - (d) Except where the Province carries out actions under this Section 11.3 in the circumstances contemplated in Section 11.3(a)(iii) of this Agreement or where Section 11.3(c) of this Agreement applies, the Design-Builder will pay to the Province on demand all costs and expenses incurred by the Province in carrying out such actions, including any costs paid

by the Province to the Design-Builder in accordance with Section 11.4 [Availability of Certain Assets on Step-In], together with an administration fee equal to
of such costs and expenses, and all without prejudice to any other rights of the Province.

11.4 Availability of Certain Assets on Step-In

Where the Province exercises its rights under Section 11.2 [Province's Emergency Rights] or Section 11.3 [Province's Other Step-In Rights], for the duration of the exercise of such rights the Design-Builder will, and will cause its Subcontractors to, to the extent requested by the Province, make available to the Province or, at the direction of the Province to a third party designated by the Province, at a fair market price or rent, as the case may be, and at the risk of the Province, all facilities and all or any part of the stocks of material, road vehicles, spare parts, equipment and machinery (including Construction Plant) and other moveable property then owned or leased by or otherwise available to the Design-Builder or any of its Subcontractors that is required for the purposes of the exercise of such rights by the Province.

PART 12 DESIGN-BUILDER DEFAULT AND PROVINCE REMEDIES

12.1 Design-Builder Default

Each occurrence of any one or more of the following events or circumstances will constitute a "Design-Builder Default":

- (a) any Design-Builder Insolvency Event;
- (b) the abandonment of the Project by the Design-Builder;
- (c) the Design-Builder ceasing to perform a substantial portion of its business or the suspension or non-performance of a substantial portion of the business of the Design-Builder (except as a result of the exercise by the Province of its rights under Part 11 [Province's Monitoring and Step-In Rights], and except where such cessation, suspension or non-performance constitutes a Design-Builder Default referred to in Section 12.1(b) of this Agreement), whether voluntarily or involuntarily, that has or could reasonably be expected to have a material adverse effect on the performance by the Design-Builder of its obligations under this Agreement or any other Project Document, and such event or circumstance is not remedied by the resumption of business or the cessation of the suspension or non-performance of business, within 30 Business Days after the date notice to do so is given by the Province to the Design-Builder;
- (d) any Change in Control that is not permitted by Section 16.3 [Change in Control of Design-Builder] of this Agreement;
- (e) any breach by the Design-Builder of Section 16.1 [Assignment by Design-Builder] of this Agreement;
- (f) any breach of Sections 5.4(b) or 5.5 [Prohibited Acts] of this Agreement;
- (g) any failure by the Design-Builder to comply with Schedule 18 [Privacy Protection] or Schedule 19 [Cloud Security] in a material respect and such failure is not remedied within 30 Business Days after the date notice of such failure is given by the Province to the

Design-Builder (and for the purposes of this paragraph such failure will be considered remedied when the Design-Builder has taken steps satisfactory to the Province to mitigate the effects of the failure and has implemented measures satisfactory to the Province to prevent a recurrence of the failure);

- (h) any breach by the Design-Builder of Section 16.5 [Material Subcontracts] of this Agreement, and such breach would, or might reasonably be expected to, or does, have any of the effects described or referenced in Section 3.4(b) of Schedule 2 [Review Procedure and Consent Procedure], except where such breach, such occurrence or such effects are capable of being remedied and such breach, such occurrence or such effects are in fact remedied within 30 Business Days after the date notice of such breach or such occurrence is given by the Province to the Design-Builder;
- (i) a sale, transfer, lease or other disposition by the Design-Builder of the whole or any part (that is material in the context of the performance of the Design-Builder's obligations under this Agreement) of its undertaking, property or assets by a single transaction or a number of transactions (whether related or not and whether at the same time or over a period of time) that has or could reasonably be expected to have a material adverse effect on the financial position of the Design-Builder or the performance by the Design-Builder of its obligations under this Agreement, except where such occurrence or the relevant material adverse effect is capable of being remedied and is in fact remedied within 30 Business Days after the date notice of such occurrence is given by the Province to the Design-Builder;
- (j) any representation or warranty made by the Design-Builder in Section 5.7 [Representations and Warranties of the Design-Builder] of this Agreement being incorrect in any material respect when made and the incorrectness of the fact or facts misrepresented has or might reasonably be expected to have a material adverse effect on the ability of the Design-Builder or the Province to perform their respective obligations, or the ability of the Province to exercise any of its rights, under this Agreement, except where such incorrect representation or warranty or the relevant material adverse effect is capable of being remedied and is in fact remedied within 60 Business Days after the date notice of such incorrect representation or warranty is given by the Province to the Design-Builder;
- (k) any Required Insurance is not taken out, maintained, paid for or renewed in accordance with Part 6 [Insurance, Damage and Destruction] of this Agreement and Schedule 5 [Insurance Requirements], or is cancelled by any insurer;
- (l) evidence that Required Insurance has in fact been taken out, maintained, paid for and renewed in accordance with Part 6 [Insurance, Damage and Destruction] of this Agreement and Schedule 5 [Insurance Requirements] is not provided to the Province in accordance with Part 6 [Insurance, Damage and Destruction] of this Agreement and Schedule 5 [Insurance Requirements];
- (m) a failure by the Design-Builder to comply with the requirements or directive of a final award (after all rights of further appeal have been exhausted or have expired) in a matter dealt with in accordance with the Dispute Resolution Procedure and such failure to comply is not remedied within 30 Business Days after the date notice of such non-compliance is given by the Province to the Design-Builder or within such longer period of time after the date such notice is given (if a longer period of time is reasonably required to comply) so

long as the Design-Builder has commenced to comply within such 30 Business Days and proceeds with such compliance with all due diligence and continuity to completion;

- (n) at any time the Default Points Balance is 60 or more Default Points;
- (o) failure by the Design-Builder to achieve Substantial Completion on or before the Substantial Completion Longstop Date;
- (p) the aggregate liability of the Design-Builder under this Agreement exceeding the aggregate limit of liability under Section 9.3(d) of this Agreement;
- (q) a failure by the Design-Builder to pay to the Province when due and payable any amount that is due and payable by the Design-Builder to the Province under this Agreement, and such payment is not the subject of an unresolved Dispute pursuant to the Dispute Resolution Procedure, and such failure is not remedied within 20 Business Days after the date notice that such payment is overdue is given by the Province to the Design-Builder;
- (r) the provision, performance or carrying out of the Project Work or any part of the Project Work without a Permit required in connection with such Project Work or in breach of the terms of any Permit required in connection with such Project Work and the failure to have the relevant Permit or such breach is not remedied within 30 Business Days after the date notice of such failure or breach is given by the Province to the Design-Builder or, if a longer period of time is reasonably required to remedy such failure or breach, within such longer period of time so long as the Design-Builder has commenced remedying such failure or breach within such 30 Business Days and proceeds to remedy it with all due diligence and continuity to completion; and
- (s) a failure by the Design-Builder to perform or observe any of its material obligations under this Agreement that is not referred to in any of the other paragraphs of this Section 12.1, and without regard to whether or not the Design-Builder has received or receives NCE Points or Default Points under this Agreement for or as a result of such failure, and such failure is not remedied within 30 Business Days after the date notice of such failure is given by the Province to the Design-Builder.

Each notice that may be given to the Design-Builder referred to in any of Sections 12.1(c), 12.1(g), 12.1(h), 12.1(i), 12.1(j), 12.1(m), 12.1(q), 12.1(r) and 12.1(s) of this Agreement will specify in reasonable detail according to the information then reasonably available to the Province the failure, breach, occurrence or other matter in respect of which the notice is given, and will state clearly that the notice is given under this Section 12.1 and could lead to a Design-Builder Default and to termination of this Agreement.

12.2 Notice of Default by Design-Builder

The Design-Builder will notify the Province of the occurrence, and details, of any Design-Builder Default and of any event or circumstance that has occurred and may or would, with the passage of time or otherwise, constitute or give rise to a Design-Builder Default, in any case promptly upon the Design-Builder becoming aware of such occurrence.

12.3 Remedies of the Province for Design-Builder Default

If and whenever a Design-Builder Default occurs and is continuing, the Province may, at its option and without prejudice to any of its other rights or remedies or to any rights or action which accrue or will

already have accrued to the Province under this Agreement or otherwise at law or in equity, exercise any or all of the following rights and remedies as the Province, in its discretion, will determine:

- (a) if the Design-Builder Default is one referred to in any of Sections 12.1(a), 12.1(b), 12.1(c), 12.1(d), 12.1(e), 12.1(g), 12.1(h), 12.1(i), 12.1(j), 12.1(m), 12.1(n), 12.1(o), 12.1(p) or 12.1(r) of this Agreement, the Province may terminate this Agreement by notice to the Design-Builder having immediate effect, subject to Section 14.4 [Notice of Intention to Terminate and Dispute] of this Agreement;
- (b) if the Design-Builder Default is one referred to in Section 12.1(f) of this Agreement, the Province may:
 - (i) where the breach is occasioned by the Design-Builder or by an employee of the Design-Builder who is not acting independently of the Design-Builder or by any person duly authorized to act for and on behalf of the Design-Builder, terminate this Agreement in its entirety by notice having immediate effect, subject to Section 14.4 [Notice of Intention to Terminate and Dispute] of this Agreement;
 - (ii) where the breach is occasioned by an employee of the Design-Builder who is acting independently of the Design-Builder, then unless the Design-Builder causes the termination of such employee's employment (or, where such employee is an Employee as defined in the BCIB-Contractor Agreement, then unless the Design-Builder recommends dismissal of such Employee to BCIB in accordance with the BCIB-Contractor Agreement) within 30 days after the earlier of the Design-Builder becoming aware of the breach and notification to the Design-Builder of the breach and (if considered by the Design-Builder, acting reasonably, to be necessary) employs a replacement to perform such terminated employee's functions (or, in the case of an Employee under the BCIB-Contractor Agreement, requests such a replacement from BCIB in accordance with the BCIB-Contractor Agreement) within such 30 day period, terminate this Agreement in its entirety by notice having immediate effect, subject to Section 14.4 [Notice of Intention to Terminate and Dispute] of this Agreement;
 - (iii) where the breach is occasioned by any person other than as referred to above in Sections 12.3(b)(i) or 12.3(b)(ii) of this Agreement, and whether or not any benefit to the Design-Builder or the employer of the person occasioning the breach was intended, then unless the Design-Builder causes the termination of the employment of such person (including, where such employee is an Employee as defined in the BCIB-Contractor Agreement or any BCIB-Subcontractor Agreement, recommending or causing the recommending of the dismissal of such Employee to BCIB in accordance with such BCIB-Contractor Agreement or BCIB-Subcontractor Agreement, as the case may be) (and, in the case of a person other than a person employed by the Design-Builder, the termination of the engagement or employment of that person's employer) within 30 days after the earlier of the Design-Builder becoming aware of the breach and notification to the Design-Builder of the breach or such longer period as the Province may in its discretion by notice permit, terminate this Agreement in its entirety by further notice given after the end of such 30 day period, such further notice having immediate effect, subject to Section 14.4 [Notice of Intention to Terminate and Dispute] of this Agreement;

- (c) if the Design-Builder Default is one referred to in Section 12.1(k) or Section 12.1(l) of this Agreement:
 - (i) the Province may in its discretion, and without prejudice to its rights under Section 12.3(c)(ii) of this Agreement, after advising the Design-Builder of the Province's intention to do so, remedy the Design-Builder Default or engage one or more third parties to do so, and in connection therewith the Province may take or cause to be taken all such steps and actions as may be reasonably required to remedy the Design-Builder Default (but this will not obligate the Province to (A) remedy or to attempt to remedy a Design-Builder Default or (B) after having commenced to remedy or to attempt to remedy a Design-Builder Default, to continue to do so), and the Design-Builder will pay to the Province on demand all costs and expenses incurred by the Province in remedying or attempting to remedy such Design-Builder Default, together with an administrative fee equal to fifteen percent (15%) of such costs and expenses, provided that no such action by the Province will be deemed to be a termination of this Agreement or relieve the Design-Builder from any of its obligations under this Agreement (except to the extent any such obligation is fully performed by the Province); and
 - (ii) if the Design-Builder Default is not remedied within 20 Business Days after notice of such Design-Builder Default is given by the Province to the Design-Builder, the Province may terminate this Agreement by notice to the Design-Builder having immediate effect, subject to Section 14.4 [Notice of Intention to Terminate and Dispute] of this Agreement;
- (d) if the Design-Builder Default is one referred to in Section 12.1(q) of this Agreement, and provided that the aggregate amount of:
 - (i) the sum that is the subject of that Design-Builder Default; and
 - (ii) all other sums that:
 - (A) are due and payable and remain unpaid by the Design-Builder to the Province;
 - (B) are not the subject of an unresolved Dispute pursuant to the Dispute Resolution Procedure; and
 - (C) have each been outstanding and unpaid by the Design-Builder to the Province for more than 20 Business Days after the date a notice of non-payment thereof was given by the Province to the Design-Builder under Section 12.1(q) of this Agreement;

exceeds \$250,000, the Province may give further notice to the Design-Builder of such aggregate amount and the non-payment thereof requiring the Design-Builder to pay such aggregate amount within 10 Business Days after the date such further notice is given by the Province to the Design-Builder, and if such aggregate amount is not paid by the Design-Builder within such 10 Business Days, then the Province may terminate this Agreement by notice to the Design-Builder having immediate effect, subject to Section 14.4 [Notice of Intention to Terminate and Dispute] of this Agreement;

- (e) if the Design-Builder Default is one referred to in Section 12.1(s) of this Agreement, the Province may give notice to the Design-Builder of the Design-Builder Default requiring the Design-Builder at the option of the Design-Builder either:
 - (i) to remedy the Design-Builder Default referred to in that notice within 20 Business Days after the date such notice is given by the Province to the Design-Builder; or
 - (ii) to submit to the Province's Representative pursuant to the Review Procedure, within 20 Business Days after the date such notice is given by the Province to the Design-Builder, a reasonable schedule and plan for the remedying of such Design-Builder Default specifying in reasonable detail the manner and latest date by which such Design-Builder Default will be remedied;and in either case Section 12.4 [Termination for Failure to Remedy According to Program] of this Agreement will apply; and
- (f) except as otherwise expressly provided in this Agreement, and subject to Schedule 16 [Dispute Resolution Procedure], the Province may exercise any of its other rights and remedies, whether under this Agreement, or at law or in equity.

12.4 Termination for Failure to Remedy According to Program

If the Province gives notice to the Design-Builder of a Design-Builder Default pursuant to Section 12.3(e) of this Agreement, and if the Design-Builder Default referred to in that notice is not remedied:

- (a) according to a schedule and plan that the Design-Builder submits to the Province's Representative pursuant to the Review Procedure in accordance with Section 12.3(e)(ii) of this Agreement and to which the Province has no objection under the Review Procedure; or
- (b) except where Section 12.4(a) of this Agreement applies, before the expiry of the period referred to in Section 12.3(e)(i) of this Agreement,

then, in any such event, the Province may at its option, and without prejudice to any of its other rights or remedies and to any rights of action which accrue or will already have accrued to the Province, terminate this Agreement by notice to the Design-Builder having immediate effect, subject to Section 14.4 [Notice of Intention to Terminate and Dispute] of this Agreement.

12.5 Province Costs

Without limiting, but without duplicating, any other amounts the Design-Builder is obligated under this Agreement to pay to the Province or BCTFA on account of costs and expenses incurred by the Province, the Design-Builder will pay to the Province and BCTFA on demand all costs and expenses incurred by the Province and BCTFA or either of them in exercising any rights and remedies as a result of a Design-Builder Default that would not have been incurred but for the Design-Builder Default, including any relevant increased administrative costs and expenses and legal and other professional advisor expenses.

12.6 Province Remedies Cumulative

Except as otherwise provided in this Agreement, including where inconsistent with the terms of this Agreement:

- (a) all rights and remedies of the Province under this Agreement are cumulative and are in addition to and not in substitution for or to the exclusion of any other rights and remedies available to the Province under this Agreement or at law or in equity; and
- (b) the Province may have recourse to any one or more or all of such rights and remedies, concurrently or successively, as it will see fit, without prejudice to any of its other available rights and remedies.

12.7 Continued Effect

Notwithstanding any Design-Builder Default, the Province may continue to treat this Agreement as being in full force and effect and to enforce its rights under this Agreement, without prejudice to any other rights and remedies of the Province in relation to such Design-Builder Default including the right to terminate this Agreement as provided herein.

12.8 Compensation on Termination

In the event of an effective termination of this Agreement pursuant to Sections 12.3(a), 12.3(c)(ii), 12.3(d) or 12.4 [Termination for Failure to Remedy According to Program] of this Agreement, compensation on termination will be payable in accordance with Part 2 [Compensation on Termination for Design-Builder Default] of Schedule 14.

PART 13 PROVINCE DEFAULT AND DESIGN-BUILDER REMEDIES

13.1 Province Default

Each occurrence of any one or more of the following events or circumstances will constitute a “Province Default”:

- (a) a failure by the Province to pay to the Design-Builder when due and payable any amount that is due and payable by the Province to the Design-Builder under this Agreement, and such payment is not the subject of an unresolved Dispute pursuant to the Dispute Resolution Procedure, and such failure is not remedied within 20 Business Days after the date notice that such payment is overdue is given by the Design-Builder to the Province;
- (b) a failure by the Province to comply with the requirements or directive of a final award (after all rights of further appeal have been exhausted or have expired) in a matter dealt with in accordance with the Dispute Resolution Procedure and such failure to comply is not remedied within 20 Business Days after the date notice of such non-compliance is given by the Design-Builder to the Province, or, if a longer period of time is reasonably required to comply, within such longer period of time as is reasonably required to comply so long as the Province has commenced to comply within such 20 Business Days and proceeds with such compliance with all due diligence and continuity to completion;
- (c) any breach by the Province of the provisions of Section 16.2 [Assignment by the Province] of this Agreement;
- (d) any person to whom the interests of the Province or BCTFA under this Agreement are transferred in accordance with Section 16.2 [Assignment by the Province] of this Agreement ceases to be a Qualified Governmental Entity;

- (e) except where such failure constitutes a Compensation Event, a failure by the Province to perform or observe any of its material obligations under this Agreement, and such failure continues so as to substantially frustrate the performance of, or render it impossible for the Design-Builder to perform, the Design-Builder's material obligations under this Agreement for a continuous period of not less than 60 days after notice of such failure is first given by the Design-Builder to the Province, and such continuing failure is still not remedied within 30 days after further notice of such failure is given by the Design-Builder to the Province after the expiration of such 60 days;
- (f) except where such expropriation, sequestration, requisition or seizure constitutes or results in a Compensation Event referred to in paragraph (a) of the definition of Compensation Event in Section 1.1 [Definitions] of Schedule 1, any expropriation, sequestration, requisition or other seizure by the Province or any agent, crown corporation, ministry or department of the Province, of the Project Site or any material part thereof, other than in the exercise of rights or obligations set out in, or expressly contemplated by, this Agreement, and such action substantially frustrates the performance of, or renders it impossible for the Design-Builder to perform, the Design-Builder's material obligations under this Agreement for a continuous period of not less than 60 days after the date notice of such action is first given by the Design-Builder to the Province, and such matter is still not remedied within 30 days after further notice of such matter is given by the Design-Builder to the Province after the expiration of such 60 days; and
- (g) any representation or warranty made by the Province in Section 4.2 [Representations and Warranties of the Province and BCTFA] of this Agreement being incorrect in any material respect when made and the incorrectness of the fact or facts misrepresented has or might reasonably be expected to have a material adverse effect on the ability of the Design-Builder or the Province to perform their respective obligations, or the ability of the Design-Builder to exercise any of its rights, under this Agreement, except where such incorrect representation or warranty or the relevant material adverse effect is capable of being remedied and is in fact remedied within 60 Business Days after the date notice of such incorrect representation or warranty is given by the Design-Builder to the Province.

Each notice that may be given to the Province referred to in any of Sections 13.1(a), 13.1(b), 13.1(e), 13.1(f) and 13.1(g) of this Agreement will be given to the Province's Representative, will specify in reasonable detail, according to the information reasonably available to the Design-Builder, the failure, breach, occurrence or other matter in respect of which the notice is given, and will state clearly that the notice is given under this Section 13.1 and could lead to a Province Default and to termination of this Agreement.

13.2 Notice of Default by Province

The Province will notify the Design-Builder of the occurrence, and details, of any Province Default and of any event or circumstance that has occurred and may or would, with the passage of time or otherwise, constitute or give rise to a Province Default, in either case promptly upon the Province becoming aware of such occurrence.

13.3 Remedies of Design-Builder for Province Default

If and whenever a Province Default occurs and is continuing, the Design-Builder may, at its option and without prejudice to any of its other rights or remedies and to any rights or action which accrue or will already have accrued to the Design-Builder, exercise any or all of the following rights and remedies as the Design-Builder, in its sole discretion, will determine:

- (a) the Design-Builder may terminate this Agreement by notice to the Province having immediate effect, subject to Section 14.4 [Notice of Intention to Terminate and Dispute] of this Agreement, if the Province Default is one referred to in Section 13.1(a) of this Agreement and the aggregate amount of:
 - (i) the sum that is the subject of that Province Default; and
 - (ii) all other sums that:
 - (A) are due and payable and remain unpaid by the Province to the Design-Builder;
 - (B) are not the subject of an unresolved Dispute pursuant to the Dispute Resolution Procedure; and
 - (C) have each been outstanding and unpaid by the Province to the Design-Builder for more than 20 Business Days after the date a notice of non-payment thereof was given by the Design-Builder to the Province under Section 13.1(a) of this Agreement;exceeds \$250,000, and such aggregate amount is not paid by the Province to the Design-Builder within 20 Business Days following written notice given by the Design-Builder to the Province of such aggregate amount and the non-payment thereof;
- (b) if the Province Default is one referred to in any of Sections 13.1(b), 13.1(c), 13.1(d), 13.1(e), 13.1(f) and 13.1(g) of this Agreement, the Design-Builder may terminate this Agreement by notice to the Province having immediate effect, subject to Section 14.4 [Notice of Intention to Terminate and Dispute] of this Agreement; and
- (c) except as otherwise expressly provided in this Agreement (including in Section 9.8 [Limitation of Province Liability] of this Agreement), and subject to Section 17.13 [No Fettering of Province's Rights, Powers and Authority] of this Agreement and Schedule 16 [Dispute Resolution Procedure], the Design-Builder may exercise any of its other rights and remedies, whether under this Agreement or at law or in equity.

13.4 Design-Builder Costs

Without limiting, but without duplicating, any other amounts the Province is obligated under this Agreement to pay to the Design-Builder on account of costs and expenses incurred by the Design-Builder, and except to the extent the Design-Builder is compensated for such costs and expenses in compensation paid or payable under Schedule 14 [Compensation on Termination], the Province will pay to the Design-Builder on demand all costs and expenses incurred by the Design-Builder in exercising any rights and remedies as a result of a Province Default that would not have been incurred but for the Province Default, including any relevant increased administrative costs and expenses and legal and other professional advisor expenses.

13.5 Design-Builder Remedies Cumulative

Except as otherwise provided in this Agreement, including where inconsistent with the terms of this Agreement:

- (a) all rights and remedies of the Design-Builder under this Agreement are cumulative and in addition to and not in substitution for or to the exclusion of any other rights and remedies available to the Design-Builder under this Agreement or at law or in equity; and
- (b) the Design-Builder may have recourse to any one or more or all of such rights and remedies, concurrently or successively, as it will see fit, without prejudice to any of its other available rights and remedies.

13.6 Continued Effect

Notwithstanding any Province Default, the Design-Builder may continue to treat this Agreement as being in full force and effect and to enforce its rights under this Agreement, without prejudice to any other rights and remedies of the Design-Builder in relation to such Province Default including the right to terminate this Agreement as provided herein.

13.7 Compensation on Termination

In the event of an effective termination of this Agreement pursuant to Sections 13.3(a) or 13.3(b) of this Agreement, compensation on termination will be payable in accordance with Part 1 [Compensation on Termination other than for Design-Builder Default] of Schedule 14.

PART 14 TERMINATION

14.1 Termination for Convenience

- (a) The Province may in its discretion and for any reason whatsoever terminate this Agreement at any time by giving to the Design-Builder at least 90 days' prior notice of the effective date of such termination, and on such effective date this Agreement will terminate.
- (b) In the event of notice being given by the Province in accordance with Section 14.1(a) of this Agreement, from and after the giving of such notice and during the notice period thereunder the Design-Builder will only proceed with or continue, or allow or permit third parties to proceed with or continue, those portions of the Project Work that are specifically authorized in writing by the Province during the notice period.
- (c) In the event of any termination pursuant to Section 14.1(a) of this Agreement, compensation on termination will be payable in accordance with Part 1 [Compensation on Termination other than for Design-Builder Default] of Schedule 14.

14.2 No Other Rights of Termination

Notwithstanding Sections 12.3(f), 12.6 [Province Remedies Cumulative], 13.3(c) and 13.5 [Design-Builder Remedies Cumulative] of this Agreement, and without prejudice to their respective rights of termination expressly set out in this Agreement, each of the Province and the Design-Builder waives and agrees not to exercise any common law or equitable right or remedy it may have prior to the end of the Term to terminate, repudiate, rescind or otherwise bring to an end this Agreement as a consequence of any breach, failure or default by another party hereunder.

14.3 Continued Performance

Subject to any exercise by the Province of its rights under Part 11 [Province's Monitoring and Step-In Rights] of this Agreement and subject to Section 14.1(b) of this Agreement, and unless otherwise directed by the Province with respect to obligations of the Design-Builder, the parties will continue to perform their respective obligations under this Agreement, notwithstanding the giving of any notice of default, Notice of Intention to Terminate or notice of termination, until the termination of this Agreement becomes effective in accordance with the terms of this Agreement.

14.4 Notice of Intention to Terminate and Dispute

Except in the case of a termination pursuant to Section 14.1 [Termination for Convenience] of this Agreement:

- (a) if either the Province or the Design-Builder wishes to terminate this Agreement pursuant to a right of termination that it believes it is entitled to exercise under the terms of this Agreement, such party (in this Section 14.4, the "**Terminating Party**") must by notice (a "**Notice of Intention to Terminate**") to the other of them (in this Section 14.4, the "**Terminated Party**") to be given before or at the time notice of termination is given, specify the right to terminate that the Terminating Party intends to exercise and the event, circumstance or default giving rise to such right or obligation to terminate;
- (b) if the Terminated Party wishes to dispute the right to terminate (or the existence or occurrence of the event, circumstance or default giving rise to such right to terminate), as set out in a Notice of Intention to Terminate, the Terminated Party must, within 20 Business Days after receiving the Notice of Intention to Terminate, either:
 - (i) refer the Dispute to the Dispute Resolution Procedure, in which event the Dispute will be resolved by agreement of the parties or, failing such agreement, through the Dispute Resolution Procedure and such termination will take effect:
 - (A) when it is agreed by the parties or finally determined by the Dispute Resolution Procedure that the exercise of the right to terminate is or would be valid in accordance with this Agreement; or
 - (B) when notice of termination pursuant to that right to terminate is actually given;whichever is later; or
 - (ii) apply to Court for declaratory relief in respect of the purported right to terminate and/or refer to the Court the question of whether or not the exercise of the right to terminate is or would be valid in accordance with this Agreement, in which event the Dispute will be resolved by agreement of the parties or, failing such agreement, by the Court, and such termination will take effect:
 - (A) when it is agreed by the parties or finally determined by the Court (without further rights of appeal) that the exercise of the right to terminate is or would be valid in accordance with this Agreement; or

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- (B) when notice of termination pursuant to that right to terminate is actually given;

whichever is later;
- (c) if, within 20 Business Days after receiving the Notice of Intention to Terminate, the Terminated Party neither refers the matter to the Dispute Resolution Procedure nor applies to Court as provided in Section 14.4(b) of this Agreement, the Terminating Party will have a valid right to terminate this Agreement, and the Terminated Party will have no further right to contest, dispute, challenge or seek recourse in respect of the validity of such right to terminate, and termination pursuant to that right to terminate will take effect:
 - (i) on the expiration of such 20 Business Days; or
 - (ii) when notice of termination pursuant to that right to terminate is actually given;whichever is later; and
- (d) the parties agree to conduct expeditiously any proceedings under Section 14.4(b)(i) or Section 14.4(b)(ii), as applicable, of this Agreement.

14.5 Changes after Notice of Termination

If either the Province or the Design-Builder gives a Notice of Intention to Terminate or a notice of termination, the Design-Builder will not, and will cause the Subcontractors not to, without the prior written consent of the Province (which consent may not be unreasonably withheld or delayed):

- (a) materially amend or offer, promise or agree for the future materially to amend the terms and conditions of employment of any employee employed by the Design-Builder or any of the Subcontractors whose work (or any part of it) is work undertaken for the purposes of the Project;
- (b) materially increase or make offers of employment so as materially to increase the number of employees referred to in Section 14.5(a) of this Agreement;
- (c) do or omit to do any other thing in relation to employees referred to in Section 14.5(a) of this Agreement that would or might reasonably be expected to increase any Design-Builder Breakage Costs included in any compensation on termination payable by the Province in connection with the termination of this Agreement;
- (d) cancel or terminate, or materially amend the terms and conditions of, any agreements or arrangements for the acquisition or supply of Plant for the purposes of the Project Work;
- (e) materially alter the volumes or quantities of Plant ordered for the purposes of the Project Work; or
- (f) enter into any new agreements or arrangements for the acquisition or supply of Plant for the purposes of the Project Work except at reasonable arm's length market rates and on reasonable arm's length market terms and conditions.

14.6 Effect of Termination or Expiry Generally

If for any reason this Agreement is terminated or the Term expires:

- (a) the rights of access granted to the Design-Builder pursuant to Section 1.1 [Access to and Responsibility for Project Site] of Schedule 8 will terminate on the Termination Date and the Design-Builder will cease to have any further rights under Schedule 8 [Lands], including Section 1.1 [Access to and Responsibility for Project Site] thereof, with respect to the Project Site and the Project Infrastructure, except to the extent necessary to enable the Design-Builder to perform any obligations of the Design-Builder under this Agreement required to be performed in consequence of or following such termination or expiry;
- (b) after the Termination Date, the Design-Builder will not have any further right to provide, perform or carry out any further Project Work, but this will not relieve or release the Design-Builder from any of its obligations under this Agreement including obligations that, by their terms or by necessary implication, are intended to survive termination or to give effect to termination or expiry or to the consequences thereof, or are consequential upon termination or expiry;
- (c) the Province and the Design-Builder will reconcile between them any amounts due or accruing due under this Agreement from one party to the other as at the Termination Date, including:
 - (i) any outstanding Province Payments, Performance Incentive Payments and Non-Compliance Event Payments that are due; and
 - (ii) the uncalled balance of any deposits and security provided by the Design-Builder under Permits assigned under Section 14.8(a)(viii) of this Agreement remaining as at the date of assignment, to the extent not replaced by the Province and returned to the Design-Builder,and any net balance owing will be adjusted in the compensation payable on termination as provided in Sections 3.2 [Adjustment for Net Balance] and 3.3 [Rights of Set Off] of Schedule 14, or paid by the relevant party to the other in the case of expiry;
- (d) subject to Sections 14.6(a), 14.6(b) and 14.6(c) of this Agreement, and Section 3.4 [Full and Final Settlement] of Schedule 14, such termination or expiry will be without prejudice to all the rights, remedies and obligations of the parties under this Agreement with respect to:
 - (i) any event, occurrence, circumstance, act or omission arising or existing before the effective time of termination or expiry;
 - (ii) any breach of this Agreement, Province Default or Design-Builder Default occurring prior to the effective time of termination or expiry;
 - (iii) provisions of this Agreement that are to be observed and performed under this Agreement up to the effective time of termination or expiry; and

- (iv) provisions of this Agreement that, by their terms or by necessary implication, are intended to survive termination or expiry or to give effect to termination or expiry or to the consequences thereof, or are consequential upon termination or expiry;

and such rights, remedies and obligations will continue following termination or expiry, subject to Sections 14.6(a), 14.6(b) and 14.6(c) of this Agreement, and subject to Section 3.4 [Full and Final Settlement] of Schedule 14; and

- (e) except as provided above in this Section 14.6, all rights and obligations of the parties under this Agreement will cease and be of no further force or effect.

14.7 Province Discretion to Complete

If for any reason this Agreement is terminated before the end of the Term, then notwithstanding any duty of the Province to mitigate its Losses:

- (a) whether or not the Project Work is continued by the Province or any other person;
- (b) whether or not the Project Facilities are operated or attempts to do so are made or discontinued;
- (c) what use, if any, is made of any Project Work performed prior to the Termination Date; and
- (d) whether or not any Project Work performed prior to the Termination Date is altered or removed;

will be in the discretion of the Province, and the Design-Builder will have no claim against the Province with respect thereto.

14.8 Transfer of Assets

- (a) Without limiting the provisions of Section 17.8 [Further Assurances] of this Agreement, within 30 days after the Termination Date the Design-Builder will, at no cost to the Province and in all cases free from Encumbrances (provided that the Province will have the right, but will not be obligated, to pay off any and all such Encumbrances in which event any amounts so paid will immediately be due and owing by the Design-Builder to the Province and will be payable by the Design-Builder to the Province forthwith on demand or, at the option of the Province, will be adjusted as provided in Section 14.6(c) of this Agreement), and in each case to the extent not previously transferred, assigned or delivered, as the case may be or caused to be transferred, assigned or delivered by the Design-Builder in accordance with the terms of this Agreement:
 - (i) if and to the extent the Province so elects, confirm by bill of sale or other document requested by the Province the transfer to the Province or, at the direction of the Province, to BCTFA or a third party designated by the Province, of title to and ownership of all Plant title to which has passed or is intended to be passed to the Province or to BCTFA or a third party designated by the Province on or before the Termination Date in accordance with Section 2.7 [Transfer of Title] of this Agreement.

- (ii) deliver to the Province or, at the direction of the Province, to BCTFA or a third party designated by the Province possession of all Plant referred to in Section 14.8(a)(i) of this Agreement to the extent it is not then affixed to and part of or incorporated into the Project Infrastructure;
- (iii) cause the benefit of all manufacturers' and third party warranties in respect of Project Work, Project Infrastructure, and any other assets that are required to be transferred to the Province in accordance with this Agreement, to be transferred and assigned to the Province or, at the direction of the Province, to BCTFA or a third party designated by the Province;
- (iv) quit claim in favour of the Province, or, at the direction of the Province, in favour of BCTFA or a third party designated by the Province, any interest of the Design-Builder in the Project Infrastructure or any other improvements from time to time on, to or forming part of the Project Site;
- (v) deliver to the Province, or, at the direction of the Province, to BCTFA or a third party designated by the Province, the Construction Records, including "as built drawings" showing all alterations made since the commencement of the Project Work to or for the Project Site and the Project Infrastructure;
- (vi) deliver to the Province, or, at the direction of the Province, to BCTFA or a third party designated by the Province, operation and maintenance manuals for the Project Infrastructure (as the same has been constructed, installed, altered, upgraded and augmented by the carrying out of the Project Work) and any other assets transferred or to be transferred to the Province or, at the direction of the Province, to BCTFA or a third party designated by the Province, including in respect of communications, signalling and other systems completed and/or in service at the Termination Date;
- (vii) deliver to the Province, or, at the direction of the Province, to BCTFA or a third party designated by the Province, where applicable in accordance with Section 1.5 [Procedure on Termination] of Schedule 17:
 - (A) the Records;
 - (B) all Province Provided Materials;
 - (C) all Modifications to Province Provided Materials; and
 - (D) copies of all Project Intellectual Property,in any such case, in any stage of completion or development, in such electronic or other format as the Province may reasonably require;
- (viii) if and to the extent the Province so elects, and to the extent permitted by Laws, assign or cause to be assigned all Permits to the Province or, at the direction of the Province, to BCTFA or a third party designated by the Province;
- (ix) return to the Province all Confidential Information of the Province or BCTFA within the possession or control of the Design-Builder or any Subcontractor; and

- (x) remove all signs identifying itself and (except as otherwise directed by the Province) and Subcontractors as contractors and subcontractors in connection with the Project Work and the Project Facilities.
- (b) Without prejudice to any of the other provisions of this Agreement that require earlier transfer of any of the same, following the Termination Date the Design-Builder will, at its own cost, transfer to the Province, or, at the direction of the Province, to BCTFA or a third party designated by the Province, title to and possession of (to the extent not referred to in Section 14.8(a) of this Agreement), all documents, manuals, records and information reasonably required to enable the Province to carry out and perform, or procure the carrying out and performance of, the work that would, but for termination of this Agreement, have constituted the Project Work, to the extent that title thereto is not owned by or title to or possession thereof has not previously been transferred to the Province or, at the direction of the Province, to BCTFA or a third party designated by the Province in accordance with the terms of this Agreement.
- (c) Following the Termination Date, to the extent the Province so elects, the Design-Builder will take all steps required by the Province to ensure:
 - (i) that all Construction Plant that is being used exclusively for the purposes of any Construction then in progress will remain available for the purpose of completing the relevant Construction, subject, except as otherwise provided herein, to payment therefor by the Province of a reasonable rental charge; and
 - (ii) compliance by the Design-Builder with its obligations under Section 3.3(e) of Schedule 8 [Lands].
- (d) Within 30 days after the Termination Date, the Design-Builder will, and will cause its Subcontractors to, offer to sell to the Province or, at the direction of the Province, to BCTFA or a third party designated by the Province, which offer will remain open for acceptance for at least 30 days after the date such offer is made, at a fair market value (determined as between a willing seller and a willing buyer with any Disputes as to such fair market value being finally determined pursuant to the Dispute Resolution Procedure) and free from any Encumbrances, all or any part of the stocks of material, spare parts and Plant owned by the Design-Builder or any of its Subcontractors, that is being used or is intended to be used exclusively for the purposes of Project Work (other than Construction) and is not otherwise transferred or to be transferred to or at the direction of the Province pursuant to any other provision of this Agreement.

The Design-Builder will ensure in the case of all Permits and Subcontracts to which the Design-Builder is a party, and will use all reasonable efforts to ensure in the case of Subcontracts to which the Design-Builder is not a party, that provisions are included to ensure that the Province will be in a position to exercise its rights and the Design-Builder will be in a position to comply with its obligations under this Section 14.8 without additional payment or compensation to any person except as expressly contemplated by this Section 14.8.

14.9 Handover

If for any reason this Agreement is terminated or the Term expires, the following provisions will apply in respect of the handover of the Project Site and the Project Infrastructure:

- (a) the Design-Builder will, for a period not exceeding one year after the Termination Date, cooperate fully with the Province and any successor contractor or operator of or with respect to the Project Site, the Project Infrastructure or the Project Work or any part thereof in order to achieve a smooth and orderly transfer of the Project Work and any work in the nature of the Project Work as a going concern and so as to protect the integrity of the Project Infrastructure and so as to protect the safety of, and avoid undue delay or inconvenience to, members of the public;
- (b) the Design-Builder will as soon as practicable after notice from the Province to do so remove from the Project Site and the Project Infrastructure all materials, plant, machinery, equipment, apparatus, temporary buildings, road vehicles, spare parts and other property owned or leased by the Design-Builder or any person for whom the Design-Builder is in law responsible (including Plant and Construction Plant), other than that:

- (i) title to which has passed to the Province, BCTFA or a third party designated by the Province under Section 2.7 [Transfer of Title] of this Agreement; or
- (ii) required to be transferred, delivered, provided, sold or rented to or at the direction of the Province pursuant to Section 14.8 [Transfer of Assets] of this Agreement;

and, if the Design-Builder has not done so within 30 days after any notice from the Province requiring it to do so, the Province may (without being responsible for any Loss) remove and sell any such property and will hold any proceeds less all costs incurred to the credit of the Design-Builder;

- (c) the Design-Builder will provide all information concerning the Project, the Project Infrastructure and the Project Work reasonably requested by the Province and not otherwise required to be provided by the Design-Builder pursuant to other provisions of this Agreement to the Province and any successor contractor or operator of the Project Site and/or the Project Infrastructure (or any part of either thereof) and provide any necessary training in relation to the communications, signalling and other systems and equipment in service at the Termination Date, as will reasonably be required for the efficient transfer of responsibility for Operation and Maintenance;
- (d) the Design-Builder will, not later than the Termination Date, deliver to the Province:
 - (i) keys to all traffic sign housings;
 - (ii) lifting keys for all types of chamber covers;
 - (iii) all keys and pass cards used by the Design-Builder to gain access to the Project Site or any Project Infrastructure, including all buildings forming part of the Project Infrastructure; and
 - (iv) codes and passwords to all computers and computerized systems, control of which is required to be transferred to the Province or its designee pursuant hereto; and
- (e) the Design-Builder will as soon as practicable vacate and hand over to the Province, and leave in a safe and orderly condition, any parts of the Project Site in respect of which either the Access Period has commenced but not otherwise terminated or expired (or in respect of which access has been made available to the Design-Builder pursuant to Section 1.1(c)

of Schedule 8 [Lands] or the Design-Builder otherwise has access, in either case at the Termination Date) and the Project Infrastructure located on any such parts of the Project Site, including any communications, signaling and other systems and equipment completed and/or in service as at the Termination Date.

**PART 15
CONFIDENTIALITY AND INTELLECTUAL PROPERTY**

15.1 Confidentiality

- (a) Each party agrees, for itself and its respective directors, officers, employees and agents, to keep confidential and not to disclose to any person any Confidential Information received from another party, other than as expressly provided in Section 15.1(b) of this Agreement or as otherwise expressly provided in this Agreement.
- (b) Notwithstanding Section 15.1(a) of this Agreement, a party may disclose the whole or any part of the Confidential Information in any of the following circumstances:
 - (i) in the case of any party:
 - (A) to its and its Affiliate's directors, officers, employees, contractors, subcontractors, agents and professional advisors, including, in the case of the Design-Builder and Subcontractors, to the extent necessary to enable it to perform (or to cause to be performed) or to protect or enforce any of its rights or obligations under this Agreement or any of the other Project Documents, provided that the party has first obtained from such person or entity to whom the disclosure is to be made an undertaking of strict confidentiality in relation to the relevant Confidential Information;
 - (B) when required to do so by Laws (including FOIPPA) or by or pursuant to the rules or any order having the force of law of any Governmental Authority or by or pursuant to the rules or any order of any recognized public stock exchange;
 - (C) to the extent that the Confidential Information has, except as a result of any disclosure prohibited by this Agreement, become publicly available or generally known to the public at the time of such disclosure;
 - (D) to the extent that the Confidential Information is already lawfully in the possession of the recipient or lawfully known to the recipient prior to such disclosure;
 - (E) to the extent that it has acquired the Confidential Information from a third party who is not in breach of any obligation as to confidentiality to any other party to this Agreement;
 - (F) to any assignee or proposed assignee permitted under Part 16 [Assignment, Change in Control and Subcontracting];
 - (G) the disclosure of which is expressly permitted or required by this Agreement; or

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- (H) the disclosure of which is necessary for the enforcement of this Agreement;
- (ii) in the case of the Province and BCTFA:
 - (A) to the extent required for the design, construction, completion, commissioning, testing, operation, maintenance, rehabilitation or improvement of the Project Infrastructure and the Project Site, or the carrying out of any statutory, public or other powers, authorities, discretions, duties or functions in respect of the Project Infrastructure and the Project Site, and including with respect to the contemplation, procurement or undertaking of any such activities by any third parties (including any other Governmental Authority);
 - (B) in relation to the outcome of the procurement process for the Project as may be required to be published;
 - (C) to any minister, ministry, office or agency of the Province, including the Auditor General and the Office of the Comptroller General, and their respective directors, officers, employees, and professional advisors, where required for parliamentary, governmental, statutory or judicial purposes;
 - (D) whether or not falling within Section 15.1(b)(ii)(B) or 15.1(b)(ii)(C) of this Agreement, to BCTFA, the Ministry or any other Governmental Authority or to TI Corp or Infrastructure BC, and their respective directors, officers, employees, and professional advisors;
 - (E) in the exercise of any of the rights granted to the Province by way of licence, including under any Complete Licence; and
 - (F) which is required to be provided to the Owner's Engineer or to the Independent Engineer in order for it to carry out its respective responsibilities in respect of the Project in accordance with this Agreement;
- (c) Without prejudice to any other rights and remedies that another party may have, each of the parties agrees that damages may not be an adequate remedy for a breach of Section 15.1(a) of this Agreement and that each other party will, in such case, be entitled to the remedies of injunction, specific performance or other equitable relief for any threatened or actual breach of Section 15.1(a) of this Agreement, subject, in the case of a claim for any such remedy against the Province, to the provisions of the *Crown Proceeding Act* (British Columbia).

15.2 Freedom of Information, Privacy Protection and Security

- (a) The Design-Builder acknowledges that it is aware that FOIPPA applies to this Agreement and to all contractual submissions and other documents and records relating to this Agreement and to the procurement process in respect of the Project and that the Province, the Ministry and BCTFA are required to fully comply with FOIPPA. No action taken or required to be taken by the Province, the Ministry or BCTFA for the purpose of complying with FOIPPA will be considered a breach of any obligation under this Agreement.

- (b) The Design-Builder, without limiting its obligation to comply with all Laws, will comply with and cause all of its agents and Subcontractors and the employees of any of them to:
 - (i) comply with the provisions of Schedule 18 [Privacy Protection]; and
 - (ii) comply with the provisions of Schedule 19 [Cloud Security].

15.3 Ownership of Intellectual Property and License to Province

- (a) Except as expressly set out in this Agreement, including Section 15.3(b) of this Agreement, or as may otherwise be agreed to in writing between the Province and the Design-Builder after the date of this Agreement, as between the Province and the Design-Builder:
 - (i) the Design-Builder will exclusively own, automatically upon its generation or creation, all rights, including Intellectual Property Rights, in and to the Project Intellectual Property; and
 - (ii) the Province will exclusively own, automatically upon its generation or creation, all rights, including Intellectual Property Rights, in and to the Records, any Province Provided Materials and any Modifications to Province Provided Materials.
- (b) The Design-Builder agrees that, at no cost to the Province, it:
 - (i) hereby irrevocably and unconditionally conveys, transfers and assigns, or will procure such conveyance, transfer or assignment from any third parties, or for all rights that arise only upon creation agrees that it will cause to be so conveyed, transferred and assigned, to the Province all right, title and interest in and to the Records and to any Modifications to Province Provided Materials, including all Intellectual Property Rights thereto;
 - (ii) will provide to the Province, whether during or after the Term, executed waivers in a form satisfactory to the Province in favour of the Province and BCTFA of all moral rights in the Project Intellectual Property, the Records and any Modifications to Province Provided Materials from all Persons who generated or created Project Intellectual Property, Records or Modifications to Province Provided Materials;
 - (iii) will provide to the Province upon Substantial Completion and at any other time upon request by the Province, whether during or after the Term, (A) copies of all materials comprising the Project Intellectual Property and (B) the Modifications to Province Provided Materials, in the format or formats as requested by the Province. Without limiting the generality of the foregoing, the Design-Builder will provide the Province with copies of all software and firmware, and all updates made thereto, that are included in or relate to the Project Work or the Project Infrastructure (as the same has been constructed, installed, altered, upgraded and augmented by the carrying out of the Work); and
 - (iv) will provide to the Province upon Substantial Completion and at any other time upon request by the Province the source code (if any) for any Records and Modifications to Province Provided Materials, and will ensure that the source code (if any) for any Project Intellectual Property, and for any Background IP and Third

Party IP necessary or desirable to implement, operate or exploit the Project Intellectual Property, is deposited in escrow or otherwise rendered available to the Province in a manner and on terms acceptable to the Province, acting reasonably.

- (c) Other than any license rights granted to the Province and BCTFA pursuant to Section 15.3(d) of this Agreement, the Province and BCTFA will not own any Intellectual Property Rights in the Background IP or the Third Party IP.
- (d) The Design-Builder, at no cost to the Province:
 - (i) hereby unconditionally grants to the Province and BCTFA a Complete Licence in and to the Project Intellectual Property and the Background IP; and
 - (ii) will grant, or cause to be granted, to the Province and BCTFA a Complete Licence in and to the Third Party IP.
- (e) For greater certainty, the provisions of Section 15.3(b)(iv) of this Agreement and the license provisions contained in Section 15.3(d)(ii) of this Agreement do not extend to include any non-specialized third party software, technology or other Intellectual Property that is generally commercially available.
- (f) Nothing in Section 15.3(d) of this Agreement will give the Province or BCTFA the right to sell, lease, license, sublicense or otherwise transfer, convey or alienate any software included in the Project Intellectual Property, the Background IP or the Third Party IP (whether for commercial consideration or not) to any person, otherwise than as may be necessary or desirable to use the Project Intellectual Property, the Background IP or the Third Party IP for Complete Licence Purposes.
- (g) If any Complete Licence granted under in Section 15.3(d) of this Agreement cannot be validly granted without the consent of a third party, the Design-Builder, at the Design-Builder's expense, will use its best efforts to obtain such consent and, without limiting any of its other obligations, will indemnify and hold harmless the Province and each Province Indemnified Person from and against any and all Direct Losses and Claims in any way arising from the Design-Builder's failure to obtain such consent.
- (h) If the Design-Builder is unable to provide any assignments, licences or waivers required to be provided under this Agreement, the Design-Builder will, at no additional cost to the Province or BCTFA, replace the portion of the Third Party IP, Background IP or Project Intellectual Property for which the assignment, licence or waiver cannot be provided, with an alternative product or technology that meets the Province's requirements.
- (i) Except as otherwise agreed in writing with the Province and BCTFA, the Design-Builder hereby represents, warrants and covenants that:
 - (i) all Project Intellectual Property, Records and all Modifications to Province Provided Materials are and will be original and do not and will not infringe any third party's Intellectual Property Rights;
 - (ii) it owns, or will as necessary acquire, the rights associated with the Project Intellectual Property, the Background IP and the Third Party IP as may be

necessary to provide the assignments or grant the licences to the Province and BCTFA as required by the terms of this Agreement; and

- (iii) it has obtained or will obtain waivers of moral rights from all persons as necessary to provide the waivers in favour of the Province and BCTFA as required by the terms of this Agreement.
- (j) The Design-Builder hereby irrevocably designates and appoints the Province, BCTFA and their duly authorized ministers, officers and agents as the Design-Builder's agent and attorney-in-fact to act for and on behalf of the Design-Builder to execute, deliver and file any and all documents with the same legal force and effect as if executed by the Design-Builder, provided that:
 - (i) the Province, BCTFA or any such other person will only be entitled to rely upon such designation and appointment in circumstances where the Province and BCTFA are unable for any reason to secure the execution by the Design-Builder of any document reasonably required for the purpose of giving effect to, or establishing compliance with, the Design-Builder's obligations under this Section 15.3; and
 - (ii) if a Dispute as to whether or not the Design-Builder has complied with any such obligation has been referred to the Dispute Resolution Procedure, the Province, BCTFA or any such other person will only be entitled to rely upon such designation and appointment in relation to such obligations after such Dispute has been resolved in favour of the Province and BCTFA.

15.4 License of Intellectual Property to Design-Builder

- (a) The Province hereby grants to the Design-Builder, only during the Term and only for the purpose of carrying out the Project Work and performing all obligations of the Design-Builder under the Project Documents, a non-transferable, non-exclusive, royalty-free limited licence (but with no right to grant sub-licences except to the Subcontractors) to:
 - (i) use and reproduce the Records and any Province Provided Materials, including any Modifications to Province Provided Materials, required by the Design-Builder for any purpose relating to the Project Work or the Project Infrastructure (including, as appropriate and only to the extent that the Province has the right and authority to grant such licence, the Disclosed Data), and all Intellectual Property Rights therein;
 - (ii) make Modifications to any Province Provided Materials, including any Modifications to Province Provided Materials, required by the Design-Builder for any purpose relating to the Project Work or the Project Infrastructure (including, as appropriate and only to the extent that the Province has the right and authority to grant such licence, the Disclosed Data), and all Intellectual Property Rights therein; and
 - (iii) use all Project Marks designated by the Province for the Project and the Project Infrastructure from time to time, provided that the Design-Builder's use of such Project Marks will at all times be subject to compliance by the Design-Builder with

any and all guidelines provided by the Province to the Design-Builder from time to time in respect of the use thereof.

- (b) Notwithstanding Section 15.4(a) of this Agreement, nothing in this Agreement will be construed as a permission or authorization for the Design-Builder to, and the Design-Builder will not, copy or make Modifications to any materials, documents or data (including Disclosed Data) or other information owned by third parties without the prior written consent of such third party owner.

PART 16 ASSIGNMENT, CHANGE IN CONTROL AND SUBCONTRACTING

16.1 Assignment by Design-Builder

The Design-Builder will not, and will ensure that no Contracting Affiliate of the Design-Builder will, assign, transfer, mortgage, pledge, charge, or create any trust, security interest or other interest in, any interest of the Design-Builder in and under this Agreement or any of the Material Subcontracts (or any of the performance securities or guarantees provided thereunder), or any part thereof, or any benefit therein or thereunder:

- (a) without the prior acceptance of the Province in accordance with the Consent Procedure, which acceptance may be withheld in the Province's discretion;
- (b) unless at the same time, in the same transaction, to the same person and to the same extent, the Design-Builder assigns, transfers, mortgages, pledges, charges, or creates a trust, security interest or other interest in its interests in and under each of such documents together, and none of them separately; and
- (c) except in the case of such an assignment, transfer or creation of any trust or other interest by way of security, unless the assignee, transferee or other person taking an interest executes and delivers to the Province an agreement in form and substance satisfactory to the Province acting reasonably whereby such assignee, transferee or other person assumes and agrees with the Province to observe, perform and be bound by, all of the obligations of the Design-Builder under such documents and the other Project Documents to which the Design-Builder is a party.

16.2 Assignment by the Province and BCTFA

- (a) Subject to Section 16.2(b) of this Agreement, the Province and BCTFA may, without the consent of the Design-Builder, assign or transfer any of their respective interest in and under this Agreement to a Qualified Governmental Entity that executes and delivers to the Design-Builder an agreement in form and substance satisfactory to the Design-Builder acting reasonably whereby such assignee or transferee assumes and agrees to observe, perform and be bound by, all the obligations and liabilities of the Province or BCTFA, as the case may be, under this Agreement that are being transferred.
- (b) Except as provided in Section 16.2(a) of this Agreement, neither the Province nor BCTFA will, without the prior consent of the Design-Builder, which may be withheld in the Design-Builder's discretion, assign or otherwise transfer any of its interest in or under this Agreement.

- (c) Upon any assignment or transfer in accordance with Section 16.2(a) of this Agreement of any or all of the obligations or liabilities of the Province or BCTFA under this Agreement to a Qualified Governmental Entity and the execution and delivery of the agreement contemplated in Section 16.2(a) of this Agreement, the Province or BCTFA, as the case may be, will be released from the obligations and liabilities under this Agreement that are the subject of such assignment or transfer.

16.3 Change in Control of Design-Builder

No Change in Control of the Design-Builder will be permitted without the prior written consent of the Province in accordance with the Consent Procedure, which consent may be withheld in the Province's discretion, provided that a Change in Control of the Design-Builder arising from any *bona fide* open market transaction effected on a recognized public stock exchange will not require the Province's consent.

16.4 Use of Subcontractors by Design-Builder

Except as otherwise provided in this Agreement, the Province acknowledges that the Design-Builder may provide, perform and carry out part of the Project Work through one or more Subcontractors. Notwithstanding any such subcontracting:

- (a) the Design-Builder will not be relieved or excused from any of its obligations and liabilities under this Agreement; and
- (b) the Design-Builder will be and remain principally liable to the Province for the observance and performance of all the covenants, agreements, conditions and provisos contained in this Agreement that are by the terms of this Agreement to be observed and performed by the Design-Builder.

16.5 Material Subcontracts

- (a) The Design-Builder will not enter into:
 - (i) any new Material Subcontract not entered into on or before the Effective Date;
 - (ii) any assignment of a Material Subcontract to a new Material Subcontractor; or
 - (iii) any material change to the scope of work to be performed under any Material Subcontract,unless the particulars of the relevant document or proposed course of action, including at a minimum the identification of any new Material Subcontractor and any relevant impacted scope of work, have been submitted to the Province's Representative pursuant to the Consent Procedure and have been accepted by the Province, acting reasonably, in accordance with the Consent Procedure.
- (b) The Design-Builder will deliver to the Province's Representative a conformed copy of each Material Subcontract, with any such redactions of pricing and other commercial terms as may be acceptable to the Province's Representative, acting reasonably, within 10 Business Days after the date of its execution, and in any case prior to the Material Subcontractor performing any Project Work at the Project Site.

**PART 17
GENERAL**

17.1 Disputes

- (a) All Disputes arising out of or relating to this Agreement will be resolved in accordance with the Dispute Resolution Procedure set out in Schedule 16 [Dispute Resolution Procedure]. Notwithstanding this or any other provision in this Agreement, the Design-Builder will not seek to revise, vary, overturn, any matter, decision or determination which by the terms of this Agreement is subject to or within the discretion of, or is to be made in the discretion of, the Province or the Province's Representative and no such matter, decision or determination will be raised by the Design-Builder in any Dispute.
- (b) At all times, notwithstanding the existence of any disagreement, claim or Dispute, except as may otherwise be expressly provided in this Agreement, the parties will continue to comply with, observe and perform all of their respective obligations (including the obligation of the Design-Builder to proceed with the conduct of the Project Work) in accordance with the provisions of this Agreement without prejudice to the right to contest, dispute and challenge the relevant matter in accordance with the provisions of this Agreement.
- (c) Without limiting the generality of the foregoing and any other provision of this Agreement, to the extent that any such disagreement, claim or Dispute involves a disagreement as to the nature or scope of any of the Project Work (including as to the performance or method of performance of any of the Project Work), the Design-Builder will abide by the decision of the Province with respect to the subject matter of the disagreement, claim or Dispute and diligently proceed with the Project Work, and will comply with all instructions given by the Province pending the outcome of the disagreement, claim or Dispute, but without prejudice to the rights of the Design-Builder as ultimately determined in accordance with the Dispute Resolution Procedure.

17.2 Public Communications

- (a) The Design-Builder will carry out the Communications and Engagement in accordance with Schedule 15 [Communications and Engagement].
- (b) Unless expressly provided in this Agreement or otherwise required by any Law (but only to that extent), neither party will make or permit to be made any public announcement or disclosure whether for publication in the press, radio, television or any other medium of any Confidential Information or any matters relating thereto, without the prior written consent of the other party, which consent may be granted or withheld by such other party in its discretion.

17.3 Survival

- (a) The representations and warranties made or given by the Province or BCTFA under any provision of this Agreement or in any certificate or other document delivered by or on behalf of the Province or BCTFA at the time of execution of this Agreement are given at the date of execution of this Agreement and will, unless expressly provided otherwise, survive the execution and delivery of this Agreement and are not mitigated or affected by any investigation by or on behalf of the Design-Builder.

- (b) All representations and warranties made or given by the Design-Builder under any provision of this Agreement or in any certificate or other document delivered by or on behalf of the Design-Builder at the time of execution of this Agreement are given at the date of execution of this Agreement and will, unless expressly provided otherwise, survive the execution and delivery of this Agreement and the other Project Documents and are not mitigated or affected by any investigation by or on behalf of the Province or BCTFA.
- (c) The provisions of Part 8 [Indemnities and Limitations on Liability] and each other indemnity contained in this Agreement will survive the expiration or termination of this Agreement.
- (d) The provisions of Part 14 [Termination] will survive the expiration or termination of this Agreement.
- (e) Notwithstanding any other provision of this Agreement, the provisions of Part 15 [Confidentiality and Intellectual Property] will survive the expiry or any earlier termination of this Agreement.
- (f) The provisions set out in Section 13.1 [Survival] of Schedule 3 will survive the expiry or any earlier termination of this Agreement.
- (g) The provisions of Section 3.3(e) of Schedule 8 [Lands] will survive the termination of this Agreement.
- (h) The provisions of Schedule 14 [Compensation on Termination] will survive the expiry or any earlier termination of this Agreement.
- (i) Notwithstanding any other provision of this Agreement, the provisions of Schedule 16 [Dispute Resolution Procedure] will survive the expiry or any earlier termination of this Agreement.
- (j) The provisions of Section 1.4 [Retention of Records] and Section 1.5 [Procedure on Termination] of Schedule 17 will survive the expiry or any earlier termination of this Agreement.
- (k) The provisions of Schedule 18 [Privacy Protection] will survive the expiry or any earlier termination of this Agreement.
- (l) Without limiting this Section 17.3, the provisions of this Agreement that by their nature are intended to survive expiry or any earlier termination of this Agreement, and all other provisions necessary for the interpretation and enforcement of such provisions or the provisions described in Sections 17.3(a) through 17.3(k) of this Agreement, will survive the expiry or any earlier termination of this Agreement.

17.4 Entire Agreement

This Agreement (including the Schedules) constitutes the entire agreement between the parties with respect to all matters contained herein, expressly superseding all prior agreements and communications (both oral and written) between any of the parties with respect to all matters contained herein and superseding as well the Request for Qualifications and the Request for Proposals.

17.5 Amendment

No amendment to this Agreement will be binding unless it is in writing and signed by each of the parties hereto.

17.6 Notices

Any notice, demand, request, consent, approval, objection, agreement or other communication required or permitted to be given, made or issued under this Agreement must, unless otherwise specifically provided in this Agreement, be in writing signed by the providing party and delivered by hand, sent by a recognized courier service (with delivery receipt requested), or transmitted by electronic transmission to the address and/or electronic email address of each party set out below:

- (a) if to the Province:

Ministry of Transportation and Infrastructure
5B – 940 Blanshard Street
Victoria, British Columbia
V8W 3E6
Attention: Deputy Minister
Email: TRANDeputyMinister@gov.bc.ca

- (b) if to BCTFA:

BC Transportation Financing Authority
c/o Ministry of Transportation and Infrastructure
5B – 940 Blanshard Street
Victoria, British Columbia
V8W 3E6
Attention: Chief Executive Officer
Email: TRANDeputyMinister@gov.bc.ca

- (c) if to the Province's Representative:

Ministry of Transportation and Infrastructure
447 Columbia Street
Kamloops, British Columbia
V2C 2T3
Attention: Province's Representative, Jumping Creek to MacDonald Snowshed Project
Email: JCM.ProvRep@gov.bc.ca

- (d) if to the Design-Builder or the Design-Builder's Representative:

300 – 966 Crowley Avenue
Kelowna, British Columbia
V1Y 0L1
Attention: Michael Lines
Email: miles@emilanderson.ca

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

- (e) if delivered by hand or by a courier service during business hours on a Business Day, when delivered, and if not delivered during business hours, upon the commencement of business hours on the next Business Day; and
- (f) if sent by electronic transmission during business hours 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.

17.7 Waiver

Except as expressly provided otherwise in this Agreement, any waiver of any provision of this Agreement will only be effective if in writing signed by the waiving party, and no failure by any party at any time to exercise a right or remedy under or to enforce any provision of this Agreement or to require performance by any other party of any of the provisions of this Agreement will be construed as a waiver of any such provision and will not affect the validity of this Agreement or any part thereof or the right of any party to enforce any provision in accordance with its terms. Any waiver will only apply to the specific matter waived and only in the specific instance and for the specific purpose for which it is given.

17.8 Further Assurances

The parties will do, execute and deliver, or will cause to be done, executed and delivered, all such further acts, documents and things as the other may reasonably request for the purpose of giving effect to this Agreement or for the purpose of establishing compliance with the parties' respective obligations under this Agreement.

17.9 Relationship of the Parties

Nothing contained in this Agreement nor any action taken pursuant hereto or thereto will be deemed to constitute the Province and the Design-Builder, or BCTFA and the Design-Builder, or all of them, a partnership, joint venture or any other similar such entity.

17.10 Binding Effect

Subject to the provisions of Part 16 [Assignment, Change in Control and Subcontracting] of this Agreement, this Agreement will enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

17.11 Governing Law

This Agreement is governed exclusively by, and is to be enforced, construed and interpreted exclusively in accordance with, the laws of British Columbia and the laws of Canada applicable in British

Columbia, and the laws of British Columbia and the laws of Canada applicable in British Columbia are the proper law of this Agreement.

17.12 Submission to Jurisdiction

Where in accordance with this Agreement, including the Dispute Resolution Procedure, a particular matter is referred to Court, or a party may initiate a proceeding in Court, the Court, subject to applicable Laws, has exclusive jurisdiction to entertain and determine such matter or proceeding, and each of the parties irrevocably submits to the exclusive jurisdiction of the Court.

17.13 No Fettering of Province's Rights, Powers and Authority

- (a) Nothing in this Agreement fetters or otherwise interferes with or limits, or will be construed to fetter or otherwise interfere with or limit, the rights, powers and authority of the Province or BCTFA or any minister (including the Minister), ministry (including the Ministry), agency, board, commission, corporation or other entity of the Province, including with respect to the development or application of government policy and including any right, power or authority to:
 - (i) enact, amend, repeal or replace any enactment or regulation made under any enactment;
 - (ii) exercise or refrain from exercising any power, authority, duty, function or discretion conferred under Laws; or
 - (iii) administer, apply and enforce Laws.
- (b) Except as expressly provided for in this Agreement, the Design-Builder is not entitled to claim or receive any compensation or other relief whatsoever as a result of anything described in any of Sections 17.13(a)(i) to 17.13(a)(iii) inclusive of this Agreement.

17.14 No Agency

- (a) The Design-Builder acknowledges that no provision of this Agreement will be construed as a delegation to the Design-Builder by the Province, BCTFA, the Minister or any other person to whom a power, discretion or right has been conferred by Law to make a decision deciding or prescribing the legal rights, powers, privileges, duties or liabilities of a person, or the eligibility of a person to receive or to continue to receive a benefit or licence (whether or not the person is legally entitled to it), of any power, authority, duty, function, right or discretion conferred under Laws.
- (b) Except to the extent (if any) that any provision in this Agreement expressly constitutes the Design-Builder the "agent" of the Province or BCTFA, the Design-Builder will not be or be deemed to be or hold itself out as being an agent of the Province or BCTFA and the Design-Builder will not hold itself out as having authority or power to bind the Province or BCTFA in any way.
- (c) The Design-Builder acknowledges and agrees that neither the Province nor BCTFA has made any representation or warranty that the Design-Builder or any Subcontractor will have the benefit of any Crown immunity.

- (d) Subject to Sections 17.14(a), 17.14(b) and 17.14(c) of this Agreement and the other provisions of this Agreement, the parties acknowledge that the Design-Builder is carrying out the Project Work at the request of the Province and BCTFA.

17.15 Language

The language of this Agreement is English. All communications, documents and information provided pursuant to or in connection with this Agreement must be entirely in English.

17.16 Counterparts

This Agreement may be executed in one or more counterparts. Any single counterpart of a set of counterparts executed, in either case, by all of the parties will constitute a full, original and binding agreement for all purposes. Counterparts may be executed and delivered either in original or PDF form.

[Execution Pages Follow]

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the day and year first above written.

SIGNED on behalf of **HIS MAJESTY**)
THE KING IN RIGHT OF THE)
PROVINCE OF BRITISH COLUMBIA)
by a duly authorized representative of)
the **MINISTER OF TRANSPORTATION**)
AND INFRASTRUCTURE in the)
presence of:)
)
)

(Witness)

Name:
Title:

BC TRANSPORTATION FINANCING AUTHORITY
by its authorized signatory:

Per:

Name:
Title:

EMIL ANDERSON CONSTRUCTION (EAC) INC.
by its authorized signatories:

Per:

Name:
Title:

Per:

Name:
Title:

**SCHEDULE 1
DEFINITIONS AND INTERPRETATION**

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**PART 1
DEFINITIONS**

1.1 Definitions

In this Agreement, including the Recitals and Schedules hereto, unless otherwise specified or the context otherwise requires, the following words and expressions have the following meanings:

“Access Period” means the period:

- (a) commencing on the date from which such part of the Project Site is made available to the Design-Builder pursuant to Section 2.3 [Commencement of Access to Project Site] of Schedule 8; and
- (b) ending on the date on which the Design-Builder’s access to such part of the Project Site terminates pursuant to Section 3.5 [Termination of Access to Project Site] of Schedule 8.

“Access Period Expiry Date” means the Substantial Completion Date, or such other date as may be specified as the “Access Period Expiry Date” in the Property Lands Drawings relating to such part.

“Adverse Claims” has the meaning given in Section 4.7(a) of Schedule 8 [Lands].

“Affiliate” means, with respect to a person (in this definition, the **“Subject Person”**) any one or more of the following, as applicable:

- (a) any other person or persons that Control the Subject Person, or is or are Controlled by the Subject Person, or is or are Controlled by the same person or persons that Control the Subject Person; and
- (b) in the case of a corporation, any other corporation that is an “affiliate” of the first mentioned corporation within the meaning of “affiliate” as defined in the *Business Corporations Act* (British Columbia) in effect as at the Effective Date;

“Agreed Remedy Cost” has the meaning given in Section 11.4(b)(ii) of Schedule 3 [Design and Construction General Requirements].

“Agreement” means this agreement including all recitals and Schedules to this agreement, as amended, supplemented or restated from time to time by agreement in writing signed by the parties.

“Applicant” has the meaning given in Section 8.1(a) of this Agreement.

“Appropriately Qualified Professional” has the meaning given in DBSS 165.01.02.

“Approved Purposes” means any purpose in connection with this Agreement, the Project, the Project Work, the Project Site, the Project Infrastructure or any part of any of them, or all or any transportation projects in British Columbia procured or to be procured by the Province or any other Governmental Authority.

“Arbitration Notice” has the meaning given in Section 5.1(a) of Schedule 16 [Dispute Resolution Procedure].

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“**Avalanche**” means a snow avalanche that is Size 1 or larger according to TASARM.

“**Avalanche Hazard Area**” has the meaning given in Section 2 [Avalanche Safety Responsibility] of Appendix 4C to Schedule 4.

“**Avalanche Path**” means any existing avalanche path included in the Avalanche Strip Map provided in the Data Room or Avalanche Occurrence Records or a new slope that is encountered or created in the course of Construction that can produce an Avalanche.

“**Avalanche Safety Plan**” has the meaning given in Section 4(b) of Appendix 4C [Snow Avalanche Safety Measures] to Schedule 4.

“**Background IP**” means the Intellectual Property specifically identified as Background IP in Appendix 1B [Background IP and Third Party IP] to this Schedule, or written notice of which is provided by the Design-Builder to the Province following the Effective Date, and that is or will be embedded in or used in connection with the Project Intellectual Property, or necessary or desirable to implement, operate or exploit the Project Intellectual Property, but which was not created or brought into existence for any of the Project Intellectual Property Purposes and provided that, for clarity, the “**Background IP**” does not include any of the Third Party IP.

“**Basic Site Restoration**” means landscaping prescriptions provided in Table 9.3.4 [Basic Site Restoration – Planting Criteria] of Part 1 of Schedule 4.

“**BCIB**” means BC Infrastructure Benefits Inc.

“**BCIB-Contractor Agreement**” means the agreement to be entered into between BCIB and the Design-Builder, in the form set out in Appendix 13A [BCIB-Contractor Agreement] to Schedule 13, as amended, supplemented or replaced from time to time by written agreement of the parties thereto.

“**BCIB-Subcontractor Agreement**” means each agreement to be entered into between BCIB and a Subcontractor in accordance with Section 2.3 [BCIB-Subcontractor Agreements] of Schedule 13, as amended, supplemented or replaced from time to time by written agreement of the parties thereto.

“**BCTFA**” has the meaning given in the Recitals.

“**Best Management Practices**” means the environmental best management practices applicable for construction, including but not limited to Good Industry Practice and the Reference Documents.

“**Bonds**” means a performance bond and a labour and materials payment bond, each:

- (a) in the form attached as Appendix 23A [Specimen Bonds] to Schedule 23 or in substantially equivalent form acceptable to the Province;
- (b) in the amount of and
- (c) issued by a surety licensed to transact the business of a surety in British Columbia and acceptable to the Province, acting reasonably.

“**Bridge**” means a structure providing a means of transit for pedestrians, cyclists and/or vehicles above the land and/or water surface of a valley, arroyo, gorge, river, stream, lake, canal, tidal inlet, gut or strait, above

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a highway, railway or other obstruction, whether natural or artificial and consists of the Foundation, Substructure, Superstructure and Bridge Deck.

“**Bridge Deck**” means the wearing surface of a Bridge and the structural component that transfers loads to the other Superstructure components.

“**Bridge Management Information System**” means the Ministry’s corporate structure asset management application that is used to maintain inventory and condition data for Structures to support the Ministry programs.

“**Bridge Structural Engineer**” means a Professional Engineer specializing in Bridge structural design, construction, maintenance and rehabilitation.

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

“**Category III Checking Team Report**” has the meaning given in Section 3.5(a)(vii) of Part 2 [Design and Certification Procedure] of Schedule 4.

“**Category III Structures**” means Structures that meet any of the criteria set out in Section 3.2(d) of Part 2 [Design and Certification Procedure] of Schedule 4.

“**Certificate**” means any certificate in the form of one of the certificates set out in Appendix 3B [Form of Certificates for Substantial Completion and Total Completion] to Schedule 3 or Appendix 4A [Form of Design and Construction Certificates] to Schedule 4.

“**Certificate of Substantial Completion**” means the Certificate issued in accordance with Part 11 [Certification of Substantial Completion and Total Completion] of Schedule 3 confirming the achievement of Substantial Completion.

“**Certificate of Total Completion**” means the Certificate issued in accordance with Part 11 [Certification of Substantial Completion and Total Completion] of Schedule 3 confirming the achievement of Total Completion.

“**Change Certificate**” has the meaning given in Section 2.7 [Change Certificate] of Schedule 11.

“**Change Directive**” has the meaning given in Section 2.11 [Change Directive] of Schedule 11.

“**Change in Control**” means a Change in Ownership resulting in a change of the person or persons having Control of the Design-Builder.

“**Change in Costs**” means, in respect of any Province Change, the net amount (calculated in accordance with Sections 2.4 [Preparation of Change Report] and 2.5 [Design-Builder’s Estimate of Change in Costs] of Schedule 11), which may be positive or negative, of:

- (a) all additional costs (including direct and indirect costs, capital expenditure costs and financing costs) which the Design-Builder reasonably expects to incur as a direct consequence of implementing the Province Change which the Design-Builder would not incur if the Province Change is not implemented; and

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- (b) any cost savings (including direct and indirect costs, capital expenditure costs and financing costs) or other credits which the Design-Builder can realize as a direct consequence of implementing the Province Change, including costs which the Design-Builder would incur if the Province Change is not implemented.

“Change in Law” means the coming into force, after the Financial Submittal Date, of any new Law in Canada (including a new Law relating to Taxes), or any amendment to or repeal of any existing Law in Canada (including an existing Law relating to Taxes) (but excluding in each case any lawful requirements of any Governmental Authority (unless resulting from a Change in Law)) which is binding on the Design-Builder, but excluding any such new Law or amendment or repeal:

- (a) relating to Taxes or any amendment to or repeal of any existing Law relating to Taxes that in either case is of general application in respect of capital or large corporations taxes, the rate of taxation applicable to the general income of a person or a change in the manner of calculation of the general income of a person;
- (b) arising from any change in the interpretation of any Law, other than a judgement of a relevant Court which changes binding precedent in British Columbia;
- (c) arising from or in any way connected to or having substantially the same effect as any Law which, as of the Financial Submittal Date:
 - (i) had been introduced as a Bill in the Legislative Assembly of British Columbia or the Parliament of Canada or in a draft statutory instrument published or issued by a Governmental Authority; or
 - (ii) had been published in the Canada Gazette or in a draft bill as part of a Governmental Authority discussion or consultation paper;
- (d) relating to the application for, coming into effect, terms, implementation, repeal, revocation or otherwise of any Permit; or
- (e) consisting of an amendment, replacement or repeal of any of the Reference Documents.

“Change in Ownership” means, with respect to a person, a change in the ownership, whether beneficial or otherwise, of the shares or units of ownership of such person, or in the direct or indirect power to vote or transfer any of the shares or units of ownership of such person.

“Change Report” has the meaning given in Section 2.4 [Preparation of Change Report] of Schedule 11.

“Checking Team” means the relevant group of engineers assigned to independently undertake a design check in accordance with the Design and Certification Procedure.

“Claim” means any claim, demand, action, cause of action, suit or proceeding.

“Claim Submission” has the meaning given in Section 4.5 [Written Submissions] of Schedule 16.

“Clear Zone” has the meaning as set out in the BC Supplement to TAC.

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“**Closure**” means any partial or total closure, obstruction, blockage or other restriction or interference (howsoever arising) impeding the flow of traffic on or affecting the ability of the public to pass and re-pass over a highway of whatever duration including any partial or total closure, obstruction, blockage, restriction or interference:

- (a) that is instigated by the Design-Builder;
- (b) that is required for any works by a Governmental Authority or for any inspection, investigation or survey (whether carried out by the Design-Builder, the Province or any Governmental Authority or any other person);
- (c) that results from an Incident;
- (d) that is instigated by the Police or other Relevant Authority for health, safety or emergency reasons or that results from Protest Action; or
- (e) that materially affects the ability to use that highway or such part thereof in a safe manner resulting from the build up of snow or ice or from any other natural event physically affecting the highway,

but excluding a Stoppage, and provided also that any traffic congestion or slowing of the flow of traffic in a lane or lanes within the highway will not by itself be considered to be a Closure (including where the same results from speed restrictions properly imposed from time to time as a direct result of adverse weather conditions or seasonal restrictions for the time being affecting the highway, but excluding where the standard of construction and/or condition of the highway has contributed to the need for such speed restrictions).

“**Communications and Engagement Obligations**” has the meaning given in Section 1.1 [Communications and Engagement Obligations] of Schedule 15.

“**Community Benefits Agreement**” means the amended and restated community benefits agreement dated March 1, 2022 between the Allied Infrastructure and Related Construction Council of British Columbia and BCIB, as amended, supplemented or replaced from time to time in accordance with this Agreement.

“**Community Benefits Requirements**” has the meaning given in Section 2.1 [Community Benefits Requirements] of Schedule 13.

“**Compensation Event**” means any of the following events or circumstances:

- (a) a breach by the Province of Section 1.1(a)(i) of Schedule 8 [Lands] or the circumstances referred to in Section 3.1 [Postponement of Specified Access Date] of Schedule 8 as constituting a Compensation Event;
- (b) the circumstances referred to in Section 2.10(d) of this Agreement as constituting a Compensation Event;
- (c) the existence as at the Financial Submittal Date of any Project Site Agreement, Encumbrance or Utility Agreement, agreement with any Railway or any Third Party Contractor, or any amendment to any thereof, affecting any Project Lands or any Infrastructure on any Project Lands, that:

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- (i) in the case of:
 - (A) a Project Site Agreement or Encumbrance, is not described in or referred to in either of Appendix 8A [Project Lands] or Appendix 8B [Certain Project Site Encumbrances] to Schedule 8; or
 - (B) an agreement with any Railway, is not expressly described in this Agreement;
- (ii) is not registered in the Land Title Office against title to any Project Lands as at the Financial Submittal Date; and
- (iii) the Design-Builder does not otherwise have knowledge of, could not have discovered through the exercise of reasonable due diligence (provided that any investigation of Crown grants or unregistered leases will be deemed not to be required for reasonable due diligence to have been exercised for these purposes) and could not reasonably have been anticipated from an analysis of all relevant information available to the Design-Builder (including the Disclosed Data) as at the Financial Submittal Date, having regard to the opportunity afforded the Design-Builder to conduct such due diligence and analysis before the Financial Submittal Date;
- (d) a claim asserting infringement of Indigenous rights or Indigenous treaty rights or Indigenous title by any Indigenous group(s), including an Indigenous Protest Action;
- (e) the circumstances referred to in Section 4.2(a) of Schedule 6 [Environmental Obligations] as constituting a Compensation Event;
- (f) the circumstances referred to in Section 10.4(c) of Schedule 3 [Design and Construction General Requirements] as constituting a Compensation Event;
- (g) the circumstances referred to in Section 11.1(c) of this Agreement as constituting a Compensation Event;
- (h) the circumstances referred to in Section 11.2(d) or Section 11.2(f) of this Agreement as constituting a Compensation Event;
- (i) the circumstances referred to in Section 11.3(c) of this Agreement as constituting a Compensation Event;
- (j) the circumstances referred to in Section 7.5(b)(iv) of Schedule 3 [Design and Construction General Requirements] as constituting a Compensation Event;
- (k) the existence of any Province Subsequent Contamination, except to the extent:
 - (i) any actions required to be taken by the Design-Builder pursuant to Part 3 [Contamination and Hazardous Substances] of Schedule 6 in respect of such Province Subsequent Contamination are required to be taken as a result of or in connection with the Design-Builder or any person for whom the Design-Builder is

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in law responsible causing, contributing to or exacerbating any such Province Subsequent Contamination; or

- (ii) any such Province Subsequent Contamination is caused, contributed to or exacerbated by the Design-Builder or any person for whom the Design-Builder is in law responsible;
- (l) the circumstances referred to in Section 2.1(f)(i) of Schedule 2 [Review Procedure and Consent Procedure] as constituting a Compensation Event;
- (m) subject to Section 8.9(a) of this Agreement, a Protest Action;
- (n) a Discriminatory Change in Law;
- (o) damage to or destruction of the Project Infrastructure or part thereof caused by a Seismic Event or Flood;
- (p) any wilful misconduct, negligent act or negligent omission of any Third Party Contractor on or about the Project Site occurring on or after the Effective Date;
- (q) the existence of a Nonconformity caused solely by a Province Non-Excusable Event;
- (r) it has been determined by a court of competent jurisdiction, without any further rights of appeal, that:
 - (i) a part of the Project Site is not a “highway” as defined by the *Transportation Act* (British Columbia); and
 - (ii) the *Builders Lien Act* (British Columbia) applies to that part of the Project Site;
- (s) the failure by a Utility Supplier to comply with its obligations under a Utility Agreement, where such compliance is necessary in connection with the performance of the Project Work and where the Design-Builder has made all reasonable efforts to cause the Utility Supplier to comply, including by providing each relevant Utility Supplier with look-ahead schedules on a regular basis and by scheduling regularly occurring meetings with the relevant Utility Supplier;
- (t) the failure by CPKC to:
 - (i) comply with its obligations under the CPKC Agreement, where the Design-Builder has made all reasonable efforts to cause CPKC to comply; and
 - (ii) prior to entering into CPKC Agreement, voluntarily comply with what would be its obligations in accordance with the draft of the CPKC Agreement provided to the Design-Builder on July 3, 2024, where the Design-Builder has complied with all of its obligations under this Agreement,

in each case where such compliance is necessary in connection with the performance of the Project Work;

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- (u) the discovery at the Project Site of a Non-Foreseeable Species at Risk;
- (v) the circumstances referred to in Section 8.10A(e) as constituting a Compensation Event; and
- (w) the circumstances referred to in each of Sections 4.7(d)(iii)(A), 4.7(d)(iv)(A) and 4.7(e) of Schedule 3 [Design and Construction General Requirements] as constituting a Compensation Event.

“Competitive Procurement Requirements” means all applicable requirements of Laws, including all treaties or agreements relating to trade to which the Province is a party from time to time, and of procurement policies or guidelines of the Province in effect from time to time.

“Complete Licence” means, in respect of any Licensed Property, a non-exclusive, perpetual, irrevocable, worldwide, royalty-free, fully-paid, sublicensable, transferable and assignable licence or sub-licence (if applicable) for the Province, BCTFA, their employees, agents, contractors, consultants, advisors, sublicensees, successors and assigns to do any one or more of the following for any one or more of the Complete Licence Purposes:

- (a) exercise, in respect of the Licensed Property, all of the rights set out in the *Copyright Act* (Canada), including the right to use, reproduce, make Modifications to, publish, distribute and otherwise use the Licensed Property in any medium or format, whether now known or hereafter devised;
- (b) use, make, have made and otherwise implement, operate or exploit any product or service based on, embodying, incorporating or derived from the Licensed Property; and
- (c) exercise any and all other past, present or future rights in and to the Licensed Property.

“Complete Licence Purposes” means, for any Licensed Property, any and all use whatsoever in relation to any design, construction, completion, commissioning, testing, operation, maintenance, repair, modification, alteration, adaptation, rehabilitation, improvement, expansion, extension, financing or regulation (including with respect to the contemplation, procurement or undertaking of any such activities by the Province or any third parties) in connection with the applicable Approved Purposes for such Licensed Property, and/or, for all Licensed Property, the carrying out of any statutory, public or other powers, authorities, discretions, duties or functions in respect of any of the foregoing, including the development of transportation standards, policies and procedures.

“Completion Plan” has the meaning given in Section 12.1(a) of Schedule 3 [Design and Construction General Requirements].

“Compulsory Acquisition Laws” means all Laws authorizing the expropriation or other compulsory acquisition of land or Land Rights, including the *Transportation Act* (British Columbia), the *Transportation Investment Act* (British Columbia) and the *Expropriation Act* (British Columbia).

“Compulsory Acquisition Order” means any order or other process of any Court or other relevant body or authority pursuant to a Compulsory Acquisition Law effecting the expropriation or other compulsory acquisition of any land or Land Rights in any Project Lands forming or intended to form part of the Project Site, but does not include an agreement entered into pursuant to Section 3 of the *Expropriation Act* (British Columbia).

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“Conditions of Access” has the meaning given in Section 2.1 [Project Site Access Subject to Other Rights] of Schedule 8.

“Confidential Information” means all confidential or proprietary information of a party (including confidential or proprietary information of a third party that is provided to or otherwise prepared for or obtained by a party) that is (whether before, on or after the Effective Date) supplied, or to which access is granted, to or on behalf of another party pursuant to or relating to this Agreement (including the terms of this Agreement and any documents or information supplied in the course of proceedings under the Dispute Resolution Procedure), either in writing, or in any other form, directly or indirectly pursuant to discussions with another party, and includes all documents, computer records, specifications, formulae, evaluations, methods, processes, technical descriptions, reports, analyses, compilations, studies and other data, records, drawings and information and other documents whether prepared by or on behalf of a party which contain or otherwise reflect or are derived from such information.

“Consent Procedure” means the procedure defined in Section 2.1 [Consent Procedure] of Schedule 2 whereby submissions for consent in respect of certain matters are made by the Design-Builder to the Province’s Representative.

“Construction” means:

- (a) the performance of all construction, alteration, augmenting, upgrading, installation, configuration, integration, completion, testing, commissioning and other services and activities, including site preparation, decommissioning and demolition, required to be performed or carried out by the Design-Builder to construct and complete the New Project Infrastructure in accordance with the Final Design for the New Project Infrastructure in order to achieve Total Completion;
- (b) the performance of all project management, quality management, environmental management, communications management and other management services and activities required to be performed or carried out by the Design-Builder for the carrying out of the foregoing;
- (c) the supply by the Design-Builder of all Plant, Construction Plant, other property, workers and materials for the performance or carrying out of the foregoing; and
- (d) all other work, services and activities to be provided by the Design-Builder in respect of the foregoing,

all as set out and described in and in accordance with this Agreement, including the Design and Construction Requirements and the Design and Certification Procedure.

“Construction Certificate” means a Certificate in respect of the Construction as provided by the Design-Builder pursuant to Section 6.1 [Construction Certificates] of Part 2 to Schedule 4.

“Construction Communications and Engagement Plan” has the meaning given in Section 1.4 [Construction Communications and Engagement Plan] of Schedule 15.

“Construction Costs” has the meaning given in Section 2.5(a)(ii) of Schedule 11 [Changes].

“Construction Costs Mark-up” has the meaning given in Section 2.5(a)(ii) of Schedule 11 [Changes].

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“Construction Environmental Management Plan” means the plan prepared by the Design-Builder in accordance with Section 2.6 [Construction Environmental Management Plan] of Schedule 6.

“Construction Manager” means the Key Individual identified by such title in Schedule 21 [Key Individuals], or such replacement as may be designated by the Design-Builder pursuant to Section 3.3 [Key Individuals] of this Agreement.

“Construction Management Plan” has the meaning given in Section 3.6 [Construction Management Plan] of Schedule 3.

“Construction Plant” means plant, materials, tools, implements, equipment, machinery, vehicles, temporary buildings and structures, whether owned or leased by the Design-Builder or a Subcontractor, necessary for or used or to be used in the performance of the Project Work, but does not include Plant.

“Construction Quality Management Plan” means the plan for the quality management of the Construction prepared by the Design-Builder in accordance with Appendix 7C [Construction Quality Management Plan] to Schedule 7.

“Construction Records” means all stand-alone documents of any kind, including records, plans and drawings, including installation drawings and cable schedules, as applied for construction purposes and as modified during construction, so as to constitute a complete and accurate record of the as-built features of the Project Infrastructure.

“Construction Specifications” means the specifications, criteria and requirements for materials and products, procedures and methodology for providing, performing and carrying out the Design and Construction as developed by the Design-Builder in accordance with this Agreement.

“Contamination” means the presence of any Hazardous Substance in the environment (including Hazardous Substances that occur naturally in the environment or result from natural processes), except Hazardous Substances present in the environment in quantities or concentrations below permissible levels as set by applicable Environmental Laws. If Contamination is present in soil, soil vapour, surface water, sediment or ground water, then the soil, soil vapour, surface water, sediment or groundwater, as the case may be, containing the Contamination will also be deemed for the purposes of this Agreement to be Contamination.

“Contracting Affiliate” means any Affiliate of the Design-Builder that performs any Project Work or is a party to any Project Document.

“Contract Price” has the meaning given in Section 1.1(a) of Schedule 10 [Payment].

“Contract Year” means each period of 12 calendar months commencing on January 1 and ending on December 31 during the Term, provided that:

- (a) the first Contract Year will be the period from the Effective Date to the next following December 31; and
- (b) the last Contract Year will be the period ending on the Termination Date and beginning on the next preceding January 1.

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“**Control**” of a person means any of the following:

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

and “**Controlled**” and “**Controlling**” have the corresponding meanings.

“**Corporate Highway & Resource Information System**” means the Ministry’s corporate application that is used to maintain inventory and condition data for inventory other than Structures to support the Ministry programs.

“**Correction**” means one of the following actions to eliminate a detected Nonconformity:

- (a) Rework;
- (b) Repair;
- (c) Reject; and
- (d) Use as Is.

“**Correction Target Date**” has the meaning given in Section 6.1(d) of Schedule 7 [Quality Management].

“**Corrective Action**” means an action to eliminate the cause of an existing Nonconformity, defect or other undesirable situation to prevent its recurrence.

“**Cost Item**” means each discrete portion of the Design and Construction components (as applicable) of the Project Work that is identified in Appendix 10B [Progress Measurement Principles] to Schedule 10.

“**Cost Item Amount**” means the amount of deemed costs, expressed in dollars, attributable to each Cost Item, as set out in Appendix 10B [Progress Measurement Principles] to Schedule 10.

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“**Cost Item Progress Amount**” has the meaning given in Section 3.1(b) of Schedule 10 [Payment].

“**Court**” means the Supreme Court of British Columbia and courts of appeal therefrom.

“**CPKC**” means Canadian Pacific Railway Company.

“**CPKC Agreement**” means the Project Coordination and Cost Recovery Agreement to be entered into between CPKC and the Province.

“**CPKC Communication and Engagement Plan**” means the plan described in Section 4.3(b) of Schedule 3 [Design and Construction General Requirements].

“**CPKC Field Representative**” means an individual appointed by CP from time to time to act in such capacity pursuant to Article 4 [CP Interface] of Schedule 3 to this Agreement.

“**CPKC Reference Documents**” means the references, codes, standards, specifications, guidelines, policies, reports, publications, manuals, bulletins and other such documents listed in Part C [CPKC Reference Documents] of Appendix 1C to this Schedule, in each case as amended, supplemented or replaced from time to time in accordance with Section 1.3 [Reference Documents] of this Schedule.

“**Crew**” has the meaning given in Section 4.9(b) of Schedule 3 [Design and Construction General Requirements].

“**Critical Path Schedule**” means the sequence of activities that represents the longest path through the Project Work which determines the shortest possible duration to complete the Project Work, as derived from the Works Schedule.

“**Data Room**” means the secure website established by the Province in connection with the procurement process for the Project prior to the Effective Date and includes all of its contents, including the materials, documents, information and data contained therein, either directly or by an external link; for record purposes, the content of the said secure website, both as at the Financial Submittal Date and as at the Effective Date, has been preserved and distributed to the parties.

“**Default Points**” means those points assigned to the Design-Builder in accordance with Section 2.4 [Assignment of Default Points] of Schedule 9.

“**Default Points Balance**” has the meaning given in Section 2.4(e)(ii) of Schedule 9 [Performance Mechanism].

“**Default Rate**” at any time means simple interest at an annual rate that is per annum over the Prime Rate at that time. If and when the Prime Rate changes, the Default Rate will automatically change by the same amount at the same time.

“**Deficiency Holdback**” has the meaning given in Section 4.1(a) of Schedule 10 [Payment].

“**Delay Liquidated Damages**” has the meaning given in Section 5.2(a) of Schedule 10 [Payment].

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“Design” means:

- (a) the production of the compendium of drawings, plans, specifications, calculations and other material produced by or on behalf of the Design-Builder to calculate and define the Construction necessary to carry out and complete the New Project Infrastructure in accordance with the Design and Construction Requirements and the other applicable Project Requirements, including the preparation of all reports, design drawings, construction drawings and Construction Records;
- (b) the performance of all project management, quality management, environmental management, communications management and other management services and activities required to be performed or carried out by the Design-Builder for the carrying out of the foregoing;
- (c) the supply by the Design-Builder of all Plant, Construction Plant, other property and workers for the carrying out of the foregoing; and
- (d) all other work, services and activities to be provided by the Design-Builder in respect of the foregoing,

all as set out and described in and in accordance with this Agreement, including the Design and Construction Requirements and the Design and Certification Procedure.

“Design and Certification Procedure” means the procedure defined in Part 2 [Design and Certification Procedure] of Schedule 4 for the review of Design Data in connection with the Project Work.

“Design and Construction Requirements” means all standards, specifications (including the Construction Specifications), procedures, design criteria, design guidelines and other requirements applicable to all design activities included within the Project Work, including the Design, and to all Construction, all as set out in this Agreement as at the Effective Date and as amended, supplemented or replaced from time to time after the Effective Date in accordance with this Agreement.

“Design-Builder” has the meaning given in the Recitals.

“Design-Builder Breakage Costs” means, without duplication, Direct Losses sustained by the Design-Builder as a direct result of the early termination of this Agreement, but only to the extent that:

- (a) the Direct Losses are incurred in connection with the Project and in respect of the performance of the Project Work, including, without duplication:
 - (i) costs of materials or goods ordered or subcontracts placed that cannot be cancelled without such Direct Losses being incurred;
 - (ii) expenditures reasonably incurred in anticipation of the performance of the Project Work in the future;
 - (iii) demobilisation costs, including the cost of any relocation of Construction Plant used in connection with the Project Work; and

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(iv) termination payments that are required under applicable Laws or under lawful contracts of employment to be made to employees of the Design-Builder and are reasonably and properly incurred by the Design-Builder arising as a direct result of termination of this Agreement (provided that the Design-Builder takes all reasonable steps to mitigate such termination payments) and provided that in calculating such amount no account will be taken of any liabilities and obligations of the Design-Builder arising out of:

- (A) contracts of employment or other agreements entered into by the Design-Builder to the extent that such contracts of employment or agreements were not entered into exclusively in connection with the Project; or
- (B) contracts of employment or other agreements entered into by the Design-Builder to the extent that such contracts of employment or agreements were not entered into in the ordinary course of business and on reasonable commercial arm's length terms,

or, in the case of Employees as defined in and provided under the BCIB-Contractor Agreement, such termination payments as are payable to such Employees in accordance with the BCIB-Contractor Agreement;

- (b) the Direct Losses are incurred under arrangements and/or agreements that are consistent with terms that have been entered into in the ordinary course of business and on reasonable commercial terms; and
- (c) the Design-Builder has used all reasonable efforts to mitigate the Direct Losses,

and provided that no compensation for the loss of future profits of the Design-Builder will be included in such Direct Losses.

“Design-Builder Default” has the meaning given in Section 12.1 [Design-Builder Default].

“Design-Builder Default Termination Sum” has the meaning given in Section 2.1 [Obligation to Pay Compensation on the Design-Builder Default] of Schedule 14.

“Design-Builder Indemnified Person” means:

- (a) the Design-Builder's Representative in its capacity as such under this Agreement;
- (b) any agent or professional advisor (including legal and financial advisor) of the Design-Builder (excluding Subcontractors), in its capacity as such in connection with the Project; and
- (c) any director, officer or employee of the Design-Builder or of any person falling within paragraph (b) of this definition.

“Design-Builder Insolvency Event” means the occurrence of any of the following:

- (a) any resolution of the Design-Builder or the directors of the Design-Builder is passed for the dissolution, liquidation or winding-up of the Design-Builder, or for the suspension of

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operations of the Design-Builder, or authorizing any of the actions in any of paragraphs (b) through (f) of this definition;

- (b) a decree, declaration or order of a court having jurisdiction is issued or entered, adjudging the Design-Builder bankrupt or insolvent, or ordering the winding-up or liquidation of the Design-Builder, or approving any reorganization, arrangement, compromise, composition, compounding, extension of time, moratorium or adjustment of liabilities of the Design-Builder under the *Companies' Creditors Arrangement Act* (Canada), the *Bankruptcy and Insolvency Act* (Canada) or the *Winding-up and Restructuring Act* (Canada) or any other bankruptcy, insolvency, moratorium, reorganization or analogous law of any applicable jurisdiction, or any action or proceeding is commenced or instituted against the Design-Builder for any of the foregoing and such action or proceeding against the Design-Builder continues unstayed and is not withdrawn or dismissed within 45 days after it is commenced or instituted, or any action or proceeding is commenced or instituted by the Design-Builder for any of the foregoing;
- (c) if execution, distress, sequestration or any analogous process is issued, filed or levied against the Design-Builder or against all or a substantial part of the property or assets of the Design-Builder and such execution, distress, sequestration or other process continues unstayed and in effect and is not withdrawn, dismissed, overturned or set aside within the period of 45 days following its issuance or filing and such execution, distress, sequestration or analogous process has or could reasonably be expected to have a material adverse effect on the performance by the Design-Builder of its obligations under this Agreement;
- (d) a trustee, receiver, receiver and manager, interim receiver, custodian, liquidator, provisional liquidator, agent for a secured creditor, or other person with similar powers, is appointed in any manner in respect of the Design-Builder or in respect of all or a substantial portion of the property and assets of the Design-Builder, or any creditor takes control of the Design-Builder or of all or a substantial portion of the property and assets of the Design-Builder or any action or proceeding is commenced or instituted against the Design-Builder for any of the foregoing and such action or proceeding against the Design-Builder continues unstayed and is not withdrawn or dismissed within 45 days after it is commenced or instituted, or any action or proceeding is commenced or instituted by the Design-Builder for any of the foregoing;
- (e) the Design-Builder admits its inability to pay or fails to pay its debts generally as they become due, acknowledges its insolvency, makes an assignment in bankruptcy or makes any other assignment for the benefit of creditors, or files any proposal, notice of intention or petition or otherwise commences or consents to or acquiesces in the commencement of any proceeding seeking any reorganization, arrangement, compromise, composition, compounding, extension of time, moratorium or adjustment of liabilities of the Design-Builder under the *Companies' Creditors Arrangement Act* (Canada), the *Bankruptcy and Insolvency Act* (Canada) or the *Winding-up and Restructuring Act* (Canada) or any other bankruptcy, insolvency, moratorium, reorganization or analogous law of any applicable jurisdiction, or consents to or acquiesces in the appointment in any manner of a trustee, receiver, receiver and manager, interim receiver, custodian, liquidator, provisional liquidator, agent for a secured creditor or other person with similar powers in respect of the Design-Builder or in respect of all or a substantial portion of the property or assets of the Design-Builder; or

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- (f) the Design-Builder suffers any event, or any event or set of circumstances occurs or comes about, analogous to any of the foregoing events or sets of circumstances set out in this definition, in any jurisdiction in which the Design-Builder is incorporated, formed, domiciled or resident.

“Design-Builder Irrecoverable Losses” means any of the following losses or damages claimed, suffered or allegedly suffered by the Design-Builder or any Design-Builder Indemnified Person, or Subcontractor:

- (a) any loss of revenue and loss of profits;
- (b) any loss of business opportunity or other loss of opportunity, loss of contract, loss of production, or loss of goodwill; and
- (c) any consequential or indirect loss or damage of any nature.

“Design-Builder Non-Excusable Event” means any of the following:

- (a) any wrongful act, wrongful omission, negligent act, negligent omission or wilful misconduct; or
- (b) any breach in the performance or observance of any of the Design-Builder’s obligations under this Agreement or any other Project Document,

of or by the Design-Builder or any person for whom the Design-Builder is in law responsible.

“Design-Builder Railway Protection Measures” has the meaning given in Section 4.5(a) of Schedule 3 [Design and Construction General Requirements].

“Design-Builder’s Environmental Obligations” means the obligations of the Design-Builder described in Schedule 6 [Environmental Obligations], including with respect to remediation of Contamination on Project Lands.

“Design-Builder’s Representative” means the Key Individual identified by such title in Schedule 21 [Key Individuals], or such replacement as may be designated by the Design-Builder pursuant to Section 3.3 [Key Individuals] of this Agreement.

“Design Certificate” means a Certificate in respect of the Design as issued by the Design-Builder pursuant to the Design and Certification Procedure.

“Design Costs” has the meaning given in Section 2.5(a)(i) of Schedule 11 [Changes].

“Design Costs Mark-up” has the meaning given in Section 2.5(a)(i)(B) of Schedule 11 [Changes].

“Design Data” means all calculations, designs, design or construction information, criteria, standards, specifications, plans, reports, drawings, graphs, sketches, models and other materials, including all eye readable or computer or other machine readable data and including all design submissions required under the Project Requirements, used or to be used for the Project Work, any Province Change, or a Value Engineering Proposal accepted by the Province in accordance with Schedule 11 [Changes].

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“Designer” means each of Urban Systems Ltd., BASIS Engineering Ltd., Ecoscape Environmental Consultants Ltd. and 6 Point Engineering and Avalanche Consulting Ltd. or any assignee or replacement permitted under this Agreement.

“Design Life” means the period of time during which the structural component performs its intended function without significant repairs, rehabilitation or replacement.

“Design Management Plan” means the Design Management Plan submitted by the Design-Builder in accordance with Section 1.1 [Submission of Design Management Plan] of Part 2 of Schedule 4.

“Design Manager” means the Key Individual identified by such title in Schedule 21 [Key Individuals], or such replacement as may be designated by the Design-Builder pursuant to Section 3.3 [Key Individuals] of this Agreement.

“Design Quality Management Plan” means the plan for the quality management of the Design prepared by the Design-Builder in accordance with Appendix 7B [Design Quality Management Plan] to Schedule 7.

“Design Team” means the group of Professional Engineers and others within a Designer’s organization undertaking the design or assessment of the Project Work in connection with the Project Requirements.

“Detailed Design” means the detailed design to be developed from the preliminary design shown in the Design and Construction Requirements in respect of each part of the Project Work so as to allow construction of that part in accordance with the Design and Construction Requirements and so as to comply with, fulfill and satisfy the requirements of the Design and Construction Requirements.

“Detour” means a route within the Project Site which takes traffic off the regular route and, using existing or newly made temporary roadways within the construction work zone, guides traffic around the work zone.

“Direct Losses” means Losses other than:

- (a) in the case of Losses suffered or incurred by the Province, Province Irrecoverable Losses; and
- (b) in the case of Losses suffered or incurred by the Design-Builder, Design-Builder Irrecoverable Losses.

“Disclosed Data” means any and all information, data, reports and documents from time to time disclosed, provided or made available by the Province or its representatives or any other person on behalf of the Province to the Design-Builder or its representatives or to any Subcontractor or their representatives, or any Proponent Team Member of the Preferred Proponent (as both such terms are defined in the Request for Proposals) in connection with or pertaining to the Project, the Project Work, the Project Site, the Project Infrastructure, the requirements of any Governmental Authority, traffic records and forecasts or any obligations undertaken by the Design-Builder under this Agreement, and whether disclosed, provided or made available before, on or after the Effective Date, and including:

- (a) any Design Data provided or made available by or on behalf of the Province;
- (b) the Reference Documents;

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- (c) any and all plans, drawings, materials, books, records, files, correspondence, studies, tests, test results, test data, certificates, investigations, samples, surveys, reports, statements, documents, facts, information, projections and traffic information (including volume counts, classification counts, origin and destination data, speed and travel time information and vehicle jurisdiction data), including any of the foregoing stored electronically or on computer-related media;
- (d) the Factual Geotechnical Data;
- (e) any and all information relating to Contamination;
- (f) the data, reports and documents referred to in this Agreement including in any Schedule;
- (g) any of the foregoing provided in connection with the Request for Qualifications and/or the Request for Proposals;
- (h) anything contained in the Data Room, either directly or by an external link; and
- (i) the Project Lands Drawings and the information contained thereon.

“Discriminatory Change in Law” means a Change in Law consisting of the bringing into force, amendment or repeal of a Law the effect of which is to discriminate directly against, and which specifically applies to:

- (a) the Project or other similar highway projects whose design and construction are procured on a basis similar to the Project;
- (b) the Design-Builder and not to any other persons; or
- (c) the Design-Builder and other persons that have contracted with the Province or any other Governmental Authority on similar highway projects procured on a basis similar to the Project and not to any other person.

“Dispute” has the meaning given in Section 2.1(a) of Schedule 16 [Dispute Resolution Procedure].

“Dispute Notice” has the meaning given in Section 2.1(a) of Schedule 16 [Dispute Resolution Procedure].

“Dispute Resolution Procedure” means the procedure set out in Schedule 16 [Dispute Resolution Procedure].

“District Avalanche Technician” means the person described in Section 1.3(a) of Appendix 4C [Snow Avalanche Safety Measures] to Schedule 4.

“Disturbance” means any alteration to any surface or subsurface conditions by the Design-Builder as a result of the performance of any Construction by it including excavating, dumping, wasting, filling, drainage, removing or affecting vegetation and other Construction-related activities that directly or indirectly reduces the stability of a slope, and **“Disturbed”** will be construed accordingly.

“Draw Request” has the meaning given in Section 6.1(b) of Schedule 10 [Payment].

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“Dynamic Message Sign” means an electronically programmable sign that is used to display traffic information to travellers.

“Effective Date” means the date of this Agreement.

“Emergency” means the existence or occurrence of any of the following:

- (a) a serious threat or risk to:
 - (i) the health or safety of members of the public;
 - (ii) the environment; or
 - (iii) the safety or integrity of the Project Infrastructure or any property adjacent to or in the vicinity of the Project Site;
- (b) any event or circumstance that prevents or unjustifiably restricts the use of the Project Infrastructure as a public highway; and
- (c) any event or circumstance in respect of the Project Infrastructure or the Project Site that prevents the Province, BCTFA or any other Relevant Authority from carrying out any function or duty that it is required by Laws to carry out in respect of the Project Infrastructure or the Project Site.

“Emergency Situation” means a situation arising that causes an immediate and serious threat or danger to the public, CPKC employees, agents or contractors, the Province, the employees or agents of the Province and all persons engaged or retained by the Province, whether directly or indirectly, in connection with the Project, including the Design-Builder, the Subcontractors or any employees thereof, or the Railway Operations, as may arise in connection with the Project or a Geotechnical Event.

“Encumbrance” means any mortgage, lien, pledge, judgment, execution, charge, security interest, restriction, covenant, restrictive covenant, easement, right of way, encroachment, condition, right of re-entry, lease, licence, permit to use or occupy land, crossing agreement (excluding railway crossing agreements), assignment, option, right to acquire, right of first refusal or pre-emption, trust, title defect, claim or encumbrance of any nature whatsoever, whether registered or registrable, and whether or not created by statute.

“Engagement Events” has the meaning given in Section 4.1 of Schedule 15 [Communications and Engagement].

“Environmental Authority” means a Governmental Authority exercising its authority under Environmental Laws.

“Environmental Constraints Drawings” means the drawings provided in the Data Room, and as may be modified from time to time in accordance with Section 1.5(b) of Schedule 6 [Environmental Obligations], depicting the environmentally sensitive areas that have been identified through review of environmental values in the Project Site and adjacent lands that have the potential to be directly or indirectly affected by the Project.

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“Environmental Laws” means:

- (a) all requirements and provisions under or prescribed by any and all applicable Laws;
- (b) all applicable rules, regulations, orders-in-council, codes, protocols, guidelines, policies, procedures, concessions, grants, franchises, licences, permits, approvals, plans, authorizations, agreements and any other governmental requirements, in each case promulgated under or pursuant to any Laws; and
- (c) all applicable judicial, administrative or regulatory judgments, orders, decisions, certificates and exemptions, including those rendered by any Governmental Authority;

all as may be amended from time to time, relating to environmental assessment, the protection of the natural environment, the protection of plant, animal and human health, and the protection of land, water and air resources, including those relating to occupational health, management of waste, safety and transportation of dangerous goods, and the safety requirements and procedures that would, in the ordinary and usual course of the construction, operation, management, repair, maintenance and rehabilitation of similar facilities in British Columbia by any person, be recognized, followed and implemented by such person, and includes the *Canadian Environmental Protection Act* (Canada), the *Fisheries Act* (Canada), the *Transportation of Dangerous Goods Act* (Canada), the *Canada Water Act* (Canada) and the *Environmental Management Act* (British Columbia).

“Environmentally Sensitive Areas” has the meaning given in Section 1.5(a)(i)(A) of Schedule 6 [Environmental Obligations].

“Environmental Manager” means the Key Individual identified by such title in Schedule 21 [Key Individuals], or such replacement as may be designated by the Design-Builder pursuant to Section 3.3 [Key Individuals] of this Agreement.

“Environmental Monitors” means the personnel in the Design-Builder’s environmental team carrying out environmental monitoring duties as defined in the DBSS.

“Environmental Procedure” has the meaning given in the DBSS.

“Environmental Reference Documents” means the references, codes, standards, specifications, guidelines, policies, reports, publications, manuals, bulletins and other such documents listed in Part B [Environmental Reference Documents] of Appendix 1C to this Schedule, in each case as amended, supplemented or replaced from time to time in accordance with Section 1.3 [Reference Documents] of this Schedule.

“Environmental Timing Windows” has the meaning given in Section 2.10(a) of Schedule 6 [Environmental Obligations].

“Excluded Event” means a Traffic Disruption Event that is:

- (a) directly attributable to a Province Non-Excusable Event;
- (b) directly attributable to a Police Incident not caused or permitted to occur by the Design-Builder;

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- (c) directly attributable to a Non-Police Incident of less than 30 minutes' duration not caused or permitted to occur by the Design-Builder;
- (d) directed by a Governmental Authority having jurisdiction, in response to some event or circumstance not caused or permitted to occur by the Design-Builder;
- (e) directed by the Province, in response to some event or circumstance not caused or permitted to occur by the Design-Builder;
- (f) directly attributable to a Compensation Event;
- (g) required solely to permit the conduct of work by or on behalf of a Utility Supplier, other than Utility Work;
- (h) directly attributable to, and resulting unavoidably from, a Latent Defect;
- (i) directly attributable to a Flood, but only during the period while the Project Site or portion thereof is submerged as a result of such Flood;
- (j) directly attributable to a failure of the Winter Maintenance Contractor to carry out routine winter maintenance in accordance with Section 6.2(a) of Schedule 3 [Design and Construction General Requirements]; or
- (k) directly attributable to a Landslide, other than
 - (i) an Excluded Landslide; or
 - (ii) a Landslide in respect of which the Landslide Repair Costs the Design-Builder is obligated to bear pursuant to Section 8.10A(b) of this Agreement are less than or equal to \$10,000.

“Excluded Landslide” means a Landslide:

- (a) that originates along portions of the Project Infrastructure or the Project Site which have been Disturbed by the Design-Builder;
- (b) that occurs during the Construction or during the period of two years following the Substantial Completion Date; and
- (c) for which the Disturbance is a reasonable factor in the causation of the Landslide,

provided that the extent that any Landslide which occurs within the period of two years following the Substantial Completion Date is reasonably caused by work undertaken by the Province's own forces or a Third Party Contractor, such Landslide or portion thereof will not be an Excluded Landslide.

“Existing Contamination” means any Contamination that is situated in, on, under or over, or affects:

- (a) any parcel of Project Lands; or
- (b) any Infrastructure or other improvements on or to any parcel of Project Lands,

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on the day immediately preceding the Handover Date for such parcel.

“**Expert Referee**” has the meaning given in Section 4.2(a) of Schedule 16 [Dispute Resolution Procedure].

“**Expert Referee Agreement**” has the meaning given in Section 4.2(e) of Schedule 16 [Dispute Resolution Procedure].

“**Expert Referee Dispute Notice**” has the meaning given in Section 4.1 [Commencement of Expert Referee Procedure] of Schedule 16.

“**Expert Referee Procedure**” has the meaning given in Section 4.1 [Commencement of Expert Referee Procedure] of Schedule 16.

“**Extensible Reinforcement**” means reinforcement elements that are within the soil for mechanically stabilized earth walls and are subject to long term creep, including geogrids.

“**External Quality Audit**” means either or both:

- (a) a second party Quality Audit conducted by parties having an interest in the relevant organization, such as customers; and
- (b) a third party Quality Audit conducted by an external independent organization such as a certification or registration body.

“**Factual Geotechnical Data**” means the data identified as “Factual Geotechnical Data” in Appendix 1A [Factual Geotechnical Data] to this Schedule.

“**Federal Government**” means His Majesty the King in right of Canada.

“**Final Deficiency List**” has the meaning given in Section 11.4(b) of Schedule 3 [Design and Construction General Requirements].

“**Final Deficiency List Deficiency**” means a defect or deficiency specified in the Final Deficiency List.

“**Final Design**” means the designs for all disciplines consisting of the relevant TAF(s) together with all final Design drawings, Design Certificates, supporting Design Data and calculations.

“**Final Quality Report**” means the report described in Section 4.10 [Final Quality Report] of Schedule 7.

“**Financial Submittal Date**” means June 3, 2024.

“**Fiscal Quarter**” means each quarter of each Fiscal Year ending on June 30, September 30, December 31 and March 31.

“**Fiscal Year**” means each period during the Term commencing April 1 and ending March 31.

“**Flood**” means waves, tides, tidal waves, and the rising of, breaking out or the overflow of any body of water, whether natural or man made, whether or not caused by or attributable to an earthquake.

“**Footing**” means a shallow Foundation.

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“Force Majeure Event” means any of the following events or circumstances:

- (a) war, hostilities (whether declared or undeclared), invasion, revolution, armed conflict, act of foreign enemy or terrorism;
- (b) pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds;
- (c) nuclear explosion, combustion of nuclear fuel or ionizing radiation;
- (d) riot or civil commotion (other than riot or civil commotion constituting a Protest Action); and
- (e) governmental expropriation or confiscation of property by the Federal Government, to the extent that such expropriation or confiscation does not result in a breach by the Province of Section 1.1(a)(i) or Section 1.1(c) of Schedule 8 [Lands] to this Agreement.

“Foundation” means the portion of a Structure that transfers loads to the supporting ground.

“Four Week Lookahead Schedule” means the detailed schedule for investigation, construction, testing, commissioning, demolition and related activities within the Project Work during the period commencing one week prior from the cutoff date (illustrating the completed activities during that week) and ending four weeks after the cutoff date.

“Full Closure” means a 30 Minute Full Closure and a 2 Hour Full Closure.

“GAAP” means, with respect to any entity at any time, generally accepted accounting principles approved by the Canadian Institute of Chartered Accountants, or any successor institute, as applicable to that entity at that time in accordance with generally accepted accounting principles, as such principles may be amended or varied by International Financial Reporting Standards then in effect in Canada.

“General Project Work Defect Warranty Period” means the period from the Substantial Completion Date to and including the second anniversary of the Substantial Completion Date or, if earlier, the second anniversary of the Termination Date, provided that the General Project Work Defect Warranty Period will be extended for one additional year for all work required of the Design-Builder to correct any Project Work Defect completed in the last year of the General Project Work Defect Warranty Period pursuant to Section 7.2 [Project Work Defect Warranty] of Schedule 3, such that the General Project Work Defect Warranty Period for any such item of remedial work will extend for an additional year after such Project Work Defect is corrected.

“Geotechnical Engineer” means a Professional Engineer qualified by training and experience in geotechnical/geological engineering specialization.

“Geotechnical Event” any rock, debris or earth fall, topple, slide, spread or flow (as further set out in Cruden and Varnes, 1996), or snow avalanche, flooding, washout, hydrotechnical event, river or stream erosion, or any other geohazard, or ground instability, each as may arise in connection with the Project.

“Geotechnical Investigation Plan” has the meaning given in Section 4.13(a) of Part 1 [Design and Construction Requirements] of Schedule 4.

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“Good Industry Practice” means the exercise of that degree of skill, diligence, prudence and foresight that would reasonably and ordinarily be expected from a person, skilled and experienced in any of the design or construction of bridges and roads similar in type to the Project Facilities, seeking in good faith to comply with all applicable Laws and the same contractual obligations as the contractual obligations of the Design-Builder under this Agreement and under the same or similar circumstances and conditions.

“Governmental Authority” means:

- (a) the Province;
- (b) the Federal Government; and
- (c) any other Canadian:
 - (i) federal, provincial, territorial, regional, municipal or local governmental authority, quasi-governmental authority, court, government organization, commission, board or tribunal;
 - (ii) regulatory, administrative or other agency; or
 - (iii) political or other subdivision, department or branch of any of the foregoing;having jurisdiction in any way over or in respect of any aspect of the performance of this Agreement or the Project Work, or the Project Site or the Project Infrastructure.

“GST” means the goods and services tax imposed pursuant to Part IX of the *Excise Tax Act* (Canada), and any successor or replacement tax therefor.

“Half Bridges” means Bridge Structures that are designed and constructed to carry two lanes of eastbound traffic of Highway 1 plus required shoulders and Structural Barriers.

“Handover Date” means, in respect of a parcel of Project Lands, the date such parcel is made available to the Design-Builder as provided in Section 2.3 [Commencement of Access to Project Site] of Schedule 8.

“Hazardous Substance” means any hazardous waste, hazardous product, hazardous substance, contaminant, toxic substance, deleterious substance, dangerous good, pollutant, waste, hazardous waste, reportable substance, and any other substance, in respect of which the storage, manufacture, handling, disposal, treatment, generation, use, transport, remediation or Release into or presence in the environment is prohibited, controlled or regulated under Environmental Laws including:

- (a) oil, flammable substances, explosives, radioactive materials, hazardous wastes or substances, toxic wastes or toxic substances or any other contaminants or pollutants;
- (b) any such substance which may or could pose a hazard to any real property, or to persons on or about any real property, or causes any real property to be in violation of any Environmental Laws, including any mixing or combination of any such substance with any other such substance that would cause a breach of any applicable Environmental Laws;
- (c) asbestos in any form which is or could become friable, radon gas, urea formaldehyde foam insulation, transformers or other equipment which contain dielectric fluid containing levels

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of polychlorinated biphenyls in excess of limits prescribed by any Environmental Laws;
and

- (d) any such substance defined as or included in the definitions of “dangerous goods”, “deleterious substance”, “hazardous substances”, “hazardous wastes”, “hazardous materials”, “extremely hazardous wastes”, “restricted hazardous waste”, “toxic substances”, “special waste”, “waste” or words of similar import under any applicable Environmental Laws, including the *Canadian Environmental Protection Act* (Canada), the *Fisheries Act* (Canada), the *Transportation of Dangerous Goods Act* (Canada), the *Canada Water Act* (Canada) and the *Environmental Management Act* (British Columbia), including the Hazardous Waste Regulation promulgated thereunder.

“**Health and Safety Laws**” means all Laws relating to occupational health and safety, including the WCA and the OHS Regulation.

“**Health and Safety Program**” has the meaning given in Section 8.3 [Health and Safety Program] of Schedule 3.

“**Highway-Occupied Railway Lands**” has the meaning given in the CPKC Agreement.

“**Hold Point**” means a mandatory verification point beyond which the specific work cannot proceed without acceptance, as defined by the Inspection and Testing Plan or as specified by the Province’s Representative.

“**Holiday**” has the meaning given in Section 2.3(b) of Part 3 [Traffic Management] of Schedule 4.

“**Identified Indigenous Group**” means the Secwepemc Collective.

“**IFC Drawings**” means drawings that are issued for construction by the Design-Builder.

“**Implementation Plan**” means the sub-plan of the Traffic Management Plan described in Section 4.2.4 [Implementation Plan] of Part 3 of Schedule 4.

“**Incident**” means any motor vehicle collision, motor vehicle breakdown or parking, flooding, forest fire, rockfall, avalanche, Release of a Hazardous Substance, Debris, Emergency or other unplanned event or circumstance of any nature whatsoever occurring on, over, across or in relation to the Project Infrastructure that results in the potential occurrence or the occurrence of a Closure.

“**Incident Management Plan**” means the sub-plan of the Traffic Management Plan described in Section 4.2.2 [Incident Management Plan] of Part 3 of Schedule 4.

“**Independent Engineer**” means the entity appointed by the Province for such role from time to time.

“**Independent Quality Audit**” has the meaning given in Section 4.7(a) of Schedule 7 [Quality Management].

“**Independent Quality Auditor**” has the meaning given in Section 4.7(b) of Schedule 7 [Quality Management].

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“Indigenous Business” means a sole proprietorship, limited company, co-operative, partnership, or not-for-profit organization where at least 51% of the firm is owned and controlled by Indigenous Members or by one or more of the Secwepemc Collective.

“Indigenous Coordinator” means the Key Individual identified by such title in Schedule 21 [Key Individuals], or such replacement as may be designated by the Design-Builder pursuant to Section 3.3 [Key Individuals] of this Agreement.

“Indigenous Member” means:

- (a) members of a Secwepemc Collective band; and
- (b) dependent spouses and/or children of members of a Secwepemc Collective band.

“Indigenous Member-owned Equipment and Operator” means a piece of equipment that is at least 51% owned by an Indigenous Member or Indigenous Business, and an operator that is qualified to operate the equipment and is an Indigenous Member.

“Indigenous Joint Venture” means a joint venture that consists of:

- (a) two or more Indigenous Businesses; or
- (b) one or more Indigenous Businesses and one or more non-Indigenous Businesses, provided that the Indigenous Businesses have at least 51% ownership and control of the joint venture.

“Indigenous Participation Plan” has the meaning given in Section 1.2 [Indigenous Participation Plan] of Schedule 12.

“Indigenous Protest Action” means any protest action or blockade arising from or in connection with any Indigenous group(s) asserting infringement of Indigenous rights, Indigenous treaty rights, or Indigenous title.

“Indigenous Requirements” has the meaning given in Section 1.1 [General Requirements] of Schedule 12.

“Infrastructure” means all road and highway infrastructure including Structures, roadways, hard shoulders, slip roads, side roads, access roads, pavement, Bridges and other highway structures, whether over or under the travelled surface, together with all related supporting infrastructure, buildings, improvements and amenities, including all intelligent traffic systems, fences and barriers, curbs, culverts, drainage systems including outfalls and balancing ponds, grassed areas, hedges and trees, planted areas, erosion protection, footways, road markings, road traffic signs, road traffic signals, road lighting, communications installations, weigh stations, washrooms and rest areas, picnic sites, pullouts, embankments, retaining walls and cuttings.

“Infrastructure BC” means Infrastructure BC Inc.

“Initiating Party” has the meaning given in Section 2.1(a) of Schedule 16 [Dispute Resolution Procedure].

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“Inspection and Testing Plan” means a detailed spreadsheet of all on and off Project Site inspection and testing activities for Project Work performed by the Design-Builder and that of its Subcontractors.

“Insurance and Bonding Costs” has the meaning given in Section 2.5(a)(v) of Schedule 11 [Changes].

“Intellectual Property” means all forms of intellectual property whatsoever including all access codes, algorithms, application programming interfaces (APIs), apparatus, circuit designs and assemblies, concepts, data, databases and data collections, designs, diagrams, documentation, drawings, equipment designs, flow charts, formulae, ideas and inventions (whether or not patentable or reduced to practice), IP cores, know-how, materials, marks (including trade marks, trade names, brand names, product names, logos and slogans), methods, models, net lists, network configurations and architectures, procedures, processes, protocols, schematics, semiconductor devices, software code (in any form including source code and executable or object code), specifications, subroutines, techniques, test vectors, tools, uniform resource identifiers including uniform resource locators (URLs), user interfaces, web sites, works of authorship, and other forms of technology.

“Intellectual Property Rights” means all past, present and future rights, including of the following types, which may exist or be created under the laws of any jurisdiction in the world in respect of any Intellectual Property:

- (a) rights associated with works of authorship, including exclusive exploitation rights, copyrights, moral rights, industrial design, integrated circuit topography and mask work rights;
- (b) trade mark and trade name rights and similar rights;
- (c) trade secret rights;
- (d) patent and industrial property rights;
- (e) other proprietary rights in Intellectual Property of every kind and nature; and
- (f) rights in or relating to registrations, renewals, extensions, combinations, divisions and reissues of, and applications for, any of the rights referred to in paragraphs (a) through (e) above.

“Interested Parties” means those persons who may be affected by the carrying out of the Project Work or who are duly authorized by Laws to review or otherwise take an interest in the Project Work, including the Relevant Authorities.

“Interface Milestones” means milestones for the Project Work that reflect the interaction with any Interested Parties, including work by Utility Providers and the obtaining of Permits.

“Interference” means to endanger, hinder, interfere with or in any way affect the Railway Operations, in connection with the Project or a Geotechnical Event.

“Interim Design” means an interim design for a component of the Project Work produced by the Design-Builder in accordance with Article 2 [Design Submissions, Review and Reports] of Part 2 of Schedule 4.

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“Interlocking Blocks” means precast monolithic concrete blocks with interlocking shear keys of specified dimensions made from wet-cast concrete for use in the construction of an engineered gravity retaining wall or an engineered Mechanically Stabilized Earth (MSE) wall.

“Internal Quality Audit” means a first party Quality Audit of an organization’s own processes conducted by or on behalf of the organization.

“Irrecoverable Losses” means:

- (a) in the case of Losses suffered or incurred by the Province, Province Irrecoverable Losses; and
- (b) in the case of Losses suffered or incurred by the Design-Builder, Design-Builder Irrecoverable Losses.

“ISO 9000:2015 Standard” means the ISO 9000:2015 International Standard, Quality Management Systems – Fundamentals and Vocabulary, as revised and updated from time to time, or, at the direction of the Province, such other replacement standard as the Province may designate, acting reasonably.

“ISO 9001:2015 Standard” means the ISO 9001:2015 International Standard, Quality Management Systems - Requirements, as revised and updated from time to time, or, at the direction of the Province, such other replacement standard as the Province may designate, acting reasonably.

“ISO 9001 Lead Auditor Course” means a accredited ISO 9001 course for lead auditors that meets the training portion of the requirements for current certification of individual quality system auditors with the International Register of Certified Auditors, American Society for Quality or Exemplar Global.

“ISO 9004:2018 Standard” means the ISO 9004:2018 International Standard, Managing for the sustained success of an organization — A quality management approach, as revised and updated from time to time, or, at the direction of the Province, such other replacement standard as the Province may designate, acting reasonably.

“ISO 10005:2018 Standard” means the ISO 10005:2018 Quality Management – Guidelines for Quality Plans, as revised and updated from time to time, or, at the direction of the Province, such other replacement standard as the Province may designate, acting reasonably.

“ISO 14001:2015 Standard” means the ISO 14001:2015 International Standard – Environmental Management Systems – Requirements with Guidance for Use, as revised and updated from time to time, or, at the direction of the Province, such other replacement standard as the Province may designate, acting reasonably.

“ISO 19011:2018 Standard” means the ISO 19011:2018 International Standard, Guidelines for Quality and/or Environmental Management Systems Auditing, as revised and updated from time to time, or, at the direction of the Province, such other replacement standard as the Province may designate, acting reasonably.

“ISO 45001:2018 Standard” means the ISO 45001:2018 International Standard, Guidelines for occupational health and safety management systems, as revised and updated from time to time, or, at the direction of the Province, such other replacement standard as the Province may designate, acting reasonably.

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“ISO/IEC 17025:2017 Standard” means the ISO/IEC 17025:2017 General requirements for the competence of testing and calibration laboratories, as revised and updated from time to time, or, at the direction of the Province, such other replacement standard as the Province may designate, acting reasonably.

“ITS Equipment” has the meaning given in Section 6.7.1 [ITS Equipment] of Part 1 of Schedule 4.

“Key Individuals” means the individuals identified in Schedule 21 [Key Individuals], as changed from time to time in accordance with Section 3.3 [Key Individuals] of this Agreement.

“Key Works Milestones” means the milestones set out in Appendix 3A [Project Schedule] to Schedule 3.

“Labour Dispute” means any lawful or unlawful strike (including a general strike in British Columbia), lockout, go-slow or other labour dispute occurring after the Effective Date affecting generally the whole or a significant section of the highway construction industry in British Columbia and/or the highway operation and maintenance industry in British Columbia.

“Landmark Kilometre Inventory” refers to Segment 1814 of Highway 1 in the B.C. LKI – July 2021 version publicly available at <https://www2.gov.bc.ca/gov/content/transportation/transportation-infrastructure/engineering-standards-guidelines/landmark-kilometre-inventory>.

“Land Rights” means an estate or interest in or right over or relating to any land (including an air space parcel, foreshore and land covered by water) whether legal, equitable, contractual, irrevocable, revocable, permanent, temporary or otherwise including a fee simple interest, subsurface rights, a leasehold estate, a statutory right of way, an easement, a licence, rights under a crossing agreement, including a railway crossing agreement, or a permit.

“Landslide” means the downslope mass movement of soil, rock and organic material under the influence of gravity and resulting from a Landslide Event, and includes debris flows, mudflows and other similar mobile mixtures of solid particles and water, and rock falls, and for greater certainty excludes an Avalanche.

“Landslide Event” means an occurring natural phenomenon, including fire, earthquake, rainfall, wind and snow, which has sufficient intensity to cause Landslides.

“Landslide Repair Costs” means:

- (a) the Direct Losses of Landslide Repair Work, other than Landslide Repair Work resulting from an Excluded Landslide, and excluding any Performance Incentive Payments payable by the Design-Builder in connection with a Landslide; and
- (b) any deductible amounts provided for in any policies of Required Insurance in the event of damage to the Project Infrastructure and/or the Project Site, and any damage to Plant and Construction Plant located on the Project Site, caused by a Landslide other than an Excluded Landslide.

“Landslide Repair Work” means:

- (a) the removal of rocks, soil and debris and other clean up work required as a result of a Landslide, but excluding any such removal or other clean up work carried out in the ordinary course of the Operation and Maintenance;

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- (b) repairing, to the extent required to restore Highway 1 to normal operating conditions in accordance with and to the standards provided for in the Project Requirements, damage to the Project Infrastructure and/or the Project Site, and any damage to Plant and Construction Plant located on the Project Site caused by a Landslide; and
- (c) any required repair works to stabilize a Landslide so that the Landslide does not cause an Interference.

“Lane Closure” has the meaning given in Table 2.1 [Stoppages and Closures] in Part 3 of Schedule 4.

“Lane Shift” means a transfer of traffic along lane(s) of the same route and which, using existing roadway lanes or surfaces, guides traffic around the work zone.

“Latent Defect” means any defect in any Original Project Infrastructure (provided that at the time of the discovery of such defect the Original Project Infrastructure containing such defect has not been disturbed by the carrying out of the Project Work by the Design-Builder (other than only to the extent such disturbing is necessary to discover the existence, nature and extent of such defect), the onus of establishing which will be on the Design-Builder) existing as at the Effective Date which the Design-Builder is not aware of as at the Effective Date, and which could not reasonably have been discovered, ascertained or anticipated as at the Effective Date by a competent person acting in accordance with Good Industry Practice during a visual examination of the Original Project Infrastructure on or before the Financial Submittal Date (including the Disclosed Data as it exists as at the Financial Submittal Date) having regard to the opportunity afforded the Design-Builder to conduct such inspection, examination and analysis before the Financial Submittal Date.

“Laws” means all laws (including the common law), statutes, regulations, treaties, judgments and decrees and all official directives, bylaws, rules, consents, approvals, authorizations, guidelines, orders and policies of any Governmental Authority having the force of law from time to time affecting, applicable to or otherwise relating to the Project, the Project Work, the Project Site, the Project Infrastructure, the Design-Builder, the Province or BCTFA, as the case may be, including, for greater certainty, those related to the issuance of Permits and any applicable building codes.

“Lead Geotechnical Engineer” means the Key Individual identified by such title in Schedule 21 [Key Individuals], or such replacement as may be designated by the Design-Builder pursuant to Section 3.3 [Key Individuals] of this Agreement.

“Legal Expenses” means all reasonable legal fees, court costs, expert witness fees and other disbursements actually incurred by the Design-Builder in connection with a Successful Defence that the Design-Builder is unable to recover from the plaintiff(s) in a Nuisance Claim, having made all reasonable efforts to prosecute a claim (including collection and enforcement proceedings) for costs against the plaintiff.

“Letter of Credit” means an irrevocable letter of credit in the form attached as Appendix 24A [Form of Letter of Credit] to Schedule 24, modified as indicated therein and meeting the requirements set out therein

“Licensed Property” means any Intellectual Property or other property to which the Complete Licence applies.

“Losses” means any and all damages, losses, loss of revenue, loss of profit, loss of business opportunity, liabilities, charges, judgments, court orders, penalties, fines, assessments, costs (including finance costs) and expenses (including legal and other professional charges and expenses on a full indemnity basis and including reasonable costs of mitigation incurred by the Province in complying with its obligations pursuant

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to Section 4.1 [Mitigation by Province] of this Agreement or the Design-Builder in complying with its obligations pursuant to Section 5.6 [Mitigation by the Design-Builder] of this Agreement, as the case may be) of any nature and kind whatsoever and howsoever arising, whether under statute or contract, at common law, in equity, in connection with judgments or criminal or quasi criminal proceedings, or otherwise, and whether direct, indirect or consequential, and “**Loss**” will be construed accordingly.

“**Lower Tier Subcontractor**” means any Subcontractor (other than any Subcontractor engaged directly by the Design-Builder) that enters into a contract in relation to the provision, performance or carrying out of any Project Work (including any contract for the supply of any Plant or Construction Plant) with a Subcontractor engaged directly by the Design-Builder.

“**MacDonald Disposal Site**” has the meaning given in Section 11.4(a) of Part 1 [Design and Construction Requirements] of Schedule 4.

“**Major Culverts**” means structures 3 m or more in diameter or span constructed of various materials (typically corrugated iron) and required to convey watercourses under the highway.

“**Major Retaining Walls**” means structures whose purpose is to structurally retain earth and which are inventoried as Structures by the Ministry when the wall face is greater than 45 degrees and the maximum exposed wall height exceeds 2.0m, with the primary purpose of the structure not being to support Bridge abutments and rockfall or avalanche catchments.

“**Major Sign Structures**” means overhead sign support structures typically of truss construction with the horizontal members either supported at both ends or cantilevered over the Travelled Lanes.

“**Mark-up**” means any direct or indirect margin, mark-up, overhead charge, premium or other increase over or above the actual amount incurred for salary, wages, machinery, equipment, tools or any other input.

“**Material Subcontract**” means an agreement between the Design-Builder and one or more Material Subcontractors for or relating to the provision of all or part of the Project Work, each as amended, supplemented or replaced from time to time in accordance with this Agreement.

“**Material Subcontractor**” means the Designer, and any supplier of structural steel, reinforcing steel, precast concrete and rock fall attenuation, and any pile installation subcontractor, blasting subcontractor, deck finishing subcontractor and asphalt paving subcontractor, in each case engaged directly by the Design-Builder, and any substitute Subcontractor for any such Material Subcontractor as may be permitted by this Agreement.

“**Milestones**” has the meaning given in Section 1(c)(ii)(D) of Appendix 3D [Works Schedule Requirements] to Schedule 3.

“**Minimum Indigenous Contracts Requirement**” has the meaning given in Section 1.1(c) of Schedule 12 [Indigenous Requirements].

“**Minister**” means the member of the Executive Council of the Province who is charged from time to time with the administration of the *Transportation Act* (British Columbia), and includes the Minister’s deputy and any person authorized to act for or on behalf of either of them with respect to any matter under or contemplated by this Agreement.

“**Ministry**” means the ministry of the Province headed by the Minister.

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“Ministry Standards” means all standards and specifications referred to or identified in Schedule 4 [Design and Construction Technical Requirements] or elsewhere in this Agreement, including the Reference Documents, issued or adopted by the Province as applicable generally to the design, construction of roads, highways, Bridges and related Structures, systems and improvements, or specifically to the Project Work or to all or any parts or components of the Project Infrastructure and the Project Site, in each case as at the Effective Date or as subsequently amended or revised after the Effective Date.

“Ministry Technical Bulletins and Circulars” means all technical bulletins and technical circulars issued by the Ministry.

“ML/ARD” has the meaning given in Section 5.2 [ML/ARD Material Management] of Part 1 of Schedule 4.

“ML/ARD Technical Memo” has the meaning given in Section 5.2 [ML/ARD Material Management] of Part 1 of Schedule 4.

“Modifications” means, in respect of any Intellectual Property or other property, all modifications including any alterations, changes, deletions, amendments, upgrades, updates, enhancements, revisions or improvements.

“Modifications to Province Provided Materials” means all Modifications made to any Province Provided Materials, whether made by or on behalf of the Province or by or on behalf of the Design-Builder.

“Motor Vehicle” means a motor vehicle as defined in the *Motor Vehicle Act* (British Columbia).

“Narrative Report” means detailed narrative of the revised Work Schedule, including a summary of the Project Work, the plan for Construction, compliance to Milestones, the critical path and potential issues or concerns that could delay the Project Work.

“NCE (Cash) Payment” means a payment paid or payable pursuant to Section 1.3 [Calculation of Non-Compliance Event Payments] of Schedule 9 in respect of the occurrence of one or more Non-Compliance Events as described in Section 1.3(b) of Schedule 9 [Performance Mechanism].

“NCE Points” means those points assigned to the Design-Builder in accordance with Section 2.1 [Assignment of NCE Points] of Schedule 9.

“NCE Points Balance” has the meaning given in Section 2.2(c)(ii) of Schedule 9 [Performance Mechanism].

“NCE Points (Default) Balance” has the meaning given in Section 2.3(b) of Schedule 9 [Performance Mechanism].

“NCE (Points) Payment” means a payment paid or payable pursuant to Section 1.3 [Calculation of Non-Compliance Event Payments] of Schedule 9 in respect of NCE Points assigned to the Design-Builder pursuant to Part 2 [NCE Points and Default Points] of Schedule 9 in respect of the occurrence of one or more Non-Compliance Events.

“Negotiation Period” has the meaning given in Section 3.2(a) of Schedule 16 [Dispute Resolution Procedure].

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“New Project Infrastructure” at any time means the Infrastructure (including Original Project Infrastructure) situated in, on, under or over any part of the Project Lands during the Access Period for such part of the Project Lands, as such Infrastructure is constructed, installed, altered, upgraded and augmented at that time by the carrying out of the Project Work, including both new Infrastructure and altered, upgraded and/or augmented Infrastructure, but excluding Utilities of Utility Suppliers and Third Party Facilities.

“No Default Interest Rate” at any time means simple interest at an annual rate that is the Prime Rate at that time. If and when the Prime Rate changes, the No Default Interest Rate will automatically change by the same amount at the same time.

“Non-Compliance Event” means:

- (a) a failure by the Design-Builder to meet a specific performance measure described in Appendix 9A [Assignment of NCE Points] to Schedule 9; and
- (b) a failure by the Design-Builder described in Section 1.3(b) of Schedule 9 [Performance Mechanism],

“Non-Compliance Event Payments” means the payments paid or payable by the Design-Builder to the Province pursuant to Section 1.3 [Calculation of Non-Compliance Event Payments] of Schedule 9.

“Nonconformity” means any failure by the Design-Builder to perform any of its obligations under this Agreement in respect of any aspect of the Project Work and which failure is not rectified by the Design-Builder within the applicable time period, if any, stipulated in this Agreement, including but not limited to the following:

- (a) a Non-Compliance Event;
- (b) defective workmanship or repairs not in compliance with the requirements of this Agreement;
- (c) use of materials and/or equipment not in compliance with the requirements of this Agreement;
- (d) deficient, incomplete and/or illegible Quality Documentation;
- (e) deficient, incomplete and/or illegible Records;
- (f) inadequate and/or ineffective defect identification processes;
- (g) failure to achieve documented response time requirements;
- (h) failure to comply with Quality Management System processes;
- (i) failure to complete a Correction of a Nonconformity and, if applicable, failure to take Corrective Action in respect of any Nonconformity, within the required time;
- (j) failure to take Opportunities for Improvement (if applicable) with respect to any potential Nonconformity within the required time;

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- (k) failure to meet the Design-Builder's reporting obligations under this Agreement;
- (l) failure to submit document deliverables, including any updates to such document deliverables, within the applicable timelines stated in this Agreement;
- (m) failure to provide training that the Design-Builder is required to provide in accordance with this Agreement within the applicable timelines stated in this Agreement;
- (n) failure to maintain general site safety, worker health safety, or the health and safety of the public;
- (o) failure to comply with the traffic management requirements in this Agreement; and
- (p) failure to submit complete deliverables that are required to be submitted under:
 - (i) the Review Procedure, resulting in the Province repeatedly endorsing the deliverable "comments" on the resubmitted document deliverable; or
 - (ii) the Consent Procedure, resulting in the Province repeatedly endorsing the deliverable "rejected" (other than a "deemed" rejection under Section 2.1(g) of Schedule 2 [Review Procedure and Consent Procedure] or a rejection on the merits of a submission).

"Nonconformity Report" means a document issued by either the Province or the Design-Builder pursuant to Section 6.1 [Nonconformity Reporting Process] of Schedule 7 detailing the description of an identified Nonconformity and the proposed rectification and action taken or to be taken to deal with such Nonconformity.

"Nonconformity Tracking System" means a system to track Nonconformity Reports issued by the Province or the Design-Builder as set out in Section 6.2 [Nonconformity Report Tracking System] of Schedule 7.

"Non-Default Termination Sum" has the meaning given in Section 1.2 [Calculation of Non-Default Termination Sum] of Schedule 14.

"Non-Foreseeable Contamination" means all Existing Contamination other than Existing Contamination that is disclosed by, or could reasonably have been foreseen from an analysis of, any field test data, investigations, studies and/or reports (for the purposes of this definition, **"Analytical Information"**) contained in the Disclosed Data (excluding any Analytical Information that is located or disclosed in the Data Room solely by way of links to external websites) as at the Financial Submittal Date to the extent contained in any of the following included in the Data Room:

- (a) a Phase I Environmental Site Assessment (Phase I ESA) in accordance with CSA Z768-01;
- (b) a Phase II Environmental Site Assessment (Phase II ESA) in accordance with CSA Z769-00;
- (c) a Stage 1 Preliminary Site Investigation (Stage 1 PSI) in accordance with BC ENV Technical Guidance 10;

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- (d) a Stage 2 Preliminary Site Investigation (Stage 2 PSI) and/or Detailed Site Investigation in accordance with BC ENV Technical Guidance 11;
- (e) a Step A – Screening Projects and/or a Step B – Soil Characterization in accordance with Technical Circular T-03-20;
- (f) any hazardous materials assessments and surveys for buildings or building materials; and/or
- (g) any other field test data, or investigations, studies and/or reports associated with such data, disclosed in the Data Room.

“Non-Foreseeable Species at Risk” means a “species at risk” as defined in the *Species At Risk Act* (Canada) that was not disclosed by, or could not reasonably have been foreseen from an analysis of or interpreting, any studies and/or reports contained in the Disclosed Data as at the Financial Submittal Date.

“Non-Permitted Traffic Disruption Event” means a Traffic Disruption Event described in Section 2.6 [Non-Permitted Traffic Disruption Events] of Part 3 of Schedule 4.

“Non-Police Incident” means an Incident as a result of which the Police do not require closure of all or part of Highway 1.

“Notice of Intention to Terminate” has the meaning given in Section 14.4(a) of this Agreement.

“Notice to Arbitrate” means Schedule A – Notice to Arbitrate of the VanIAC Rules.

“Nuisance Claim” means a Claim for damages or other relief for private nuisance, public nuisance or injurious affection in relation to the Project.

“OHS Regulation” means the *Occupational Health and Safety Regulation* (British Columbia) promulgated pursuant to the WCA.

“180-Day Lookahead Schedule” means a schedule fully detailing all of the Project Work activities to be completed in the first 180 calendar days after the Effective Date, including the activities set out in Section 3.5(a) of Schedule 3 [Design and Construction General Requirements].

“Operation and Maintenance” has the meaning given in Section 6.1 [Responsibility for Operation and Maintenance – General] of Schedule 3.

“Operation and Maintenance Plan” has the meaning given in Section 6.6 [Operation and Maintenance Plan] of Schedule 3.

“Operations/Traffic Manager” means the person appointed by the Design-Builder in accordance with Section 5.2 [Operations/Traffic Manager] of Part 3 of Schedule 4.

“Opportunities for Improvement” means a situation or condition where actions can be taken by the Design-Builder to enhance its performance in the delivery of products or services or to eliminate the causes of a potential Nonconformity or other undesirable situation in order to prevent its occurrence.

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“Original Project Infrastructure” means Infrastructure situated in, on, under or over any parcel of Project Lands at the Handover Date for such parcel, but excludes Utilities of Utility Suppliers and Third Party Facilities.

“Other Lands” means those lands which are not Project Lands and are proposed to be used by the Design-Builder in connection with or to facilitate the delivery of all or any part of the Project Work.

“Overhead” means a Bridge carrying a highway over either a railway or a railway and another facility.

“Owner’s Engineer” means the entity or entities appointed by the Province for such role from time to time

“Participants” has the meaning given in Section 8.8(a) of this Agreement.

“parties” means the parties to this Agreement unless reference is made specifically to another agreement or document.

“Pavement Marking” means a retro-reflective mechanism such as paint used to delineate a profile, such as a road.

“Payment Application” means a payment application in the applicable form set out in Appendix 10C [Forms] to Schedule 10, and includes a Draw Request.

“Payment Milestones” means specific Cost Items, or combinations of Cost Items, from Schedule 10 [Payment], including mobilization and the Specified Cost Items.

“Payment Period” means each calendar month, provided that:

- (a) the first Payment Period will commence on the Effective Date and end on the last day of the calendar month following the calendar month in which the Effective Date occurs; and
- (b) the last Payment Period will end on the last day of the calendar month in which the Total Completion Date occurs.

“Performance Incentive Payments” means, collectively, the payments paid or payable by the Design-Builder to the Province pursuant to Section 1.1 [Calculation of Performance Incentive Payments] of Schedule 9.

“Performance Requirements” has the meaning given in Section 4.6 [Railway Protection Performance Requirements] of Schedule 3.

“Periods Of Active Work” means all periods of time during the Term other than Periods of Inactivity.

“Periods Of Inactivity” means any period of time when Construction is not scheduled to be actively undertaken by the Design-Builder, including nights and weekends.

“Permits” means:

- (a) all permissions, consents, approvals, certificates, permits, licences, statutory agreements and authorizations required from any Governmental Authority; and

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- (b) all necessary permissions, consents, approvals and agreements from any third parties;

needed to carry out the Project and the Project Work in accordance with this Agreement, including all such permissions, consents, approvals, certificates, permits, licences, statutory and other agreements and authorizations required under or pursuant to any other Permit, the Indigenous Requirements, the Requirements of Interested Parties, any Project Site Agreement or any Project Site Encumbrance but for greater certainty does not include a permit granted pursuant to Article 8.400 of the Community Benefits Agreement.

“person” means a legal entity, individual, corporation, body corporate, partnership, joint venture, association, trust, syndicate, limited liability company, pension fund, union or Governmental Authority, and the heirs, executors, administrators and legal representatives of an individual.

“Personal Information” means recorded information about an identifiable individual, other than contact information, collected, created or accessible by the Design-Builder as a result of this Agreement.

“Pit Development Plan” means a technical information report and drawing describing the property boundaries, topographic contours, material types, slope breaks, extraction faces, extraction areas/volumes, benches, access roads, drainage features, stockpiles, restricted areas and other attributes (existing or planned) for a Ministry gravel pit, quarry or borrow source.

“Plant” means plant, goods, products, commodities, materials, supplies, machinery, equipment, apparatus and other tangible property supplied by or on behalf of the Design-Builder:

- (a) intended to form part of the Project Infrastructure or actually forming part of the Project Infrastructure; or
- (b) intended to be incorporated into or permanently affixed to real property forming part of the Project Site or actually incorporated into or permanently affixed to real property forming part of the Project Site.

“Police” means any of:

- (a) the Royal Canadian Mounted Police;
- (b) any other provincial, federal, regional or municipal police force, police department or other law enforcement body and any related governing body having territorial jurisdiction over or in respect of the Project Infrastructure, the Project Site or any part thereof from time to time;
- (c) a member of the Royal Canadian Mounted Police or any other law enforcement body or related governing body referred to in paragraph (b) above; and
- (d) any other official who has or is exercising the powers of a constable or a peace officer while engaged in law enforcement duties, when those duties are exercised in relation to a matter in connection with, or which incidentally affects the construction or operation of, the Project Infrastructure, the Project Site or any part thereof from time to time.

“Police Incident” means any Incident as a result of which the Police require closure of all or part of Highway 1.

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“Ponding” means large puddles of water trapped on a roadway.

“Preliminary Estimate” has the meaning given in Section 2.3 [Preparation of Preliminary Estimate] of Schedule 11.

“Primary Works Milestones” means milestones that represent major Design stage progress, procurement package completion and major Project Work element completion, including the completion of full Structures and traffic switches.

“Prime Contractor” means a “prime contractor” as defined and described in the WCA and the OHS Regulation, respectively.

“Prime Rate” at any time means the variable rate of interest per annum announced from time to time by Canadian Imperial Bank of Commerce (or its successor) as such bank’s “prime” rate then in effect for determining interest rates on Canadian dollar commercial loans made by it in Canada.

“Privacy Course” means the Province’s online privacy and information sharing training course or another course approved by the Province.

“Professional Engineer” means a person who is registered as a professional engineer with the EGBC.

“Profit and Overhead Costs” has the meaning given in Section 2.5(a)(iv) of Schedule 11 [Changes].

“Progress Amount” has the meaning given in Section 3.1(a)(i) of Schedule 10 [Payment].

“Progress Payment” has the meaning given in Section 2.1(a) of Schedule 10 [Payment].

“Progress Payment Holdback” has the meaning given in Section 3.1(a)(iv) of Schedule 10 [Payment].

“Project” has the meaning given in Section 2.1 [The Project] of this Agreement.

“Project Documents” means:

- (a) this Agreement;
- (b) the BCIB-Contractor Agreement;
- (c) when executed by the parties thereto in accordance with this Agreement, each BCIB-Subcontractor Agreement entered into by a Subcontractor in accordance with this Agreement;
- (d) the Bonds; and
- (e) the Material Subcontracts,

and all other documents executed and delivered by or on behalf of the parties pursuant to Section 2.11 [Execution and Delivery of Project Documents] of this Agreement and Schedule 22 [Closing Deliveries].

“Project Facilities” at any time means:

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- (a) the lands and interests in land described in Appendix 8A [Project Lands] to Schedule 8 that, before that time, have been made available to the Design-Builder as provided in Section 2.3 [Commencement of Access to Project Site] of Schedule 8, and excluding any Land Rights (other than fee simple interests) that have been terminated or, in the case of Temporary Lands, expired before that time; and
- (b) the Project Infrastructure at that time.

“Project Infrastructure” at any time means the Original Project Infrastructure at that time and the New Project Infrastructure at that time.

“Project Intellectual Property” means all Intellectual Property, whether complete or not, and all Intellectual Property Rights therein, that is not Background IP or Third Party IP and which is created, brought into existence, acquired, licensed or used by the Design-Builder or any Subcontractor, directly or indirectly, for the Project Intellectual Property Purposes, and Design Data that is prepared by or on behalf of the Design-Builder and/or any of the Design-Builder’s agents, employees or Subcontractors, but specifically excluding Records, Construction Records, Province Provided Materials, Modifications to Province Provided Materials and Design Data provided or made available by or on behalf of the Province.

“Project Intellectual Property Purposes” means the purpose of designing or constructing the New Project Infrastructure or otherwise for the purposes of the Project Work or this Agreement.

“Project Lands” means those lands and interests in lands identified as “Project Lands” on the Project Lands Drawings.

“Project Lands Drawings” means the drawings entitled • attached as Appendix 8C [Project Lands Drawings] to Schedule 8.

“Project Marks” has the meaning given in Section 2.5(c)(ii) of this Agreement.

“Project Requirements” means all standards, specifications, procedures, design criteria, design and professional practice guidelines and other requirements applicable to the Project Work, including the Design, the Construction, and all other design activities and Construction, all as set out in this Agreement as at the Effective Date and as amended, supplemented or replaced from time to time after the Effective Date in accordance with this Agreement, and includes the Design and Construction Requirements.

“Project Schedule” means the schedule of the Key Works Milestone dates for the Project Work as set out in Appendix 3A [Project Schedule] to Schedule 3 as of the Effective Date, and as subsequently amended from time to time in accordance with Section 3.2 [Project Schedule] of Schedule 3.

“Project Site” at any time means any part of the Project Lands and Temporary Lands for which the Access Period is extant as at that time.

“Project Site Agreements” means any and all agreements and instruments setting out terms and conditions on which Land Rights in any parcel of Project Lands or Temporary Lands that are less than a fee simple interest are at any time, on or after the Effective Date, held by the Province or BCTFA.

“Project Site Encumbrances” means any and all Encumbrances from time to time charging, encumbering or affecting any lands comprising part of the Project Site on or after the Effective Date, and any amendments thereto, and including:

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- (a) any such Encumbrances described in Appendix 8A [Project Lands] or Appendix 8B [Project Site Encumbrances] to Schedule 8;
- (b) any such Encumbrances disclosed in the Disclosed Data;
- (c) any such Encumbrances registered in the Land Title Office against title to any lands comprising part of the Project Site;
- (d) any permit issued in replacement for a statutory right of way registered in the Land Title Office against title to any Project Lands that is cancelled on cancellation of a certificate of title in the Land Title Office for any parcel of Project Lands; and
- (e) any such Encumbrance that is a permitted Encumbrance (howsoever described) under or in respect of any agreement or instrument pursuant to which Land Rights in any part of the Project Site are, at any time, on or after the Effective Date, held by the Province or BCTFA.

“Project Work” means all activities of or required of the Design-Builder (and/or any of the Design-Builder’s employees and Subcontractors) in connection with the performance of any obligations of the Design-Builder under this Agreement, and the conduct of all work and operations of the Design-Builder (and/or any of the Design-Builder’s employees and Subcontractors) on or in relation to the Project, the Project Site and the Project Infrastructure including the Design, the Construction and the Reinstatement Work.

“Project Work Defect” means any defect which the Design-Builder is obligated to repair and remediate pursuant to this Agreement and any deficiency, defect or error in the Project Work or (to the extent constructed, installed, altered, upgraded or augmented by the carrying out of the Project Work or to the extent, in order to comply with its obligations under this Agreement, any component thereof ought to have been constructed, installed, altered, upgraded or augmented by the carrying out of the Project Work) the Project Infrastructure or non-compliance with the requirements of this Agreement (including the representations, warranties and covenants in Section 7.1 [Representation, Warranty and Covenant as to Project Work] of Schedule 3).

“Property Damage Insurance Proceeds” has the meaning given in Section 6.17(b) of this Agreement.

“Proposal” means:

- (a) the technical submittal dated March 27, 2024; and
- (b) the financial submittal dated the Financial Submittal Date,

each submitted by the Preferred Proponent (as defined in the Request for Proposals) to the Province in response to the Request for Proposals, together with all amendments and supplements to such technical proposal and financial proposal.

“Proposal Extracts” means the extracts from the Proposal attached as Schedule 25 [Proposal Extracts].

“Proposed Drainage Work” has the meaning given in the CPKC Agreement.

“Protest Action” means any civil disobedience, protest action, riot, civil commotion, blockade or embargo, including any action taken or threatened to be taken, by any person or persons protesting or demonstrating

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against the carrying out of any part of the Project (including the construction of the Project Infrastructure) or against the construction or operation of highways in general, occurring after the Effective Date, but excluding any:

- (a) Indigenous Protest Action;
- (b) Labour Dispute; or
- (c) other strike, lockout, industrial relations dispute or job action by, of or against workers carrying out any part of the Project Work.

“Province” has the meaning given in the Recitals.

“Province Change” means any of the following as initiated by the Province:

- (a) a variation in the design, quality or scope of the New Project Infrastructure, including the Project Work, or in the Construction of the New Project Infrastructure;
- (b) any other variation in the Project Requirements or this Agreement; or
- (c) any other matter which, by the terms of this Agreement, is stated to constitute a Province Change or in respect of which the provisions of Part 2 [Province Changes] of Schedule 11 are stated to be applicable.

“Province Change Notice” has the meaning given in Section 2.1 [Province Change Notice] of Schedule 11.

“Province Default” has the meaning given in Section 13.1 [Province Default].

“Province Indemnified Persons” means:

- (a) the Province’s Representative in its capacity as such under this Agreement;
- (b) BCTFA;
- (c) TI Corp;
- (d) Infrastructure BC;
- (e) any agent or professional advisor (including legal and financial advisors) of the Province or BCTFA (excluding the Design-Builder and any person for whom the Design-Builder is in law responsible); and
- (f) any director, officer or employee of the Province or BCTFA or of any person falling within paragraph (c) of this definition.

“Province Irrecoverable Losses” means:

- (a) any loss of revenue or loss of profit, including loss of revenue from the Project Facilities;

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- (b) any loss of business opportunity or other loss of opportunity, loss of contract, loss of production or loss of goodwill; and
- (c) any consequential or indirect loss or damage of any nature.

“Province Non-Excusable Event” means any of the following:

- (a) any wrongful act, wrongful omission, negligent act, negligent omission or wilful misconduct; or
- (b) any breach in the performance or observance of any of the Province’s obligations under this Agreement,

or by the Province or any person for whom the Province is in law responsible.

“Province Payments” means, collectively, the payments paid or payable by the Province to the Design-Builder pursuant to Part 2 [Payment Obligations of Province] of Schedule 10.

“Province Permits” means the following Permits:

- (a) Occupant Licence to Cut Only (File number L51057) issued under the *Forest Act* (British Columbia) and expiring May 31, 2027.

“Province Provided Materials” means any materials, documents, data (including Design Data provided or made available by or on behalf of the Province and the Disclosed Data) or other information, and any Intellectual Property Rights therein, provided by the Province or its representatives or any other person on behalf of the Province to or for the benefit of the Design-Builder or its representatives or to any Subcontractor or its respective representatives or any Proponent Team Member of the Preferred Proponent (as both such terms are defined in the Request for Proposals) for the Project Intellectual Property Purposes.

“Province’s Representative” means the person appointed by the Province pursuant to Section 3.1(a) of this Agreement, or such replacement or substitute as may be appointed by the Province pursuant to Section 3.1 [Province’s Representative] of this Agreement.

“Province Subsequent Contamination” means any Contamination, other than Existing Contamination, on any part of the Project Infrastructure or the Project Site that was caused by the Province or any person for whom the Province is in law responsible.

“PST” means the sales tax that is imposed pursuant to the *Provincial Sales Tax Act* (British Columbia), and any successor or replacement tax therefor.

“Public Information Plan” means the sub-plan of the Traffic Management Plan described in Section 4.2.3 [Public Information Plan] of Part 3 of Schedule 4.

“Qualified Coordinator” has the meaning given in Section 8.2(b)(i) of Schedule 3 [Design and Construction General Requirements].

“Qualified Governmental Entity” means any of the following:

- (a) the Province or any ministry or department of the Province;

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- (b) any person having the legal capacity, power and authority to become a party to and to perform the obligations of the Province or, as the case may be, BCTFA, under this Agreement, the duties, obligations and liabilities of which are guaranteed and supported by the Province or any ministry or department of the Province;
- (c) the Federal Government provided it has the legal capacity, power and authority to become a party to and to perform the obligations of the Province or, as the case may be, BCTFA, under this Agreement; and
- (d) any person having the legal capacity, power and authority to become a party to and to perform the obligations of the Province or, as the case may be, BCTFA, under this Agreement, the duties, obligations and liabilities of which are guaranteed by the Federal Government or any ministry or department of the Federal Government.

“Qualified Indigenous-sourced Resources” means Indigenous Members, Indigenous Member-owned Equipment and Operators, Indigenous Businesses and Indigenous Joint Ventures.

“Qualified Insurer” means a reputable and duly qualified insurer of good standing in the worldwide insurance market, licensed to transact insurance business in Canada (or, in the case only of the Marine Liability including Protection and Indemnity insurance referenced in Section 1.1(b) of Section 1.1 [Third Party Liability Insurance – Construction] of Schedule 5 [Insurance Requirements], a member of the International Group of Protection and Indemnity Associations), rated A.M. Best A- or better or Standard & Poors Ratings Services, a division of the McGraw-Hill Companies, Inc. (in this definition, **“Standard & Poors”**) A or better, provided that:

- (a) if a rating from A.M. Best Company or Standard & Poors is not available, or if A.M. Best Company or Standard & Poors ceases to provide ratings for insurance companies, then having a rating equivalent to or better than the A.M. Best A- rating or the Standard & Poors A rating as at the Effective Date, from another rating agency of equivalent calibre that provides ratings of equivalent quality, all as agreed upon by the parties or, failing such agreement, as determined by the Dispute Resolution Procedure; or
- (b) if A.M. Best Company changes its A- rating or Standard & Poors changes its A rating, then having a rating equivalent to or better than the A.M. Best A- rating or the Standard & Poors A rating as at the Effective Date, from A.M. Best Company or Standard & Poors or another rating agency of equivalent calibre that provides ratings of equivalent quality, all as agreed upon by the parties or, failing such agreement, as determined by the Dispute Resolution Procedure.

“Qualifying Landslide Repair Costs” means the Landslide Repair Costs incurred by the Design-Builder (and not reimbursed by the Province in accordance with Section 8.10A(b) of this Agreement) in connection with any one or more Landslides caused by or attributable to a single Landslide Event.

“Quality Audit” means a systematic, independent and documented process for obtaining audit evidence and evaluating it objectively to determine the extent to which audit criteria are fulfilled.

“Quality Audit Plans” means the Design-Builder’s audit plans defining the Internal Quality Audits and External Quality Audits that the Design-Builder will perform or cause to be performed on its own processes and the processes of its Subcontractors.

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“Quality Director” means the Key Individual identified by such title in Schedule 21 [Key Individuals], or such replacement as may be designated by the Design-Builder pursuant to Section 3.3 [Key Individuals] of this Agreement.

“Quality Documentation” means all documentation required in accordance with Schedule 7 [Quality Management] which together constitutes and describes the Quality Management System, including the Quality Manual, Quality Management Plans, Work Method Statements and Quality Audit Plans.

“Quality Management Plan” means each detailed quality management plan of the Design-Builder detailing which procedures and associated resources will be applied by whom and when for each aspect of the Project Work required in accordance with this Agreement, including the Design Quality Management Plan and the Construction Quality Management Plan.

“Quality Management System” means the Design-Builder’s management system that establishes the organizational structure, procedures, processes, systems, management plans and resources for determining and achieving the Quality Policy in the performance of the Project Work in accordance with this Agreement.

“Quality Manual” means the Design-Builder’s quality manual meeting the requirements set out in Appendix 7A [Quality Manual] to Schedule 7 and:

- (a) outlining the Quality Management System for all aspects of the Project Work, and for the complete organization (including the Design-Builder and its Subcontractors) involved in performing the Project Work;
- (b) establishing Quality Policy and Quality Objectives; and
- (c) outlining the means by which the Design-Builder will establish, implement, control and continually improve processes to achieve that Quality Policy and those Quality Objectives.

“Quality Objectives” means the objectives related to quality that are measurable and consistent with the Quality Policy and which are to be formally expressed and recorded in the Quality Manual in accordance with Schedule 7 [Quality Management], provided that, alternatively, each Quality Management Plan may have its own Quality Objectives which are directly related to applicable Quality Policy expressed or recorded in the Quality Manual.

“Quality Policy” means the overall intentions and direction of the Design-Builder related to quality applicable to the overall organization (including the Design-Builder and its Subcontractors) involved in performing the Project Work which are to be formally expressed and recorded in the Quality Manual in accordance with Schedule 7 [Quality Management], provided that, alternatively, each Quality Management Plan may have its own Quality Policies which are directly related to applicable Quality Objectives expressed or recorded in the Quality Manual.

“Quality Records” has the meaning given in Section 5.8 [Quality Records] of Schedule 7.

“Queue Clearing Time” means the minimum amount of time that Highway 1 must remain open to clear queued traffic prior to implementing a subsequent Stoppage or Closure, with queued traffic being deemed to be cleared when the last vehicle stopped in the queue has completely cleared the location of the first vehicle in that queue at the start of the Stoppage or Closure location in any one direction.

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“Railway Coordinator” has the meaning given in Section 4.3(a) of Schedule 3 [Design and Construction General Requirements].

“Railway Impact Assessment Report” has the meaning given in Section 4.2(a) of Schedule 3 [Design and Construction General Requirements].

“Railway Lands” means all land, rights of way or other real property that is owned, occupied, leased or licensed by Railways between Glacier National Park and Mount Revelstoke National Park (and any improvements or structures located thereon), including specifically the Railways’ Mountain Subdivision, the Highway-Occupied Railway Lands and the Temporary Licence Areas.

“Railway Operations” means the operations, business and undertaking of CPKC in respect to or in furtherance of Rolling Stock over CPKC’s network of railway lines, as well as the operation of switches, signals, fibre optic, signal and communications systems (including conduits, cables, fibres, towers, associated equipment and facilities).

“Railways” means CPKC.

“Records” has the meaning given in Section 1.1 [Design-Builder Records] of Schedule 17 and includes Construction Records and Quality Records.

“Records Management Protocol” means the protocol developed by the Design-Builder pursuant to Section 1.3 [Records Management Protocol] of Schedule 17.

“Recoverable Expenditures” means expenditures incurred, directly or indirectly, by the Design-Builder, which expenditures:

- (a) relate to an asset that:
 - (i) has a physical existence; and
 - (ii) will generate benefits to be received in future years; and
- (b) are not recurring or routine.

“Reference Concept” means the Reference Concept(s) as provided in the Data Room.

“Reference Documents” means:

- (a) the references, codes, standards, specifications, guidelines, policies, reports, publications, manuals, bulletins and other such documents listed in Part A [General Reference Documents], Part B [Environmental Reference Documents] and Part C [CPKC Reference Documents] of Appendix 1C to this Schedule; and
- (b) all Ministry Technical Bulletins and Circulars,

in each case as amended, supplemented or replaced from time to time in accordance with Section 1.3 [Reference Documents] of this Schedule, except “Reference Documents” does not include any document that is a Law, notwithstanding that the document may be listed in Appendix 1C [Reference Documents].

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“Reinstatement Funds Deficiency” has the meaning given in Section 8.7 [Termination for Damage or Destruction] of this Agreement.

“Reinstatement Plan” has the meaning given in Section 6.15 [Reinstatement Plan] of this Agreement.

“Reinstatement Work” has the meaning given in Section 6.14 [Restoration and Reinstatement of Damage or Destruction] of this Agreement.

“Reject” means an action (including recycling or destroying) to remove a detected Nonconformity from the Project Work or discontinue its use.

“Release” includes any spill, leak, deposit, pumping, pouring, emission, emptying, discharging, injecting, escape, leaching, migration, disposal, dumping or other form of release of a Hazardous Substance, or permitting of any of the foregoing.

“Relevant Authority” means any entity whose authority is or may be required for the carrying out of all or any part of the Project Work or which has any authority or right in respect of the Project, the Project Infrastructure, the Project Site or any part thereof under any Laws and includes Governmental Authorities.

“Relevant Completion Percentage” has the meaning given in Section 3.1(b) of Schedule 10 [Payment].

“Relevant Obligation” has the meaning given in Section 2.2 [Design-Builder Objection] of Schedule 11.

“Relevant Property” means any property that is not within the boundary of the Project Lands that is affected:

- (a) by any Existing Contamination or Province Subsequent Contamination in, on, under or over:
 - (i) any Project Lands; or
 - (ii) any Project Infrastructure; or
- (b) by any migration or leaching of Existing Contamination or Province Subsequent Contamination from:
 - (i) any Project Lands; or
 - (ii) any Project Infrastructure.

“Relevant Third Party” means:

- (a) any person having a legal interest in any Relevant Property who suffers damage, injury or other harm caused by:
 - (i) Existing Contamination or Province Subsequent Contamination in, on, under or over:
 - (A) any Project Lands; or

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- (B) any Project Infrastructure; or
- (ii) migration or leaching of any Existing Contamination or Province Subsequent Contamination into or onto the Relevant Property from:
 - (A) any Project Lands; or
 - (B) any Project Infrastructure; and
- (b) any person who suffers damage, injury or other harm caused by any Existing Contamination or Province Subsequent Contamination in, on or under any Relevant Property from time to time to the extent such Existing Contamination or Province Subsequent Contamination constitutes Existing Contamination or Province Subsequent Contamination which has migrated or leached into or onto the Relevant Property from:
 - (i) any Project Lands; or
 - (ii) any Project Infrastructure,

and “**Relevant Third Party**” includes the Province and BCTFA to the extent they have a legal interest in any Relevant Property.

“**Relief Event**” means any of the following events or circumstances:

- (a) receipt by the Design-Builder of an order or direction by Police or fire, ambulance or other emergency services or other Relevant Authorities, provided such order or direction does not result from the occurrence of another Supervening Event;
- (b) the inability of the Design-Builder to obtain a required Permit or a required renewal or extension of any required Permit due, in each case, to any unreasonable delay by a Relevant Authority, provided that the Design-Builder has made all reasonable efforts to obtain such Permit, renewal or extension, including making complete and timely application and, to the extent reasonably practicable, making modifications to the applicable design and/or construction methods;
- (c) fire, explosion, lightning or storm occurring at the Project Site and directly affecting the Project Site or the Project Infrastructure;
- (d) a Labour Dispute;
- (e) blockade or embargo of the Project Site falling short of a Protest Action or a Force Majeure Event;
- (f) the discovery of any Undisclosed Utilities;
- (g) the existence of any Non-Foreseeable Contamination or ground water, surface water, soil or other materials that in any such case is or contains Non-Foreseeable Contamination; and
- (h) a Landslide, other than:

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- (i) an Excluded Landslide; or
- (ii) a Landslide in respect of which the Landslide Repair Costs the Design-Builder is obligated to bear pursuant to Section 8.10A(b) of this Agreement are less than or equal to \$10,000.

“Repair” means an action that makes a detected Nonconformity acceptable for its intended purpose.

“Repeat Nonconformity” has the meaning given in Section 2.1(d) of Schedule 9 [Performance Mechanism].

“Reports” has the meaning given in Section 2.1 [Required Reports] of Schedule 17.

“Request for Proposals” means the request for proposals in respect of the Project issued by the Province on November 29, 2023, together with all amendments, supplements and addenda thereto.

“Request for Qualifications” means the Request for Qualifications in respect of the Project issued by the Province on August 2, 2023, together with all amendments, supplements and addenda thereto.

“Required Flagging Period” has the meaning given in Section 4.6(f)(ii)(A) of Schedule 3 [Design and Construction General Requirements]

“Required Insurance” means the insurance required to be taken out, maintained in force, paid for and renewed by the Design-Builder in accordance with the provisions of Part 6 [Insurance, Damage and Destruction] of this Agreement and Schedule 5 [Insurance Requirements].

“Requirements of Interested Parties” means the requirements of Interested Parties which are legally enforceable against any or all of the Province, BCTFA and the Design-Builder, whether established pursuant to Laws, the provisions of this Agreement or otherwise:

- (a) as disclosed or described in the Disclosed Data as at the Financial Submittal Date; or
- (b) which, as of the Financial Submittal Date, the Design-Builder otherwise had knowledge of, could have discovered through the exercise of reasonable due diligence, or could reasonably have been anticipated from an analysis of all relevant information available to the Design-Builder (including the Disclosed Data) as at the Financial Submittal Date, having regard to the opportunity afforded the Design-Builder to conduct such due diligence and analysis before the Financial Submittal Date.

“Respect in the Workplace Plan” has the meaning given in Section 4.2 [Respect in the Workplace] of Schedule 13 to this Agreement.

“Responding Party” has the meaning given in Section 4.5 [Written Submissions] of Schedule 16.

“Response Submission” has the meaning given in Section 4.6 [Response to the Written Submissions] of Schedule 16.

“Restricted Detonation” has the meaning given in Section 4.2(a)(viii) of Schedule 3 [Design and Construction General Requirements].

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“Restricted Periods” means those periods of time, as set out in Part 3 [Traffic Management] of Schedule 4 during any Construction for an identified location during which there are restrictions on the Design-Builder’s available Traffic Management measures.

“Retaining Structure” means a Structure designed to resist the horizontal earth pressures of a fill or other material.

“Review Procedure” means the procedure defined in Section 1.1 [Review Procedure] of Schedule 2 whereby submissions for review are made by the Design-Builder to the Province’s Representative.

“Rework” means an action that makes a detected Nonconformity conform to the Project Requirements.

“Risk and Contingency Costs” has the meaning given in Section 2.5(a)(vii) of Schedule 11 [Changes].

“Road Base” means the portion of highway subsurface on which the travelling surface or wearing surface is placed.

“Road Safety Audit” means an audit carried out in accordance with Article 13 [Road Safety Audit] of Part 1 of Schedule 4.

“Road Safety Audit Team” means a group of individuals appointed from time to time in accordance with the Design and Certification Procedure to carry out road safety audits in respect of the Project Work.

“Road Safety Audit Certificate” has the meaning given in Section 4.3 [Road Safety Audit Certificates] of Part 2 of Schedule 4.

“Roadside” means that part of the public highway between the edge of the Shoulder and the highway right-of-way boundary, excluding the Shoulder.

“Rock Excavation Process Progressive Test Procedure Plan” has the meaning given in Section 5.5.3(a) of Part 1 [Design and Construction Requirements] of Schedule 4.

“Rolling Stock” means trains, locomotives, railcars, boxcars, gondolas, railway machinery, vehicles, equipment of every nature, and the contents of same.

“Roadway Pavement Management System” means the Ministry’s corporate pavement asset management application that is used for monitoring the condition of paved highways to support the planning, programming and delivery of the annual resurfacing plan.

“SCR Points” has the meaning given in Section 4.8(g) of Schedule 7 [Quality Management].

“Secondary Works Milestones” means milestones that represent sub-sections of Primary Works Milestones, including certain steps of procurement such as purchase orders awarded, shop drawings completed and delivery to site, and stages of major Project Work elements such as Foundations, Substructures and Superstructures.

“Secwepemc Collective” means the following bands:

- (a) Skwlax te Secwepemculecw (formerly, Little Shuswap Lake Band);

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- (b) Shuswap Band;
- (c) Splatsin;
- (d) Neskonlith Indian Band; and
- (e) Adams Lake Indian Band.

“Seismic Event” means an earthquake and includes snowslide, landslide or other earth movements occurring concurrently with and directly resulting from an earthquake shock, but does not include:

- (a) a Flood; or
- (b) more than one earthquake shock occurring within any 168 consecutive hours, which for the purposes of this Agreement will be deemed to be a single earthquake.

“Senior Management Executives” has the meaning given in Section 3.1 [Negotiations by Senior Management Executives] of Schedule 16.

“Service Life” has the meaning given to that term in CSA-S6-19.

“Shoulder” means the area between the edge of the outside traffic lane and the ditch, including the components of Shoulder top, Shoulder edge and Shoulder side slope, and with the Shoulder edge being the breakpoint between the Shoulder top and the Shoulder side slope.

“Side Protection” means the railing, parapets or barriers of the Bridge Structure.

“Sign” means a lettered board, message or other display which includes all regulatory, warning, guide or informational, advisory, construction and maintenance, route markers and all special or other messages/displays under provincial jurisdiction as defined by the Province but excluding electronically controlled messages/displays, but including the sign face overlay.

“Site and Project Management Costs” has the meaning given in Section 2.5(a)(iii) of Schedule 11 [Changes].

“Site Condition Rating” has the meaning given in Section 4.8(g) of Schedule 7 [Quality Management].

“Site Materials” means all materials, including soil, aggregates, gravel, rocks, coal, minerals or other deposits, excavated, arising or produced in connection with the carrying out of the Project Work on the Project Lands.

“Site Requirements” means:

- (a) the Conditions of Access;
- (b) the Project Site Agreements; and
- (c) the Project Site Encumbrances,

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and any amendments to any of the Site Requirements referred to in any of paragraphs (a) to (c) of this definition.

“Site Superintendent” means a person appointed by the Design-Builder or any Subcontractor to direct the work on the Project Site.

“Specified Access Date” in respect of a parcel of Project Lands means the date specified as the “Specified Access Date” for the parcel in Appendix 8A [Project Lands] to Schedule 8.

“Specified Cost Item” means a Cost Item identified in Appendix 10B [Progress Measurement Principles] to Schedule 10 as one in respect of which a Cost Item Progress Amount is payable only upon 100% completion thereof.

“Species of Concern” means wildlife species that are identified by federal or provincial conservation status rankings as of heightened concern for Indigenous groups, stakeholders (including regulators and scientists) or the public.

“Statement of Progress” has the meaning given in Section 6.1(a) of Schedule 10 [Payment].

“Statutory Authority” means, in defence of a Nuisance Claim, a finding by the court that the Design-Builder has established that, at common law, private and/or public nuisance, as applicable, was an inevitable result of the exercise of statutory authority by the Province and/or BCTFA in the construction of the Project.

“Stoppage” has the meaning given in Table 2.1 [Stoppages and Closures] in Part 3 of Schedule 4.

“Strengthened Earthworks” means materials other than intact bedrock, either placed or *in situ*, the stability of which has been improved by tensile reinforcement acting through interface friction, bearing or other means (such as reinforced soil or soil nailing) or by external support such as gabions, where the slope face is less than or equal to 45 degrees to the horizontal.

“Structural Barrier” is a rigid traffic barrier designed as part of a Structure to the requirements of CSA S6-19.

“Structures” means any structure to be designed, constructed, installed, altered, upgraded or augmented by the Design-Builder as part of the Project Work.

“Subcontract” means any contract entered into by a Subcontractor in relation to the provision, performance or carrying out of any Project Work.

“Subcontractor” means any party (other than the Design-Builder or BCIB) that enters into a contract in relation to the provision, performance or carrying out of any Project Work (including any contract for the supply of any Plant or Construction Plant) with:

- (a) the Design-Builder; or
- (b) any subcontractor of any tier of the Design-Builder.

“Substantial Completion” means the satisfactory completion, in accordance with the Design and Certification Procedure, of all Project Work required in respect of the Project Infrastructure in accordance

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with all Laws, Permits, applicable Project Requirements and other requirements applicable to the Project Infrastructure referred to or set out in this Agreement, including:

- (a) paving of all road surfaces;
- (b) completion of all Structures and drainage systems;
- (c) full operation of all traffic lighting and signalization;
- (d) all layout for permanent Pavement Markings at all intersections and on all major roads;
- (e) installation of all regulatory, warning and guide signing;
- (f) installation of all median and Roadside barrier and other safety devices;
- (g) completion of all Utility Work, other than Utility Work independent of Highway 1;
- (h) all construction staging areas located on the Project Site are in a condition acceptable to the Province; and
- (i) all Debris, superfluous materials and equipment have been removed from the Project Site, and the Project Site has been satisfactorily cleared,

in each case to such extent as is necessary to permit the safe, uninterrupted and unobstructed public use of the Project Infrastructure (subject to Stoppages and Closures in accordance with Part 3 [Traffic Management] of Schedule 4) and in accordance with the Project Requirements and this Agreement, and “**Substantially Completed**”, “**Substantially Completing**” and “**Substantially Complete**” have corresponding meanings.

“**Substantial Completion Date**” means the date on which Substantial Completion occurs, as established by the Certificate of Substantial Completion.

“**Substantial Completion Longstop Date**” means at any time the date that is twelve months after the Substantial Completion Target Date, as such first mentioned date may be extended pursuant to this Agreement.

“**Substantial Completion Target Date**” means November 30, 2027.

“**Substructure**” means the Structure of a Bridge (including piers and abutments) which supports the Superstructure and transfers load to the Foundations.

“**Successful Defence**” means, with respect to a Nuisance Claim, a final judgment of dismissal in favour of the Design-Builder, which dismissal will, in the case of a claim for public nuisance or private nuisance only, be based on Statutory Authority. In no event will the term “Successful Defence” apply to a Nuisance Claim made against the Design-Builder for which settlement has occurred unless:

- (a) as a term of such settlement the plaintiff(s) agree to a dismissal of such Nuisance Claim, which dismissal will, in the case of a claim for public nuisance or private nuisance only, be based on Statutory Authority;

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- (b) the settlement was entered into in good faith by the Design-Builder; and
- (c) the Design-Builder had obtained the prior written consent of the Province, in its discretion, to such settlement.

“Superelevation” means the vertical rise in elevation from the outside edge of a highway surface, to the inside edge on a curving section of highway, and **“Superelevated”** has a corresponding meaning.

“Superstructure” means the Structure of a Bridge (including bearings, girders and Bridge Deck) which is supported by the Substructure.

“Supervening Event” means any of a Compensation Event, Relief Event or Force Majeure Event.

“Supervening Event Notice” has the meaning given in Section 8.2(a) of this Agreement.

“Surveillance Quality Audit” means Quality Audits conducted by or on behalf of the Province as contemplated in Section 4.3.3(a) of Schedule 7 [Quality Management].

“Table of Commitments and Performance Index” means the document attached as Appendix 6A [Table of Commitments and Performance Index] to Schedule 6, and as amended, supplemented or replaced from time to time.

“TAMS” means the Terra Aqua Marine Services Bottling Plant.

“TAMS Event” means the occurrence, established to the satisfaction of the Province, acting reasonably, of interference with the carrying out of the Project Work by the Design-Builder arising as a direct result of the acts or omissions of TAMS owners, owners’ family members and/or employees, and provided that the Design-Builder has complied with all of its relevant obligations under this Agreement.

“Tax” or “Taxes” means, from time to time, all present and future taxes, surtaxes, duties, levies, imposts, rates, fees, deductions, withholdings, assessments and similar impositions imposed, levied, rated, collected, charged, withheld or assessed by or payable to any Governmental Authority (including income, capital (including large corporations), withholding, consumption, sales, use, transfer, goods and services or other value-added, excise, customs, anti-dumping, countervail, net worth, stamp, registration, franchise, payroll, employment, health, education, business, school, property, local improvement, development, education development and occupation taxes, surtaxes, duties, levies, imposts, rates, fees, deductions, withholdings, assessments and similar impositions), and any other payments imposed by any Governmental Authority in lieu of any of the foregoing, together with all fines, interest, penalties on or in respect of, or in lieu of or for non-collection of, those taxes, surtaxes, duties, levies, imposts, rates, payments, assessments, withholdings, dues and other charges, and includes all PST and GST except where stated to the contrary.

“Technical Appraisal Form” means a technical appraisal form substantially in the format attached as Appendix 4B [Sample Contents for a Structural TAF] to Schedule 4, and submitted by the Design-Builder to the Province’s Representative in accordance with the Design and Certification Procedure.

“Temporary Lands” means those lands with an Access Period Expiry Date before the Substantial Completion Date, and identified as “Temporary Lands” on the Project Lands Drawings.

“Temporary Licence Areas” has the meaning given in the CPKC Agreement.

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“Temporary Works” means all works and things of a temporary nature of every kind required in or about the execution and completion of the Project Work.

“Term” means the period commencing on the Effective Date and ending at 11:59 p.m. on the date that is the later of:

- (a) the end of the General Project Work Defect Warranty Period; and
- (b) the completion of any work performed by the Design-Builder to correct any Project Work Defects.

“Termination Date” means the effective date of termination of this Agreement according to its terms.

“Third Party Contractor” means any contractor (excluding the Design-Builder and any person for whom the Design-Builder is in law responsible) that, on behalf of the Province or BCTFA, has carried out or will carry out work after the Effective Date in respect of the Project Infrastructure or otherwise on the Project Site, including any Other Prime Contractor as defined in Section 8.6(a) of Schedule 3 [Design and Construction General Requirements].

“Third Party Facilities” means bus shelters, telephone facilities, kiosks, Utilities and other facilities and associated equipment, plant, materials and apparatus installed and operated or to be installed and operated on the Project Site or areas adjacent to the Project Site by any transit authority, communications provider, Utility Supplier or other third party.

“Third Party IP” means the Intellectual Property specifically identified as Third Party IP in Appendix 1B [Background IP and Third Party IP] to this Schedule, or written notice of which is provided by the Design-Builder to the Province following the Effective Date, that is owned by a person other than the Design-Builder or a Subcontractor, or any Affiliate thereof, and that and is or will be embedded in or used in connection with the Project Intellectual Property, or necessary or desirable to implement, operate or exploit the Project Intellectual Property, but which was not created or brought into existence for any of the Project Intellectual Property Purposes.

“30 Minute Full Closure” has the meaning given in Table 2.1 [Stoppages and Closures] of Part 3 of Schedule 4.

“TI Corp” means Transportation Investment Corporation.

“Total Completion” means the satisfactory full and final completion, in accordance with the Design and Certification Procedure, of all Project Work required in respect of the Design and Construction in accordance with all Laws, Permits, applicable Project Requirements and other requirements referred to or set out in this Agreement, including the completion of the remedy of all Final Deficiency List Deficiencies, and **“Totally Completed”**, **“Totally Completing”** and **“Totally Complete”** have corresponding meanings.

“Total Completion Date” means the date on which Total Completion occurs, as established by the relevant Certificate of Total Completion.

“Total Completion Target Date” means June 20, 2028.

“Traffic Barrier” means a roadside or median barrier designed to redirect errant vehicles and prevent them from leaving the roadway.

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“Traffic Control” means the placement or erection of Signs, signals, Pavement Markings or other installations, and the use of flaggers and other personnel, for the purpose of regulating, warning or guiding traffic.

“Traffic Control Plan” means the sub-plan or sub-plans of the Traffic Management Plan prepared by the Design-Builder in accordance with Section 4.2.1 [Traffic Control Plans] of Part 3 of Schedule 4.

“Traffic Control Supervisor” means a person appointed by the Design-Builder in accordance with Section 5.4 [Traffic Control Supervisors] of Part 3 of Schedule 4.

“Traffic Disruption Event” means a Closure or Stoppage on Highway 1.

“Traffic Engineer” means the person appointed by the Design-Builder in accordance with Section 5.3 [Traffic Engineer] of Part 3 of Schedule 4.

“Traffic Management” means the recognition of the various situations where Traffic Control and guidance are required, and the implementation of effective procedures, including Traffic Control, to safely control and guide traffic with minimal interruptions and delays.

“Traffic Management Auditing” has the meaning given in Section 4.8(c) of Schedule 7 [Quality Management].

“Traffic Management Criteria” has the meaning given in Section 4.8(e) of Schedule 7 [Quality Management].

“Traffic Management Payments” means the payments to be made by the Design-Builder to the Province pursuant to Section 1.2 [Calculation of Traffic Management Payments] of Schedule 9.

“Traffic Management Plan” means the plan prepared by the Design-Builder in accordance with Article 4 [Traffic Management Plan] of Part 3 of Schedule 4.

“Traffic Site” means the cumulative and maximum extent and boundaries of the areas affected by Traffic Management implemented by the Design-Builder for the purposes of the Construction, as delineated and modified in the Traffic Control Plans.

“Travelled Lane” means the surface of a highway:

- (a) between the painted Shoulder line on one side and the painted Shoulder line on the other side; or
- (b) in the absence of Shoulder lines, from asphalt edge to asphalt edge; or
- (c) in the absence of hard surfacing, as defined for a dirt and gravel highway,

and includes the trafficable portions of rest areas, pullout areas, parking areas, weigh scale areas, and any other vehicle-accessible portions within the highway right-of-way.

“Trespassers” has the meaning given in Section 8.8(a) of this Agreement.

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“**2 Hour Full Closure**” has the meaning given in Table 2.1 [Stoppages and Closures] of Part 3 of Schedule 4.

“**Undisclosed Utilities**” means any Utilities (other than Utility Service Connections) located underground on the Project Site and the Project Infrastructure (and, for greater certainty, not visible on or above ground), the existence of which:

- (a) was either not disclosed, or is discovered more than two metres in any horizontal direction from the location disclosed, to the Design-Builder in the Disclosed Data as at the Financial Submittal Date; and
- (b) the Design-Builder does not otherwise have knowledge of, could not have discovered through the exercise of reasonable due diligence prior to the Financial Submittal Date, and could not reasonably have been anticipated from any analysis of all relevant information available to the Design-Builder (including the Disclosed Data) as at the Financial Submittal Date, having regard to the opportunity afforded the Design-Builder to conduct such due diligence and analysis before the Financial Submittal Date,

and excluding:

- (c) any Utilities of which any component (including any associated lines, wires, poles, catch basins, or related or ancillary infrastructure) was visible as at the Financial Submittal Date;
- (d) any Utilities that have been abandoned; and
- (e) any Utilities the size, composition, materials or other features of which are different from that shown or described in the Disclosed Data or other information available to the Design-Builder as at the Financial Submittal Date, provided that such Utilities are discovered to be two metres horizontally or less from the locations provided in the Disclosed Data.

“**Use As Is**” means that no action to eliminate a detected Nonconformity is needed.

“**Utilities**” means privately, publicly or cooperatively owned lines, facilities or systems for transmitting or distributing electricity, data, communications, gas, oil and petroleum products, water, storm water and sewage or other similar commodity which serve the public directly or indirectly, including underground, surface and overhead facilities as well as facilities which use common poles, ducts or conduits on a shared basis, all related and ancillary Infrastructure and all Utility Service Connections.

“**Utility Agreements**” means all agreements entered into by the Province or BCTFA with a Utility Supplier in connection with the construction, installation, operation, repair, preservation, relocation and/or maintenance of Utilities in, on, under, over or adjacent to the Project Infrastructure and the Project Site or any part thereof, and includes any site or other permits issued thereunder or pursuant thereto, all as amended, supplemented or replaced from time to time, and including:

- (a) the Protocol Agreement between BC Hydro and the Province dated December 13, 2018; and
- (b) the Protocol Agreement between BC Tel and the Ministry of Transportation and Highways dated January 26, 1996.

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“Utility Service Connections” means:

- (a) the direct connections to the point of the utility mains (including to transmission or distribution mains) that specifically provide utility service to privately-owned properties, which include any properties owned in fee simple by a public agency or road dedication where a public agency has an agreement to operate a service within such road dedication; and
- (b) any private utilities within such privately-owned properties, which include any properties owned in fee simple by a public agency or road dedication where a public agency has an agreement to operate a service within such road dedication.

“Utility Supplier” means the owner of any Utility.

“Utility Work” means temporary and permanent installation, protection, removal and relocation works relating to Utilities carried out in connection with or as part of the Project Work and related and ancillary works.

“Value Engineering Proposal” has the meaning given in Section 3.1 [Notice of Value Engineering Proposal] of Schedule 11.

“VanIAC” means the Vancouver International Arbitration Centre.

“VanIAC Rules” means VanIAC’s applicable Arbitration rules.

“Vesting Certificate” means a certificate in the form of Appendix 10D [Form of Vesting Certificate] to Schedule 10, which demonstrates that title in certain machinery or equipment, to which the certificate relates, have vested in the Province.

“Warranty Costs” has the meaning given in Section 2.5(a)(vi) of Schedule 11 [Changes].

“Warranty Holdback” has the meaning given in Section 4.2(a) of Schedule 10 [Payment].

“Website” has the meaning given in Section 2.1(i)(ii) of Schedule 15 [Communications and Engagement].

“Wildlife Ramp” has the meaning given in Section 3.5(a) of Part 1 [Design and Construction Requirements] of Schedule 4.

“Winter Maintenance Contractor” has the meaning given in Section 6.2(a) of Schedule 3 [Design and Construction General Requirements].

“Witness Point” means a mandatory verification point at which the specific work will be inspected or witnessed as defined by the Inspection and Testing Plan.

“Workers’ Compensation Board” means the Board defined in and continued under the WCA.

“Work Method Statements” means written management plans for critical and complex activities, processes or plans where the absence of written instructions could have a negative impact on worker safety, quality, consistency, cost or schedule, which constitute commitments of the Design-Builder and describe how work will be performed, inspected or tested and will include a checklist to confirm that work is being

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conducted in accordance with the appropriate standard, code, specification or plan in accordance with this Agreement.

“**Works Schedule**” means the detailed schedule for design, investigation, construction, testing, commissioning and related activities within the Design and Construction, to be submitted by the Design-Builder pursuant to, and as subsequently amended from time to time in accordance with, Section 3.3 [Works Schedule] of Schedule 3, and includes:

- (a) the Critical Path Schedule;
- (b) the Narrative Report; and
- (c) a detailed time-distance schedule,

all as set out in Appendix 3D [Works Schedule Requirements] to Schedule 3.

1.2 Acronym List

In this Agreement, including the Recitals and Schedules hereto, unless otherwise specified or the context otherwise requires, the following acronyms have the following meanings:

“**AASHTO**” means American Association of State Highway and Transportation Officials.

“**AQP**” means Appropriately Qualified Professional.

“**ASTM**” means the American Society for Testing and Materials.

“**BMIS**” means Bridge Management Information System.

“**BMP**” means Best Management Practices.

“**CASL**” means *An Act to promote the efficiency and adaptability of the Canadian economy by regulating certain activities that discourage reliance on electronic means of carrying out commercial activities, and to amend the Canadian Radio-television and Telecommunications Commission Act, the Competition Act, the Personal Information Protection and Electronic Documents Act and the Telecommunications Act* (Canada).

“**CHRIS**” means Corporate Highway & Resource Information System.

“**CSA**” means the Canadian Standards Association.

“**DFO**” means the former Department of Fisheries and Oceans of the Federal Government, subsequently renamed Fisheries and Oceans Canada, but still commonly referenced and recognized by its former acronym.

“**DMS**” means Dynamic Message Sign.

“**EGBC**” means the Association of Professional Engineers and Geoscientists of British Columbia, also known as Engineers and Geoscientists BC.

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“**FOIPPA**” means the *Freedom of Information and Protection of Privacy Act* (British Columbia).

“**FRP**” means fibre reinforced polymer.

“**ITP**” means Inspection and Testing Plan.

“**LKI**” means Landmark Kilometre Inventory.

“**MSE**” means mechanically stabilized earth;

“**NCE**” means Non-Compliance Event.

“**QMS**” means Quality Management System.

“**RPMS**” means Roadway Pavement Management System.

“**RWIS**” means the Road Weather Information System that provides real time reporting of pavement and weather information.

“**SLAT**” means a Lane Closure.

“**TAF**” means Technical Appraisal Form.

“**TCP**” means Traffic Control Plan.

“**TMP**” means Traffic Management Plan.

“**WCA**” means the *Workers Compensation Act* (British Columbia).

“**WMS**” means Work Method Statement.

1.3 Reference Documents

- (a) The Reference Documents set out in paragraph (a) of the definition thereof in Section 1.1 [Definitions] of this Schedule are referenced in this Agreement by the “Short Form” identified on Appendix 1C [Reference Documents] to this Schedule.
- (b) Subject to Section 1.3(c) of this Schedule, if a provision of this Agreement refers to a particular edition of a Reference Document or a Reference Document with a specified date, the specified edition of the Reference Document or the Reference Document with the specified date (as applicable) will apply. If a provision of this Agreement refers to a Reference Document without specifying a particular edition or date, the latest edition of that Reference Document as at the Financial Submittal Date will apply.
- (c) If a Reference Document is amended, supplemented or replaced after the Financial Submittal Date, then the Design-Builder will give written notice to the Province of such change and, if after receiving such notice, the Province decides:
 - (i) that it requires compliance with the amended, supplemented or replaced Reference Document (as applicable) rather than the edition specified in this Agreement at the

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Financial Submittal Date, then, to the extent such compliance impacts the Project Work and would not have otherwise been taken into account by compliance with Good Industry Practice, the Province will issue a Province Change to require compliance with such amendment, supplement or replacement of or to such Reference Document and the provisions of Part 7 [Province Changes and Value Engineering Proposals] of this Agreement will apply accordingly; or

- (ii) that it does not require compliance with the amended, supplemented or replaced Reference Document (as applicable), the Design-Builder will continue to comply with the edition applicable at the Financial Submittal Date.

PART 2 INTERPRETATION

This Agreement will be interpreted according to the following provisions, except to the extent the context or the express provisions of this Agreement otherwise require:

2.1 Waiver of *Contra Proferentum*

The parties waive the application of any rule of law which otherwise would be applicable in connection with the construction of this Agreement that ambiguous or conflicting terms or provisions should be construed against the party who (or whose counsel) prepared the executed agreement or any earlier draft of the same, or against the party benefiting from such terms or provisions.

2.2 Headings

The table of contents, headings and sub-headings, and references to them, in this Agreement, are for convenience of reference only, do not constitute a part of this Agreement, and will not be taken into consideration in the interpretation or construction of, or affect the meaning of, this Agreement.

2.3 Cross References

All references to Parts, Articles, Sections, paragraphs and Schedules are references to the relevant Parts, Articles, Sections, paragraphs and Schedules of this Agreement unless reference is made to another Agreement. Without limiting the generality of the foregoing, reference in this Agreement, or in a Schedule of this Agreement, to a Part, Article or Section (whether or not with specific reference to “this Agreement”) refers to the applicable Part, Article or Section in this Agreement (excluding the Schedules), unless reference to a Part, Article, Section or paragraph of a particular Schedule to this Agreement is indicated or the context otherwise requires.

2.4 Internal References

The words “**herein**”, “**hereof**” and “**hereunder**” and other words of similar import refer to this Agreement as a whole and not to any particular Part, Article, Section, paragraph or Schedule of this Agreement.

2.5 Reference to Statutes

Unless a reference to a statute or statutory provisions (including any subordinate legislation) refers expressly to a statute or statutory provision in effect at a particular time (in which case the reference is to

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the statute or statutory provision in effect at that time), references to any statute or statutory provision (including any subordinate legislation) include any statute or statutory provision which amends, extends, consolidates or replaces the same or which has been amended, extended, consolidated or replaced by the same. References to any statute or statutory provisions include any applicable orders, regulations, bylaws, ordinances, orders, codes of practice, instruments or other subordinate legislation made under the relevant statute or statutory provision.

2.6 Reference to Statutory or Public Duties or Functions

References to statutory or public duties or functions are references to such duties or functions (including powers and discretions) from time to time and include any common law duties and functions (including powers and discretions).

2.7 Reference to Right or Duty of a Governmental Body

A reference to any right, power, obligation, duty or responsibility of any Governmental Authority or of any board or commission of any Governmental Authority is to the Governmental Authority or the board or commission that, pursuant to Laws, has such right, power, obligation or responsibility at the relevant time.

2.8 Time

- (a) All references to time of day are references to Pacific Standard time or Pacific Daylight Saving time, as the case may be, in Vancouver, British Columbia.
- (b) If the time for doing an act falls or expires on a day that is not a Business Day, the time for doing such act will be extended to the next Business Day.

2.9 Time of the Essence

Time is of the essence of this Agreement, and remains of the essence in respect of any extension of time given.

2.10 Number

Words, including “they”, “them” and “their”, which may import the plural, include the singular and vice versa.

2.11 Gender

Words which may import gender are interpreted as gender neutral.

2.12 Reference to Office of a Governmental Body

Each reference to a minister, ministry, office, branch, agency, board, commission or similar body of any Governmental Authority will be deemed to be a reference to any successor or replacement in function of such minister, ministry, office, branch, agency, board, commission or similar body.

2.13 Reference to Public Organizations

Any reference to a public organization will be deemed to include a reference to any successor(s) to such public organization or any organization or entity or organizations or entities which has or have taken over the functions or responsibilities of such public organization.

2.14 Persons for Whom the Design-Builder is Responsible

A reference to a person or persons for whom the Design-Builder is in law responsible means and is limited to: the Key Individuals; the Design-Builder's Contracting Affiliates; officers, employees, consultants, agents, professional advisors (including legal and financial advisors) and invitees; any person over whom the Design-Builder could reasonably be expected to exercise control and the Subcontractors and their respective officers, employees, consultants and agents; and any other person for whom the Design-Builder is responsible in law or by the terms of this Agreement, but excludes BCIB. For certainty, notwithstanding any arrangement with respect to Employees (as such term is defined in the BCIB-Contractor Agreement and each BCIB-Subcontractor Agreement), as between the Province and the Design-Builder, for the purposes of this Agreement only, all such Employees will be deemed to be "persons for whom the Design-Builder is in law responsible".

2.15 Persons for Whom the Province is Responsible

A reference to a person or persons for whom the Province is in law responsible means and is limited to:

- (a) BCTFA, but only in respect of performing functions in relation to the Project, the Project Site, the Project Infrastructure or this Agreement;
- (b) the Province's Representative in its capacity as such under this Agreement; and
- (c) employees, agents, professional advisors (including legal and financial advisors) and contractors of the Province or BCTFA (which may include Third Party Contractors) in all cases only while performing functions of, or on behalf of, the Province or BCTFA in relation to the Project, the Project Site, the Project Infrastructure or this Agreement;

but excludes the Design-Builder and any person for whom the Design-Builder is in law responsible pursuant to Section 2.14 [Persons for Whom the Design-Builder is Responsible] of this Schedule.

2.16 Reference to Legal Entity

Any reference to a corporate or other legal entity includes and is also a reference to any entity that is a successor to such entity.

2.17 Currency

All monetary amounts are expressed in Canadian dollars and all amounts to be calculated and paid pursuant to this Agreement are to be calculated and paid in Canadian dollars.

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2.18 Costs

Without limiting Section 9.10 [Costs and Expenses] of this Agreement, whenever this Agreement obliges the Province to pay any amount to the Design-Builder in respect of any costs, expenses, fees, charges, liabilities, losses, claims or other sums incurred by the Design-Builder:

- (a) such obligation will be construed as applying only to so much of such sums as have been properly incurred on an arm's length commercial basis or, where not incurred on an arm's length commercial basis (including when the payment is made to an Affiliate of the Design-Builder), so much of them as are proper and reasonable; and
- (b) the Design-Builder will, when requested by the Province, provide reasonable supporting evidence of such costs, expenses, fees, charges, liabilities, losses, claims or other sums.

2.19 Knowledge of the Province

The Province will not be imputed with knowledge of any fact, matter or thing unless that fact, matter or thing is within the actual knowledge of the Province's Representative or within the actual knowledge of those of the Province's employees and agents who have responsibilities in connection with the conduct of the Project or the Project Work.

2.20 Knowledge of the Design-Builder

Without limiting the extent of its actual knowledge, the Design-Builder will for all purposes of this Agreement be deemed to have such knowledge in respect of the Project and the Project Work as is held (or ought reasonably to be held) by all persons involved in carrying out the Project and the Project Work including the Design-Builder, any Subcontractors, and their respective officers, employees, consultants and agents, and any Proponent Team Member of the Preferred Proponent (as such terms are defined in the Request for Proposals).

2.21 Performance to Standards

Any requirement for any thing or action to be "in accordance with", "in conformity with" or "in compliance with" any standard, code, criteria, specification, guideline or other requirement or stipulation, and any requirement expressed using words or phrases of similar import, means that such thing or action is to exceed or at least equal that standard, code, criteria, specification, guideline or other requirement or stipulation.

2.22 Words of Inclusion; Mandatory Provisions

- (a) The words "**include**", "**includes**" or "**including**" are to be construed as meaning "include without limitation", "includes without limitation" and "including without limitation", respectively, and the words following "include", "includes" and "including" will not be considered to set forth an exhaustive list.
- (b) The words "**will**" and "**shall**" are synonymous with each other and used interchangeably herein to designate a mandatory requirement or obligation, as applicable.

2.23 General Meanings Not Restricted

General words are not given a restrictive meaning:

- (a) if they are introduced by the word “other”, by reason of the fact that they are preceded by words indicating a particular class of act, matter or thing; or
- (b) by reason of the fact that they are followed by particular examples intended to be embraced by those general words.

2.24 Trade Meanings

Unless otherwise defined in this Agreement or the context otherwise requires, words or abbreviations which have well-known and accepted trade meanings are used in accordance with those meanings.

2.25 Decisions of the Province

Where in this Agreement:

- (a) the Province, BCTFA, the Minister or the Province’s Representative is entitled to make a decision or determination, or to grant or withhold any consent, approval or acceptance or to exercise any judgement (in this Section 2.25, any such decision, determination, grant, withholding or exercise is referred to as an “**Province Decision**”), “in its discretion” or “in the discretion” of the Province, BCTFA, the Minister or the Province’s Representative, as the case may be, or words of similar import; or
- (b) the Province, BCTFA, the Minister or the Province’s Representative is entitled to make a Province Decision and there is neither express language conferring discretion as contemplated by Section 2.25(a) of this Schedule nor express language requiring the Province, BCTFA, the Minister or the Province’s Representative, as the case may be, to act reasonably or not to act unreasonably,

the Province, BCTFA, the Minister or the Province’s Representative, as the case may be, will be entitled to make the relevant Province Decision in its sole, absolute, unfettered and subjective discretion.

2.26 All Reasonable Efforts

- (a) The expression “**all reasonable efforts**”, when used in connection with an obligation of the Design-Builder, means taking all reasonable steps to achieve the objective and to perform the obligation, including doing all that can reasonably be done in the circumstances taking into account the Design-Builder’s obligations hereunder to mitigate delays and additional costs to the Province and BCTFA, and in any event taking no less steps and efforts than those that would be taken by a reasonable and prudent person in comparable circumstances but where the whole of the benefit of the obligation and where all the results of taking such steps and efforts accrued solely to that person’s own benefit.
- (b) The expression “**all reasonable efforts**”, when used in connection with an obligation of the Province or BCTFA, means taking all reasonable steps to achieve the objective and to perform the obligation, including doing all that can reasonably be done in the

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circumstances taking into account the obligations of the Province or BCTFA, as the case may be, hereunder to mitigate delays and additional costs to the Design-Builder, and in any event taking no less steps and efforts than those that would be taken by a reasonable and prudent person in comparable circumstances but where the whole of the benefit of the obligation and where all the results of taking such steps and efforts accrued solely to that person's own benefit, provided that the foregoing will not require the Province or BCTFA to:

- (i) take any action which is contrary to the public interest or decline, refrain or abstain from taking any action which is in the public interest, as determined by the Province or BCTFA in its discretion;
- (ii) exercise or refrain, decline or abstain from exercising any statutory or administrative law power, authority or discretion; or
- (iii) undertake any mitigation measure that might be available arising out of its status as the Crown or as a legislative or public body that would not normally be available to a private commercial party.

2.27 Accounting Terms

All accounting and financial terms used herein are, unless otherwise indicated, to be interpreted and applied in accordance with GAAP, consistently applied.

2.28 Severability

Each provision of this Agreement will be valid and enforceable to the fullest extent permitted by law. If any provision of this Agreement is held to be invalid, unenforceable or illegal to any extent, such provision may be severed and such invalidity, unenforceability or illegality will not prejudice or affect the validity, enforceability and legality of the remaining provisions of this Agreement. If any such provision of this Agreement is held to be invalid, unenforceable or illegal, the parties will promptly endeavour in good faith to negotiate new provisions to eliminate such invalidity, unenforceability or illegality and to restore this Agreement as nearly as possible to its original intent and effect.

2.29 No Derogation from Laws

No provision of this Agreement is intended to derogate from or be inconsistent with or in conflict with any Laws and no provision of this Agreement will be interpreted in a manner as to result in any such derogation, inconsistency or conflict and, if any such provision is found by a court of competent jurisdiction to be inconsistent with or in conflict with any Laws, the applicable Laws will prevail and such provision will be read down or rendered inoperative (either generally or in such particular situation, as appropriate), to the extent of such conflict or inconsistency, as the case may be and, if any such provision is found by a court of competent jurisdiction to derogate from any Laws, then such provision will be read down or rendered inoperative (either generally or in such particular situation, as appropriate) to the extent of the derogation.

2.30 Principles for Resolving Conflicts within Documents

In the case of any conflict, ambiguity or inconsistency between or among any of the provisions within this Agreement (excluding the Schedules) or any of the Schedules hereto, including any conflict,

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ambiguity or inconsistency between or among any of the provisions within Schedule 4 [Design and Construction Technical Requirements] or any of the Project Requirements, the following principles will apply unless the matter is expressly addressed elsewhere in this Agreement:

- (a) in the case of any conflict, ambiguity or inconsistency relating to the quality, manner or method of performing the Project Work, the provisions (including any part of the Proposal Extracts) establishing the higher quality, manner or method of performing the Project Work, using the more stringent standards, or the broader scope of the Project Work will prevail, with the intent that the provisions which produce the higher quality with the higher levels of safety, durability, performance and service will govern;
- (b) in the case of any conflict, ambiguity or inconsistency relating to the application of any codes and standards referred to in the Project Requirements, and to the extent such conflict, ambiguity or inconsistency is not resolved in accordance with an order of priority specified in this Agreement, the Design-Builder will promptly provide the Province's Representative with written notice including full particulars of the conflict, ambiguity or inconsistency and the conflict, ambiguity or inconsistency will be resolved in accordance with a written direction given by the Province to the Design-Builder, which will be given as soon as reasonably practicable after receipt by the Province's Representative of such notice from the Design-Builder;
- (c) in the case of any conflict, ambiguity or inconsistency between or among the Proposal Extracts and any other provision of this Agreement, the provision of this Agreement or the relevant part or parts thereof will prevail unless in the discretion of the Province and by written direction given by the Province to the Design-Builder (which direction will be given as soon as reasonably practicable after, and in any event within 15 Business Days after, the Province's Representative receives written notice of such conflict, ambiguity or inconsistency from the Design-Builder) the Province confirms that the relevant Proposal Extract or the relevant part or parts thereof will prevail; and
- (d) in the case of any Dispute regarding any other conflict, ambiguity or inconsistency, the Dispute will be resolved in accordance with the Dispute Resolution Procedure applying accepted rules of contract interpretation.

2.31 No Additional Payments or Time

The Design-Builder will not be entitled to any additional payment, reduction in any payment to be made by the Design-Builder or extension of time under this Agreement as a result of the existence of any conflict, ambiguity or inconsistency referred to in Section 2.30 [Principles for Resolving Conflicts within Documents] of this Schedule or as a result of giving effect to any resolution of any such conflict, ambiguity or inconsistency pursuant to Section 2.30 [Principles for Resolving Conflicts within Documents] of this Schedule (whether by the terms of Section 2.30 [Principles for Resolving Conflicts within Documents] of this Schedule, by agreement between the Province and the Design-Builder, or pursuant to the Dispute Resolution Procedure).

2.32 [Not Used]

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APPENDIX 1A
FACTUAL GEOTECHNICAL DATA

Data Room Category Number	Author	Report Title and Date	Factual Geotechnical Data
0540	Thurber Engineering Ltd.	“Highway 1 – Illecillewaet Four Laning and Brake Check Improvements - Geotechnical Investigation Interim Results”, Report to BC Ministry of Transportation & Infrastructure, November 1, 2019.	The data and test results, but not the interpretations and analyses thereof, are a reasonable representation of the conditions encountered at the specific locations on the specific dates, subject to all limitations, testing methods, and standards as stated in the report. Exclusions to Factual Geotechnical Data 1. Any information identified as estimates or interpretation. 2. Graphic soil symbol and rock symbol column on logs. 3. Interpretations of material origin (e.g. Fill, Till, Colluvium). 4. Section 1. of the report. 5. Drawing 26979-1 test hole location drawing.
0635	Golder Associates Ltd.	“Jumping Creek to MacDonald Snow Shed Geotechnical Data Report”, Report to BC Ministry of Transportation & Infrastructure, November 15, 2018. (2018 Investigation)	The data and test results, but not the interpretations and analyses thereof, are a reasonable representation of the conditions encountered at the specific locations on the specific dates, subject to all limitations, testing methods, and standards as stated in the report. Exclusions to Factual Geotechnical Data 1. Any information identified as estimates or interpretation. 2. Graphic soil symbol and rock symbol column on logs. 3. Interpretations of material origin (e.g. Fill, Till, Colluvium). 4. Table 2: Summary of Field Mapped Rock Cuts (entirely) 5. Table 5: Joint set orientation by Design Sector (entirely) 6. Dwg. No. 1897081-3000-3000-02 and Dwg. No. 1897081-3000-3000-03: base plans and any preliminary design alignments information. 7. Annex C-1: Interpretation of televiewer geophysical surveys (e.g. orientations of interpreted features). 8. Annex D-1: All columns except ‘Dip’ and ‘Corrected Dip Direction’. 9. Annex D-2 (entirely). 10. Annex D-3: stereonet set window interpretations and interpreted data from LiDAR and televiewer of test hole. 11. Annex E-2: interpretation of peak stresses from Direct Shear Strength Testing.

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Appendix 1A: Factual Geotechnical Data

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Data Room Category Number	Author	Report Title and Date	Factual Geotechnical Data
0635	Thurber Engineering Ltd.	“Highway 1 Jumping Creek to MacDonald Geotechnical Investigation Data Report”, Report to BC Ministry of Transportation & Infrastructure, July 16, 2020. (2019 Investigation)	The data and test results, but not the interpretations and analyses thereof, are a reasonable representation of the conditions encountered at the specific locations on the specific dates, subject to all limitations, testing methods, and standards as stated in the report. Exclusions to Factual Geotechnical Data 1. Any information identified as estimates or interpretation. 2. Graphic soil symbol and rock symbol column on logs. 3. Interpretations of material origin (e.g. Fill, Till, Colluvium). 4. Table 4: All columns except ‘Dip’ and ‘Measured Dip Direction’. 5. Appendix A: test hole location drawings (sheets 1 to 4): base plans and any preliminary design alignments information. 6. Appendix F: rock UCS estimated from Point Load Test results. 7. Appendix G: seismic refraction and MASW interpretation lines, velocity contours and comments. 8. Appendix G: Interpretation of televiewer geophysical surveys (e.g. orientations of interpreted features).
0635	Thurber Engineering Ltd.	“Highway 1 Jumping Creek to MacDonald Fall 2020 Geotechnical Investigation Data Report”, Report to BC Ministry of Transportation & Infrastructure, May 5, 2021. (2020 Investigation)	The data and test results, but not the interpretations and analyses thereof, are a reasonable representation of the conditions encountered at the specific locations on the specific dates, subject to all limitations, testing methods, and standards as stated in the report. Exclusions to Factual Geotechnical Data 1. Any information identified as estimates or interpretation. 2. Graphic soil symbol and rock symbol column on logs. 3. Interpretations of material origin (e.g. Fill, Till, Colluvium). 4. Appendix A: test hole location drawings (Sheets 1 to 4): base plans and any preliminary design alignments information. 5. Appendix F: rock UCS estimated from Point Load Test results and ‘K*’ column. 6. Appendix G: interpreted peak and residual stresses and strength parameters from direct shear tests. 7. Appendix H: All columns except ‘Dip’ and ‘Mag Dip Direction’. 8. Appendix I: Interpretation of televiewer geophysical surveys (e.g. orientations of interpreted features).

SCHEDULE 1: DEFINITIONS AND INTERPRETATION

Appendix 1A: Factual Geotechnical Data

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Data Room Category Number	Author	Report Title and Date	Factual Geotechnical Data
0635	Thurber Engineering Ltd.	“Highway 1 Jumping Creek to MacDonald 2021 Geotechnical Investigation Data Report”, Report to BC Ministry of Transportation & Infrastructure, April 4, 2022. (2021 Investigation).	The data and test results, but not the interpretations and analyses thereof, are a reasonable representation of the conditions encountered at the specific locations on the specific dates, subject to all limitations, testing methods, and standards as stated in the report. Exclusions to Factual Data 1. Any information identified as estimates or interpretation. 2. Graphic soil symbol and rock symbol column on logs. 3. Interpretations of material origin (e.g. Fill, Till, Colluvium). 4. Appendix A test hole location drawings (Sheets 1 to 4): base plans and any preliminary design alignments information. 5. Appendix F: rock UCS estimated from Point Load Test results and ‘K*’ column. 6. Appendix H: All columns except ‘Dip’ and ‘Mag Dip Direction’. 7. Appendix I: Interpretation of televiwer geophysical surveys (e.g. orientations of interpreted features).
0635	Thurber Engineering Ltd.	“Highway 1 Jumping Creek to MacDonald 2022 Geotechnical Data Report”, Report to BC Ministry of Transportation & Infrastructure, July 25, 2022. (2022 Investigation).	The data and test results, but not the interpretations and analyses thereof, are a reasonable representation of the conditions encountered at the specific locations on the specific dates, subject to all limitations, testing methods, and standards as stated in the report. Exclusions to Factual Data 1. Any information identified as estimates or interpretation. 2. Appendix A test hole location drawings (Sheets 1 to 4): base plans and any preliminary design alignments information.
0635	Thurber Engineering Ltd.	“Highway 1 Jumping Creek to MacDonald 2022 Groundwater Monitoring Summary”, Report to BC Ministry of Transportation & Infrastructure, July 22, 2022.	The data and test results, but not the interpretations and analyses thereof, are a reasonable representation of the conditions encountered at the specific locations on the specific dates, subject to all limitations, testing methods, and standards as stated in the report. Exclusions to Factual Data 1. Any information identified as estimates or interpretation. 2. Appendix A test hole location drawings (Sheets 1 to 4): base plans and any preliminary design alignments information. 3. Appendix C Figure 1 plots of piezometric data.

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Data Room Category Number	Author	Report Title and Date	Factual Geotechnical Data
0635	Thurber Engineering Ltd.	“Highway 1 Jumping Creek to MacDonald 2023 Groundwater Monitoring Summary”, Report to BC Ministry of Transportation & Infrastructure, September 5, 2023.	The data and test results, but not the interpretations and analyses thereof, are a reasonable representation of the conditions encountered at the specific locations on the specific dates, subject to all limitations, testing methods, and standards as stated in the report. Exclusions to Factual Data 1. Any information identified as estimates or interpretation. 2. Appendix A test hole location drawings (Sheets 1 to 4): base plans and any preliminary design alignments information. 3. Appendix C Figure 1 plots of piezometric data. 4. Appendix D Photographs of monitoring wells.

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APPENDIX 1B
BACKGROUND IP AND THIRD PARTY IP

Nil

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**APPENDIX 1C
REFERENCE DOCUMENTS**

Part 1: General Reference Documents

Short Form	Document Name
AASHTO Guide for Design of Pavement Structures	AASHTO <i>Guide for Design of Pavement Structures</i> , 1993.
AASHTO LRFD Bridge Design Specifications	AASHTO <i>LRFD Bridge Design Specifications</i> , 9 th Edition, 2020.
AASHTO MASH	AASHTO <i>Manual for Assessing Safety Hardware</i> , Second Edition, 2016.
AASHTO M251	AASHTO <i>Standard Specification for Plain and Laminated Elastomeric Bridge Bearings</i> , 2006.
AASHTO R 52-6	AASHTO <i>R 52-6, Standard Specification for Compost for Erosion/Sediment Control (Compost Blankets)</i> , 2010.
ANSI C136.31	American National Standards Institute, Inc. <i>American National Standard for Roadway and Area Lighting Equipment-Luminaire Vibration</i> , 2010.
API 5L	American Petroleum Institute <i>Specification 5L Line Pipe</i> 46 th Edition.
ASTM A123	ASTM A123-17, <i>Standard Specification for Zinc (Hot-Dip Galvanized) Coatings on Iron and Steel Products</i> , 2017.
ASTM A153	ASTM A153-16a, <i>Standard Specification for Zinc Coating (Hot-Dip) on Iron and Steel Hardware</i> , 2016.
ASTM A240-00	ASTM A240-00, <i>Standard Specification for Chromium and Chromium-Nickel Stainless Steel Plate, Sheet, and Strip for Pressure Vessels and for General Applications</i> , November 2022.
ASTM A252	ASTM A252-19, <i>Standard Specification for Welded and Seamless Steel Pipe Piles</i> , 2019.
ASTM C1218	ASTM C1218-17, <i>Standard Test Method for Water-Soluble Chloride in Mortar and Concrete</i> , 2017.
ASTM C457	ASTM C457-16, <i>Standard Test Method for Microscopical Determination of Parameters of the Air-Void System in Hardened Concrete</i> , 2016.
ASTM D4694	ASTM D4694-15, <i>Standard Test Method for Deflections with a Falling-Weight-Type Impulse Load Device</i> , September 2015.
ASTM D4695	ASTM D4695-15, <i>Standard Guide for General Pavement Deflection Measurements</i> , March 2015.
ASTM D6760	ASTM D6760, <i>Standard Test Method for Integrity Testing of Concrete Deep Foundations by Ultrasonic Crosshole Testing</i> , February 2017.
ASTM D7949	ASTM D7949, <i>Standard Test Methods for Thermal Integrity Profiling of Concrete Deep Foundations</i> , November 2014.
ASTM E273	ASTM E273, <i>Standard Practice for Ultrasonic Testing of the Weld Zone of Welded Pipe and Tubing</i> , January 2021.
Avalanche Design Reference	Canadian Avalanche Association <i>Planning Methods for Assessing and Mitigating Snow Avalanche Risk</i> , 2018.
BC Catalogue of Traffic Signs	BC Ministry of Transportation and Infrastructure <i>Catalogue of Traffic Signs</i> , 2008 Edition updated January 2010.

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Appendix 1C: Reference Documents

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Short Form	Document Name
BC ENV Technical Guidance 1	BC Ministry of Environment and Climate Change Strategy <i>Technical Guidance No. 1 Site Characterization and Confirmation Testing</i> , March 2023.
BC ENV Technical Guidance 10	BC Ministry of Environment and Climate Change Strategy <i>Technical Guidance No. 10 Guidance for a Stage 1 Preliminary Site Investigation</i> , August 2016.
BC ENV Technical Guidance 11	BC Ministry of Environment and Climate Change Strategy <i>Technical Guidance No. 11 Guidance for a Stage 2 Preliminary Site Investigation and Detailed Site Investigation</i> , August 2016.
BC Supplement to CHBDC S6-19	BC Ministry of Transportation and Infrastructure <i>Bridge Standards and Procedures Manual – Volume 1 – Supplement to CHBDC S6:19</i> , July 2022.
BC Supplement to TAC	BC Ministry of Transportation and Infrastructure <i>B.C. Supplement to TAC Geometric Design Guide 2019 3rd Edition</i> , April 2019.
Blue Book	BC Road Builders and Heavy Construction Association <i>The Blue Book Equipment Rental Rate Guide</i> .
Bridge Standards and Procedures Manual	BC Ministry of Transportation <i>Bridge Standards and Procedures Manual</i> , 2005-2016.
CAN/CSA A23.1	CAN/CSA A23.1-19, <i>Concrete Materials and Methods of concrete Construction</i> , 2019.
CAN/CSA A23.2	CAN/CSA A23.2-19, <i>Test Methods and Standard Practices for Concrete</i> , 2019.
CAN/CSA C22.2 No. 232-09	CAN/CSA C22.2 No. 232-09 <i>Optical Fiber Cables</i> , R2014.
CAN/CSA C22.2 No. 60529	CAN/CSA C22.2 No. 60529, <i>Degrees of Protection Provided by Enclosures (IP Code)</i> 2016.
CAN/CSA-G40.21-M	CAN/CSA G40.21-M, <i>General Requirements for Rolled or Welded Structural Quality Steel / Structural Quality Steel</i> , 2013.
CAN/CSA W59	CAN/CSA W59 <i>Welded Steel Construction (Metal Arc Welding)</i> , 2018.
CAN/ULC-S102.2-10	CAN/ULC-S102.2-10 <i>Standard Method of Test for Surface Burning Characteristics of building Materials and Assemblies</i> , 2010.
Canadian Nursery Stock Standards	Canadian Nursery Landscape Association <i>Canadian Standards for Nursery Stock</i> , 9th Edition, February 28, 2017.
Cantilever Sign Structures Drawings	BC Ministry of Transportation, <i>SP635-3.6.5 to SP635-3.6.12 (Interim)</i> ;2010.
Catalogue of Standard Traffic Signs	BC Ministry of Transportation <i>Catalogue of Standard Traffic Signs</i> .
Climate-Resilient Buildings and Core Public Infrastructure	Environment and Climate Change Canada <i>Climate-Resilient Buildings and Core Public Infrastructure</i> , 2020.
CSA A283	CSA A283, <i>Qualification Code for Concrete Testing Laboratories</i> , 2019.
CSA B95	CSA B95, <i>Surface Texture (Roughness, Waviness, and Lay)</i> , 1962
CSA-S6-19	CSA-S6-19, <i>Canadian Highway Bridge Design Code</i> , 2019.
CSA W47.1	CSA W47.1, <i>Certification of Companies for Fusion Welding of Steel</i> , 2009, Reaffirmed in 2014.
CSA W178.1	CSA W178.1, <i>Certification of Welding Inspection Organizations</i> , 2018.
CSA W178.2	CSA W178.2, <i>Certification of Welding Inspectors</i> , 2018.

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Short Form	Document Name
CSA Z768-01	CSA Z768-01, <i>Phase I Environmental Site Assessment</i> , Reaffirmed in 2022.
CSA Z769-00	CSA Z769-00, <i>Phase II Environmental Site Assessment</i> , Reaffirmed in 2023.
DBSS	BC Ministry of Transportation and Infrastructure <i>2018 Design-Build Standard Specifications for Highway Construction</i> , Adopted November 1, 2018.
Debris Flow Control Structures for Forest Engineering	BC Ministry of Forests Research Branch <i>Paper 22/1996 Debris Flow Control Structures for Forest Engineering</i> , 1996.
EGBC Bylaws	EGBC <i>Bylaws of the Association</i> , Amended October 2018.
EGBC Documented Independent Review of Structural Designs Guidelines	EGBC <i>Quality Management Guidelines - Documented Independent Review of Structural Designs</i> , Version 1.4, January 9, 2018.
EGBC Climate Change – Resilient Design	EGBC <i>Professional Practice Guidelines, Developing Climate Change – Resilient Designs for Highway Infrastructure in British Columbia</i> Version 2.0, July 9, 2020.
EGBC Seismic Design Guidelines	EGBC <i>Guidelines – Performance-Based Seismic Design of Bridges in BC</i> , March 23, 2018.
Electrical and Signing Materials Standards	BC Ministry of Transportation <i>Electrical and Signing Materials Standards</i> (Draft), 2003 and including Volume 1 updated June 2014.
Electrical and Traffic Engineering Manual	BC Ministry of Transportation <i>Electrical and Traffic Engineering Manual – Guidelines for the Design of Lighting, Signal, Sign, and ITS Installations</i> , 2019.
ETAG 027	European Organization for Technical Approvals <i>Guideline for European Technical Approval of Falling Rock Protection Kits (ETAG 027)</i> , September 2012, amended April 2013.
FHWA Circular No. 4	U.S. Department of Transportation Federal Highway Administration <i>Geotechnical Engineering Circular No. 4: Ground Anchors and Anchored Systems – FHWA-IF-99-015</i> , June 1999.
FHWA Circular No. 7	U.S. Department of Transportation Federal Highway Administration <i>Geotechnical Engineering Circular No. 7: Soil Nail Walls - Reference Manual – FHWA-NHI-14-007</i> , February 2015.
FHWA HEC 14	U.S. Department of Transportation Federal Highway Administration <i>Hydraulic Engineering Circular No. 14, Third Edition: Hydraulic Design of Energy Dissipators for Culverts and Channels – FHWA-NHI-06-086</i> , July 2006.
FHWA-NHI-10-024 and NHI-10-025 Guidelines	U.S. Department of Transportation Federal Highway Administration <i>Design and Construction of Mechanically Stabilized Earth Walls and Reinforced Soil Slopes – Volume I and II, FHWA-NHI-10-024 and FHWA NHI-10-025</i> , November 2009.
Forestry Engineering Manual	Ministry of Forests, Lands, Natural Resource Operations and Rural Development <i>Engineering Manual</i> , July 26, 2019.
Guardrail Placement Guidelines	BC Ministry of Transportation <i>Guardrail Placement Guidelines</i> , October 1993.
Guidelines for Metal Leaching and Acid Rock Drainage at Minesites in British Columbia	BC Ministry of Energy and Mines <i>Guidelines for Metal Leaching and Acid Rock Drainage at Minesites in British Columbia</i> , August 1998.
Highway Capacity Manual	Transportation Research Board <i>Highway Capacity Manual, Sixth Edition: A Guide for Multimodal Mobility Analysis</i> , 2016.
Highway Maintenance Specifications	BC Ministry of Transportation and Infrastructure <i>Highway Maintenance Agreement Service Area 12 Schedule 1 Section 6 General Specifications SA12</i> , Nov 2018.

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Short Form	Document Name
Highway Maintenance Specifications Local Area Specifications	BC Ministry of Transportation and Infrastructure <i>Highway Maintenance Agreement Schedule 1 Section 7 Local Area Specifications SA12</i> , Nov 2018.
ISO/IEC 17025	International Organization for Standardization <i>ISO/IEC 17025 Testing and Calibration Laboratories</i> , 2017.
Landscape Policy and Design Standards	BC Ministry of Transportation <i>Landscape Policy and Design Standards</i> , 1991.
MacDonald Disposal Site Drawing	BC Ministry of Transportation and Infrastructure <i>Jumping Creek to MacDonald Snowshed Paving and Grading – Reference Concept: MacDonald Pit Disposal Site</i> , March 21, 2022.
Manual of Standard Traffic Signs and Pavement Markings	BC Ministry of Transportation <i>Manual of Standard Traffic Signs and Pavement Markings</i> , September 2000.
Ministry Jurisdictional Atlas	BC Ministry of Transportation <i>Lower Mainland – Howe Sound District Jurisdictional Atlas, Corporation of Delta and City of Richmond</i> .
ML/ARD Assessment	SNC Lavalin Inc. <i>Results of ML/ARD Assessment for Jumping Creek to MacDonald Snow Shed; Highway 1 near Revelstoke, BC</i> , September 10, 2018.
ODOT Rockfall Catchment Area Design Guide	Oregon Department of Transportation <i>Rockfall Catchment Area Design Guide - Final Report SPR-3(032), Metric Edition</i> , 2001.
Pavement Surface Condition Rating Manual	BC Ministry of Transportation and Infrastructure <i>Pavement Surface Condition Rating Manual, Fifth Edition</i> , August 2016.
Pedestrian Crossing Control Manual	BC Ministry of Transportation and Highways Highway Safety Branch <i>Pedestrian Crossing Control Manual for British Columbia</i> , Second Edition April 1994.
Prediction Manual for Drainage Chemistry from Sulphidic Geologic Materials	Natural Resources Canada <i>Prediction Manual for Drainage Chemistry from Sulphidic Geologic Materials</i> , 2009.
PTI DC35.1-14	Post-Tensioning Institute <i>DC35.1-14: Recommendations for Prestressed Rock and Soil Anchors</i> , 2014.
Recognized Products List	BC Ministry of Transportation <i>Recognized Products List</i> , March 10, 2022 Edition.
Recognized Sign Suppliers	BC Ministry of Transportation and Infrastructure <i>Appendix 4 - Recognized Sign Suppliers</i> , 2019.
Road Safety Audit Guidelines	BC Ministry of Transportation <i>Road Safety Audit Guidelines</i> , April 1, 2004.
RTAC Drainage Manual	Roads and Transportation Association of Canada <i>RTAC Drainage Manual</i> , 1987.
Specifications for Standard Highway Sign Materials, Fabrication and Supply	BC Ministry of Transportation <i>Specifications for Standard Highway Sign Materials, Fabrication and Supply</i> , July 2008.
Standard Electrical Equipment Maintenance Manual	BC Ministry of Transportation <i>DRAFT Maintenance Manual for Standard Electrical Equipment</i> , March 2001.
Standard Specifications for Highway Construction	BC Ministry of Transportation and Infrastructure <i>2020 Standard Specifications for Highway Construction</i> , November 1, 2020.
TAC Geometric Design Guide	Transportation Association of Canada <i>Geometric Design Guide for Canadian Roads</i> , 2019.
TAC Road Safety Audit Guide	Transportation Association of Canada <i>Canadian Road Safety Audit Guide</i> , 2001.
TASARM	Canadian Avalanche Association <i>Technical Aspects of Snow Avalanche Risk Management - Resources and Guidelines for Avalanche Practitioners in Canada</i> , 2017.

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Short Form	Document Name
Technical Bulletin GM02001	BC Ministry of Transportation and Highways <i>Rock Slope Design</i> Technical Bulletin GM02001.
Technical Circular T-01/15	BC Ministry of Transportation and Infrastructure <i>Pavement Structure Design Guidelines</i> , January 26, 2015.
Technical Circular T-02/04	BC Ministry of Transportation <i>Road Safety Audit (RSA) Policy</i> , March 8, 2004 and <i>Clarification Road Safety Audit (RSA) Policy</i> , March 17, 2004.
Technical Circular T-04/13	BC Ministry of Transportation and Infrastructure <i>Evaluating the Potential for Acid Rock Drainage and Metal Leaching at Quarries, Rock Cut Sites and from Stockpiled Rock or Talus Materials used by the MOTI</i> , September 15, 2013.
Technical Circular T-04/17	BC Ministry of Transportation and Infrastructure <i>Geotechnical Design Criteria</i> , March 22, 2017.
Technical Circular T-04/19	BC Ministry of Transportation and Infrastructure <i>Resilient Infrastructure Engineering Design - Adaptation to the Impacts of Climate Change and Weather Extremes</i> , March 27, 2019.
Technical Memorandum GM02001	BC Ministry of Transportation and Infrastructure <i>Technical Memorandum GM02001 Rock Slope Design</i> , September 17, 2002.
TIA/EIA 568.2-D	Telecommunications Industry Association <i>TIA/EIA 568.2-D Balanced Twisted-Pair Telecommunications Cabling and Components Standard</i> , September 2018.
TIA/EIA 569-C	Telecommunications Industry Association <i>TIA/EIA 569-C Design Considerations for Telecommunications Pathways and Spaces</i> , January 2014.
TIA FOTP 8/59/60/61/78	Telecommunications Industry Association <i>Fibre Optic Test Procedures (FOTPs)</i> .
Traffic Management Key Locations Plan	BC Ministry of Transportation and Infrastructure <i>Jumping Creek to MacDonald Snowshed – Reference Concept: Traffic Management Key Locations Plan</i> , Drawing no. T-100-101, June 2022.
Traffic Management Manual	BC Ministry of Transportation <i>Traffic Management Manual for Work on Roadways</i> , 2015 Office Edition, Interim.
Trans-Canada Highway Coordination Plan	BC Ministry of Transportation and Infrastructure <i>Trans-Canada Highway Coordination Plan</i> , October 2019.
2021 Geotechnical Investigation Data Report	Thurber Engineering Ltd. <i>Highway 1 Jumping Creek to MacDonald 2021 Geotechnical Investigation Data Report</i> , April 4, 2022.
Utility Policy Manual	BC Ministry of Transportation <i>Utility Policy Manual</i> , 2019.
Water and Air Baseline Monitoring Guidance Document	BC Ministry of Environment <i>Water and Air Baseline Monitoring Guidance Document for Mine Proponents and Operators</i> , June 2016.
Wildlife Ramp Drawing	BC Ministry of Transportation and Infrastructure <i>Jumping Creek to MacDonald Snowshed – Reference Concept: Wildlife Ramp Plan/Elevation</i> , Drawing no. R-100-101, September 2023.

Part 2: Environmental Reference Documents

Short Form	Document Name
Air Emissions – Environment and Climate Change Canada Best Practices for Reduction	Cheminfo Services Ltd. for Environment Canada, Transboundary Issues Branch <i>Best Practices for the Reduction of Air Emissions from Construction and Demolition Activities</i> , March 2005.

SCHEDULE 1: DEFINITIONS AND INTERPRETATION

Appendix 1C: Reference Documents

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Short Form	Document Name
Amphibian and Reptile Conservation	Ministry of Forests, Lands and Natural Resource Operations and Ministry of Environment <i>Guidelines for Amphibian and Reptile Conservation during Urban and Rural Land Development in British Columbia</i> , 2014.
Archaeological Impact Assessment Phase 3 Interim Report	Yucwmenlúcwu (Caretakers of the Land) LLP, <i>Archaeological Impact Assessment: Jumping Creek Phase 3</i> , January 24, 2022.
BC Ambient Air Quality Objectives	Province of British Columbia <i>British Columbia Ambient Air Quality Objectives</i> Updated May 9, 2018.
BC Approved Water Quality Guidelines	BC Ministry of Environment and Climate Change Strategy <i>British Columbia Approved Water Quality Guidelines</i> https://www2.gov.bc.ca/gov/content/environment/air-land-water/water/water-quality/water-quality-guidelines/approved-water-quality-guidelines
BC Field Sampling Manual	Province of British Columbia <i>Field Sampling Manual</i> , 2013.
Best Practices for Managing Invasive Plants on Roadsides	BC Ministry of Transportation and Infrastructure <i>Best Practices for Managing Invasive Plants on Roadsides</i> , 2010.
Canada-Wide Standards for Particulate Matter and Ozone	Canadian Council of Ministers of the Environment <i>Canada Wide Standards for Particulate Matter and Ozone</i> , 2012.
Canadian Water Quality Guidelines for the Protection of Aquatic Life	Canadian Council of Ministers of the Environment <i>Canadian Water Quality Guidelines for the Protection of Aquatic Life Protocol</i> ; 2017 Update.
Compendium of Wildlife Guidelines for Industrial Development in the North Area, British Columbia	BC Ministry of Forests, Lands and Resource Operations <i>Compendium of Wildlife Guidelines for Industrial Development Projects in the North Area, British Columbia</i> , November 19, 2014.
Contaminated Sites Overview Assessment	SNC Lavalin Inc. <i>Contaminated Sites Overview Assessment, Jumping Creek to MacDonald Snow Shed, Highway 1, East of Revelstoke, BC</i> . February 11, 2020.
Culvert and Fish Passage Fact Sheet	BC Ministry of Transportation <i>Culvert and Fish Passage Information Sheet</i> , May 2013.
Develop with Care	BC Ministry of Forests, Lands and Natural Resource Operations and BC Ministry of Environment <i>Develop with Care: Environmental Guidelines for Urban and Rural Development in British Columbia</i> , 2014.
EA Best Practice Guide for Wildlife at Risk in Canada	Canadian Wildlife Service <i>Environmental Assessment Best Practice Guide for Wildlife at Risk in Canada</i> , February 2004.
Emergency Response Guidebook	Transport Canada <i>Emergency Response Guidebook</i> , 2016.
Environmental Assessment Report	Triton Environmental Consultants <i>Highway 1 Jumping Creek to MacDonald Snowshed Environmental Assessment Report</i> January 2021.
Environmental Baseline Conditions Supplemental Summary Report	WSP Canada Inc. <i>Summer 2022 and 2023 Baseline Biological Survey Results for MOTI Jumping Creek to MacDonald Snowshed Four Laning Project, Highway 1, East of Revelstoke, BC</i> , October 4, 2023.
Environmental Best Practices for Highway Maintenance Activities	BC Ministry of Transportation and Infrastructure <i>Environmental Best Practices for Highway Maintenance Activities</i> , January 2018.
Guidelines for Use of Treated Wood In and Around Aquatic Environments and Disposal of Treated Wood	BC Ministry of Transportation and Infrastructure <i>Guidelines for Use of Treated Wood In and Around Aquatic Environments and Disposal of Treated Wood</i> , September 2013.
Land Development Guidelines for the Protection of Aquatic Habitat	Department of Fisheries and Oceans Canada and Ministry of Environment, Lands and Parks <i>Land Development Guidelines for the Protection of Aquatic Habitat</i> , 1992.

**JUMPING CREEK TO MACDONALD SNOWSHED PROJECT
DESIGN-BUILD AGREEMENT**

**Commercial in Confidence
Execution**

SCHEDULE 1: DEFINITIONS AND INTERPRETATION

Appendix 1C: Reference Documents

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Short Form	Document Name
Manual of Aesthetic Design Practice	BC Ministry of Transportation <i>Manual of Aesthetic Design Practice</i> , 1991.
Manual of Control of Erosion and Shallow Slope Movement	BC Ministry of Transportation <i>Manual of Control of Erosion and Shallow Slope Movement, Vancouver Island Highway Project</i> , August 22, 1997.
Mitigating Multi-species Mortality and Fragmentation on TCH	Clevenger, A.P., M.A. Sawaya, E.L. Landguth, and B. Dorsey <i>Mitigating multi-species mortality and fragmentation on the Trans-Canada Highway, Mount Revelstoke and Glacier National Parks, British Columbia, Final Report</i> , 2014.
Protocols for Rare Plant Surveys	E-Flora BC: Electronic Atlas of the Plants of British Columbia [www.eflora.bc.ca] Lab for Advanced Spatial Analysis, Department of Geography, University of British Columbia <i>Protocols for Rare Vascular Plant Surveys</i> , 2008.
Raptor Conservation	Ministry of Forests, Lands and Natural Resource Operations and Ministry of Environment <i>Guidelines for Raptor Conservation during Urban and Rural Land Development in British Columbia</i> , 2013.
Spill Reporting Fact Sheet	BC Ministry of Environment and Climate Change Strategy <i>Facts on the Management of Environmental Emergencies: Spill Reporting</i> , March 2021.
Step A - Project Screening: Jumping Creek to MacDonald Snowshed	Golder Associates Ltd. <i>Step A - Project Screening: Jumping Creek to MacDonald Snowshed, Highway 1, East of Revelstoke, BC</i> , April 7, 2022.
Step B - Environmental Soil Characterization: Jumping Creek to MacDonald Snowshed	WSP Canada Inc. <i>Jumping Creek Highway 1 - Step B Environmental Soil Characterization: Jumping Creek to MacDonald Snowshed, Highway 1, East of Revelstoke, BC</i> , October 10, 2023.
Technical Circular T-03/20	BC Ministry of Transportation and Infrastructure <i>Identification and Characterization of Potentially Contaminated Soil</i> , August 4, 2020.
Wildlife Tree Retention	<i>Wildlife Tree Retention: Management Guidance</i> , May 16, 2006.

Part 3: CPKC Reference Documents

Short Form	Document Name
CP Geotechnical Protocol	Canadian Pacific Railway <i>CP Geotechnical Protocol for Pipeline and Utility Crossing(s) under Railway Tracks</i> , updated May 16, 2022.
CP Guidelines for Excavations on CPR Property	Canadian Pacific Railway <i>Guidelines for Excavations on CPR Property</i> , updated March 8, 2012.
CP Minimum Safety Requirements	Canadian Pacific Railway <i>Minimum Safety Requirements for Contractors Working on CP Property in Canada</i> , effective January 20, 2023.
CP Operational Constraint for Work On, Above or Below Railway Right of Way	Canadian Pacific Railway <i>Operational Constraint for Work On, Above or Below Railway Right of Way</i> , May 1, 2009.
CP Protection of Structures Adjacent to Railroad Tracks	Canadian Pacific Railway <i>Protection of Structures Adjacent to Railroad Tracks</i> , April 2016.
CP Requirements for Culverts	Canadian Pacific Railway <i>Structures Planning and Design Requirements for the Design of Steel Culverts Carrying Railway Traffic</i> , April 2009.
CP Specification No. SP-TS-2.39	Canadian Pacific Railway (CPR) <i>Specification No. SP-TS-2.39: Pipeline and Cable Installations within Railway Right of Way</i> , Effective April 23, 2007.
CP Third Party Flagging Information Guide	Canadian Pacific Railway <i>Third Party Flagging Information Guide</i> .
CP Track Monitoring Requirements for Third Party Projects	Canadian Pacific Railway <i>Track Monitoring Requirements for Third Party Projects</i> , October 2008.

SCHEDULE 1: DEFINITIONS AND INTERPRETATION

Appendix 1C: Reference Documents

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Short Form	Document Name
CP Track Movement Monitoring Guidelines for Trenchless Pipe Installation	Canadian Pacific Railway <i>Track Movement Monitoring Guidelines for Trenchless Pipe Installation</i> , updated April 9, 2014.
CP Utility Specification and Application Process	Canadian Pacific Railway <i>Utility Specification and Application Process</i> .

**SCHEDULE 2
REVIEW PROCEDURE AND CONSENT PROCEDURE**

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PART 1
REVIEW PROCEDURE

1.1 Review Procedure

- (a) Any proposed document (including any Design Data) or proposed course of action on the part of the Design-Builder which, under the terms of this Agreement, either:
 - (i) is expressly required to be submitted to the Province's Representative pursuant to the Review Procedure or to the Province's Representative for review in accordance with or pursuant to the Review Procedure; or
 - (ii) unless the parties agree otherwise, in the case of Schedule 3 [Design and Construction General Requirements], Schedule 4 [Design and Construction Technical Requirements], Schedule 6 [Environmental Obligations] or Schedule 7 [Quality Management] is required to be submitted to the Province's Representative for consideration, without specifying whether such submission is to be under the Review Procedure or the Consent Procedure,will be submitted to the Province's Representative accompanied by the proposed document (including any Design Data) or statement of a proposed course of action, and the following procedures (together, the "**Review Procedure**") will apply (provided, in the case of any document or proposed course of action submitted to the Review Procedure in accordance with the Design and Certification Procedure, any specific procedures set out therein will also apply).
- (b) The Province's Representative will as soon as practicable and, subject to Section 3.2 [Incomplete Information] of this Schedule, in any event within 10 Business Days of actual receipt thereof (or such other period as may be specified in this Agreement for any particular case, and provided that, in the event receipt is after 12:00 p.m. Pacific time on any Business Day, such time period will be calculated as if receipt had been on the next following Business Day) return one copy of the relevant submission document endorsed "received" or (subject to Sections 3.3 [Objection or Rejection in Province's Discretion] and 3.4 [General Grounds for Objection or Rejection] of this Schedule, as applicable in each case) "received with comments" or "comments". In the case of any submission document returned endorsed "received with comments" or "comments", the Province's Representative will also provide with such returned document such comments.
- (c) The Design-Builder may proceed to implementation in the case of a submission document endorsed "received".
- (d) The documents or proposed course of action accompanying a submission document returned endorsed "received with comments" will be amended by the Design-Builder in accordance with such comments (but need not be re-submitted to the Province's Representative except by their issuance to the Province's Representative pursuant to Section 1.1(i) of this Schedule) and once so amended the Design-Builder will proceed to implementation subject to Section 1.2 [Early Commencement of Project Work] of this Schedule unless the Design-Builder disputes that any such comment is on grounds permitted by Section 3.4 [General Grounds for Objection or Rejection] of this Schedule if applicable to such submission document, in which case the Design-Builder may refer the

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matter to the Dispute Resolution Procedure within 10 days of the Design-Builder's receipt of such comments but not thereafter. If it is then resolved in accordance with the Dispute Resolution Procedure that any such comment was not on such permitted grounds, then such submission document will thereupon be deemed to have been endorsed "received" and otherwise such submission document will thereupon be revised and implemented by the Design-Builder pursuant to this Section 1.1. If the matter is not referred by the Design-Builder to the Dispute Resolution Procedure within such 10 day period, the Design-Builder will be deemed to have accepted the comments of the Province's Representative and such submission document will thereupon be revised and implemented by the Design-Builder pursuant to this Section 1.1.

- (e) The documents or proposed course of action accompanying a submission document returned endorsed "comments" will be revised by the Design-Builder and re-submitted to the Province's Representative pursuant to this Section 1.1 within 10 Business Days of the Design-Builder's receipt of such comments (or such other time period as agreed in writing by the Province's Representative), together with the relevant submission document, unless the Design-Builder disputes that any such comment is on grounds permitted by Section 3.4 [General Grounds for Objection or Rejection] of this Schedule if applicable to such submission document, in which case the Design-Builder may refer the matter to the Dispute Resolution Procedure within 10 days of the Design-Builder's receipt of such comments but not thereafter. If it is then resolved in accordance with the Dispute Resolution Procedure that any such comment was not on such permitted grounds, then such submission document will thereupon be deemed to have been endorsed "received" and otherwise such submission document will thereupon be revised and re-submitted by the Design-Builder pursuant to this Section 1.1. If the matter is not referred by the Design-Builder to the Dispute Resolution Procedure within such 10 day period, the Design-Builder will be deemed to have accepted the comments of the Province's Representative and such submission document will thereupon be revised and re-submitted by the Design-Builder pursuant to this Section 1.1.
- (f) If, subject to Section 3.2 [Incomplete Information] of this Schedule, the Province's Representative fails to return any such submission document (including any re-submitted submission document) duly endorsed within 10 Business Days of actual receipt thereof (or such other period as may be specified in this Agreement for any particular case), then it will be deemed to have returned such submission document to the Design-Builder marked "received".
- (g) A reference in this Agreement to there being "no objection" under the Review Procedure in relation to a particular matter means that such matter has been submitted in accordance with the provisions of this Section 1.1 and returned (or deemed returned) with an endorsement of "received" or returned with an endorsement of "received with comments", in the latter case the matter having been amended in accordance with such comments.
- (h) Documents or courses of action the subject of a submission pursuant to this Section 1.1 and returned (or deemed returned) endorsed:
 - (i) "received" will be adhered to; or
 - (ii) "received with comments" will, once amended in accordance with the comments, be adhered to,

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except to the extent that there has been no objection to any subsequent change or amendment thereto submitted in accordance with this Section 1.1.

- (i) The Design-Builder will ensure that two copies and electronic versions of all documents, including all drawings, numbered appendices, specifications and schedules, that have been modified by the Design-Builder in accordance with the Review Procedure are issued to the Province's Representative, prior to the commencement of any Project Work to which such documents relate, except in the circumstances provided for in Section 1.2 [Early Commencement of Project Work] of this Schedule.
- (j) Once all applicable disputes arising in respect of any decision made by the Province's Representative under the Review Procedure have been resolved in accordance with this Section 1.1, such decision will, subject only to Section 2.8(a)(iii) of this Agreement, be final.

1.2 Early Commencement of Project Work

The Design-Builder may proceed with a component of the Project Work which is the subject of a submission under the Review Procedure prior to the completion of the Review Procedure in accordance with Section 1.1 [Review Procedure] of this Schedule, provided that:

- (a) in the case of any Construction, the requirements set out in Section 2.13 [No Construction] of Part 2 of Schedule 4 will have been satisfied in respect of such component of the Project Work; and
- (b) in all cases, any such action will be taken at the sole risk of the Design-Builder and the Design-Builder will in any event remain responsible for complying with the outcome of the Review Procedure, once it is completed in accordance with Section 1.1 [Review Procedure] of this Schedule, at the Design-Builder's sole cost and expense, including any and all reconstruction, alterations, modifications or other remedial work to the Project Work already completed as may be necessary to comply with such outcome.

**PART 2
CONSENT PROCEDURE**

2.1 Consent Procedure

- (a) Any proposed document or proposed course of action on the part of the Design-Builder which, under the terms of this Agreement, is required to be submitted to the Province's Representative pursuant to the Consent Procedure or to the Province's Representative for consent in accordance with or pursuant to the Consent Procedure, will be submitted to the Province's Representative, accompanied by the proposed document or statement of a proposed course of action, and the following procedures (together, the "**Consent Procedure**") will apply.
- (b) The Province's Representative will as soon as practicable and, subject to Section 3.2 [Incomplete Information] of this Schedule, in any event within 20 Business Days of actual receipt thereof (or such other period as may be specified in this Agreement for any particular case, and provided that, in the event receipt is after 12:00 p.m. Pacific time on any Business Day, such time period will be calculated as if receipt had been on the next

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following Business Day) return one copy of the relevant submission document endorsed “accepted” or (subject to Sections 3.3 [Objection or Rejection in Province’s Discretion] or 3.4 [General Grounds for Objection or Rejection] of this Schedule as applicable in each case) “rejected”. In the case of any submission document returned endorsed “rejected”, the Province’s Representative will also provide with such returned document the grounds for such rejection.

- (c) The Province’s Representative will have the right at its option to impose conditions to the acceptance of a submission document pursuant to Section 2.1(b) of this Schedule, which conditions will be required to be reasonable having regard to the relevant circumstances save in the case of an acceptance to which Section 3.3 [Objection or Rejection in Province’s Discretion] of this Schedule applies.
- (d) The Design-Builder may proceed to implementation in the case of a submission document endorsed “accepted” and such implementation must be in accordance with any conditions imposed pursuant to Section 2.1(c) of this Schedule. If the Design-Builder disputes the reasonableness of any such condition, the Design-Builder may refer the matter to the Dispute Resolution Procedure within 7 Business Days of the Design-Builder’s receipt of such acceptance with conditions but not thereafter, and will comply with such condition pending resolution of the Dispute in accordance with Section 17.1(b) of this Agreement. If the matter is not referred by the Design-Builder to the Dispute Resolution Procedure within such 7 Business Day period, the Design-Builder will be deemed to have accepted the conditions of the Province’s Representative.
- (e) Unless otherwise specified in this Agreement for any particular case, the documents or proposed course of action accompanying a submission document endorsed “rejected” will not be implemented by the Design-Builder unless revised by the Design-Builder and re-submitted to the Province’s Representative pursuant to this Section 2.1 within 10 Business Days of the Design-Builder’s receipt of such rejection (or such other time period as agreed in writing by the Province’s Representative) together with the relevant submission document and it is subsequently returned endorsed “accepted”.
- (f) In the case of a submission endorsed “rejected”, if the Design-Builder disputes that any such rejection (including a deemed rejection pursuant to Section 2.1(g) of this Schedule) is on grounds permitted by Section 3.4 [General Grounds for Objection or Rejection] of this Schedule, if applicable to such submission document, the Design-Builder may refer the matter to the Dispute Resolution Procedure within 10 days of the Design-Builder’s receipt of such rejection but not thereafter. If it is then resolved in accordance with the Dispute Resolution Procedure that any such rejection or deemed rejection:
 - (i) was not on such permitted grounds, then such submission document will thereupon be deemed to have been endorsed “accepted”, and the rejection or deemed rejection of such submission document on grounds that were not such permitted grounds will constitute a Compensation Event and the provisions of Part 8 [Supervening Events] will apply; or
 - (ii) was on such permitted grounds, then such submission document will not be implemented by the Design-Builder unless revised by the Design-Builder and re-submitted to the Province’s Representative pursuant to this Section 2.1 and subsequently returned endorsed “accepted”.

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If the matter is not referred by the Design-Builder to the Dispute Resolution Procedure within such 10 day period, the Design-Builder will be deemed to have accepted the rejection and such submission document will not be implemented by the Design-Builder unless revised by the Design-Builder and re-submitted to the Province's Representative pursuant to this Section 2.1 and subsequently returned endorsed "accepted".

- (g) If, subject to Section 3.2 [Incomplete Information] of this Schedule, the Province's Representative fails to return any such submission document (including any re-submitted submission document) duly endorsed within 20 Business Days of actual receipt thereof (or such other period as may be specified in this Agreement for any particular case), then it will be deemed to have returned such submission document to the Design-Builder marked "rejected", and such rejection will be deemed to have been made by the Province's Representative in reliance upon grounds set out in Sections 3.3 [Objection or Rejection in Province's Discretion] and 3.4 [General Grounds for Objection or Rejection] of this Schedule as applicable to such submission document.
- (h) Documents or courses of action the subject of a submission pursuant to this Section 2.1 and returned (or deemed returned) endorsed "accepted", including any conditions imposed by the Province's Representative under Section 2.1(c) of this Schedule, will be adhered to, except to the extent that there has been "acceptance" of any subsequent change or amendment thereto submitted in accordance with this Section 2.1.
- (i) The Design-Builder will ensure that two copies and electronic versions of all documents, including all drawings, numbered appendices, specifications and schedules, that have been modified by the Design-Builder in accordance with the Consent Procedure are issued to the Province's Representative prior to the commencement of any Project Work to which such documents relate.
- (j) Once all applicable disputes arising in respect of any decision made by the Province's Representative under the Consent Procedure have been resolved in accordance with this Section 2.1, such decision will, subject only to Section 2.8(a)(iii) of this Agreement, be final.

2.2 No Early Commencement of Project Work

Subject to Section 1.5.1(c) of Schedule 7 [Quality Management], in no circumstances will the Design-Builder proceed with any component of the Project Work in respect of which a submission has been made under the Consent Procedure (including where the Project Work involves providing such submission to a Governmental Authority) prior to the completion of the Consent Procedure in accordance with Section 2.1 [Consent Procedure] of this Schedule.

**PART 3
GENERAL PROVISIONS**

3.1 Referral by Province's Representative

The Province's Representative may, in reviewing and dealing with any matter, refer such matter to the Province or any of its employees, agents, advisors, consultants, or contractors or subcontractors of any tier, and any review, consideration, decision, belief, opinion or determination referred to herein in relation to the Province's Representative may be that of the Province's Representative or any such person upon

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whose review, consideration, decision, belief, opinion or determination the Province's Representative relies. The Province's Representative may also, by written notice to the Design-Builder from time to time, designate an employee, advisor, consultant, contractor or other person to whom any specific submission or class of submissions is to be delivered by the Design-Builder and the Design-Builder will comply with any such designation in making submissions under the Review Procedure and the Consent Procedure, as applicable, and, where a submission is delivered in accordance with any such designation, will provide the Province's Representative with a copy of the transmittal of the submission to the designated person at the same time as the submission is delivered to that person.

3.2 Incomplete Information

- (a) The Province's Representative, acting reasonably and without unreasonable delay, may request in writing, and if so requested the Design-Builder will promptly and in any event no later than 21 days following such request submit, any further or other information, data and documents which may be reasonably required by the Province's Representative for a full appreciation of a submission under Section 1.1 [Review Procedure] or Section 2.1 [Consent Procedure] of this Schedule and its implications, and will take all such steps as may be reasonably required to satisfy the Province's Representative that the proposed document or proposed course of action complies with this Agreement and is appropriate.
- (b) If the Province's Representative makes a written request for further or other information, data or documents under this Section 3.2, then the time periods referred to in Section 1.1 [Review Procedure] or Section 2.1 [Consent Procedure] of this Schedule, as the case may be, will not commence to run until such time as the Design-Builder has submitted the requested information, data or documents to the Province's Representative in satisfaction of the request.

3.3 Objection or Rejection in Province's Discretion

Subject to Section 3.4 [General Grounds for Objection or Rejection] of this Schedule, or as may otherwise be expressly provided in this Agreement, the Province's Representative may make comments in relation to or reject, as applicable, any Review Procedure or Consent Procedure submission in its discretion.

3.4 General Grounds for Objection or Rejection

If any provision of this Agreement expressly provides that the Province's Representative will act reasonably or not act unreasonably in granting its approval or consent with respect to a submission, the Province's Representative may make comments in relation to or reject, as applicable, any Review Procedure or Consent Procedure submission on any one or more of the following grounds:

- (a) that the Design-Builder has not provided all information, data and documents required (including any information, data and documents required by the Province's Representative pursuant to Section 3.2 [Incomplete Information] of this Schedule) in respect of such submission;
- (b) that the adoption of the proposed document or proposed course of action would or might reasonably be expected to:
 - (i) conflict or be inconsistent with the statutory, public or other duties or functions of the Province or BCTFA;

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- (ii) give rise to a breach, or be in breach, of any Laws;
 - (iii) not satisfy, comply with or conform to any provision or requirement set out in this Agreement or any other Project Document;
 - (iv) not satisfy, comply with or conform to Good Industry Practice;
 - (v) materially and adversely affect the ability of the Design-Builder to perform any of its obligations under this Agreement or under any other Project Document and/or materially and adversely affect any right or obligation of the Province under this Agreement or the ability of the Province to enforce any such right or perform any such obligation; or
 - (vi) materially and adversely affect the risks or costs to which the Province is exposed in respect of the Project;
- (c) if, in accordance with this Agreement, the Design-Builder is required to deliver a submission which is to be substantially in accordance with or consistent with any template or table of contents provided by the Province in the Data Room or otherwise, and the Design-Builder's submission is not substantially in accordance with or consistent with the document so provided;
- (d) any other grounds applicable to the submission that are expressly set out in this Agreement; or
- (e) any other reasonable grounds,

and the Province's Representative will always be entitled to make such comments or reject, as the case may be, on the foregoing grounds notwithstanding any other provision in this Agreement.

3.5 Optional Standards

- (a) If any Ministry Standard or other standards or specifications which are incorporated into the Project Requirements contain options from which a choice can be made, any choice by the Design-Builder of any one option set out therein will satisfy the Project Requirements in that regard, and the Province's Representative will not object to the choice of such option on that basis, unless any such option is otherwise excluded or limited by the terms of the Project Requirements.
- (b) If following a choice by the Design-Builder in accordance with Section 3.5(a) of this Schedule, as expressed or reflected in a submission to the Province's Representative, the Province's Representative requires another such option to be adopted which the Design-Builder has not chosen, the Province's Representative will request a Province Change under Section 7.1 [Province Changes and Value Engineering Proposals] of this Agreement.

3.6 Design-Builder Submittals

Without limiting the obligations of the Design-Builder to comply with any other Project Requirements, including the preparation and delivery to the Province's Representative of any plans, submittals, programs, drawings, reports and other material, documents and information referred to in the

SCHEDULE 2: REVIEW PROCEDURE AND CONSENT PROCEDURE

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Project Requirements, or any other obligations of the Design-Builder under this Agreement, the Design-Builder will prepare, submit and, where applicable, comply with any and all plans, submittals, programs, drawings, reports and other material, documents and information set out or referred to in this Agreement or in any Schedule to this Agreement provided that, where the Design-Builder is required in accordance with this Agreement to submit any such plan, submittal, program, drawing, report or other material, document or information to the Province's Representative pursuant to the Review Procedure or the Consent Procedure, or otherwise for the consent, approval or acceptance of the Province, such compliance will, notwithstanding any other provision of this Agreement, be with such plan, submittal, program, drawing, report or other material, document or information to which there has been "no objection" under the Review Procedure or which has been "accepted" under the Consent Procedure or which has otherwise been consented to, approved or accepted in writing by the Province, as the case may be.

**SCHEDULE 3
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**PART 1
PROVINCE DESIGN**

1.1 Province Design

The Province makes no representation or warranty whatsoever, express or implied, that the design or concepts for the Project Work developed by the Province (including the Reference Concept) comply with the Project Requirements and any use by the Design-Builder of any or all aspects of the Province's design or concepts in performing the Project Work will be entirely at the Design-Builder's own risk.

**PART 2
DESIGN AND CONSTRUCTION**

2.1 Responsibility for Design and Construction

The Design-Builder will be responsible for the Design and the Construction, all of which will be carried out in strict accordance with the Design and Construction Requirements and in such a manner as to comply with this Agreement and all other applicable Project Requirements.

2.2 Design and Construction Standards

- (a) Without limiting any other provision in the Agreement, the Design-Builder will undertake the Design and Construction in compliance with all applicable standards, including the standards listed in Appendix 1C [Reference Documents] to Schedule 1.
- (b) The Project Work will be carried out in accordance with the DBSS and with the following amendments to the DBSS:
 - (i) Section 125 [Value Engineering - Proposal Guidelines] will not apply;
 - (ii) any and all reference to "approval by the Ministry Representative" in the DBSS, in terms of acceptance of materials, work methodology or end product, will be construed as meaning "approval by the Designer";
 - (iii) any and all reference in the DBSS to the submission of material to the Ministry Representative "for approval", "for acceptance", or other qualifying phrase with similar connotation, is to be construed as the Province's Representative retaining the right to object to the submission material as set out in the Review Procedure; and
 - (iv) when required under the DBSS to submit for approval by the Ministry Representative samples of any products which are not included on the Recognized Products List, to the extent the Design-Builder proposes to use any such products, the Design-Builder will submit such samples to the Province's Representative in accordance with the Review Procedure.

2.3 Design Manager

The Design Manager will be a Key Individual subject to the applicable requirements of Section 3.3 [Key Individuals] of this Agreement. The Design Manager will have extensive experience leading multi-

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disciplinary design teams on large transportation projects of comparable scope, scale and complexity to the Project.

2.4 Construction Manager

The Construction Manager will be a Key Individual subject to the applicable requirements of Section 3.3 [Key Individuals] of this Agreement. The Construction Manager will have extensive experience leading multi-disciplinary construction teams on transportation projects of comparable scope, scale and complexity to the Project.

2.5 Other Key Individuals

The following Key Individuals will be subject to the applicable requirements of Section 3.3 [Key Individuals] of this Agreement, and will have the experience and qualifications as set out below:

- (a) The Lead Geotechnical Engineer will be a Professional Engineer with a minimum of 15 years of geotechnical design experience and will have experience with projects of comparable scope, scale and complexity to the Project.

2.6 Province Project Office and BCIB Facilities

- (a) The Design-Builder will make available to the Province, immediately upon the start of full mobilization until 30 days after the Total Completion Date, at the Design-Builder's sole cost and expense, a Type C working office space in accordance with DBSS 145.18.01. The Province office, which will be in proximity to the Design-Builder's field construction office, will be located on provincially owned land or on land approved by the Province, will be provided with secure unrestricted access and will be provided with:
 - (i) three secure parking stalls;
 - (ii) air conditioning; and
 - (iii) highspeed internet.
- (b) The Design-Builder will make available to BCIB, immediately upon the start of full mobilization until 30 days after the Total Completion Date, at the Design-Builder's sole cost and expense, a Type C working office space in accordance with DBSS 145.18.01. The BCIB office, which will be in close proximity to the Design-Builder's field construction office, will be located on provincially owned land or on land approved by the Province, will be provided with secure unrestricted access and will be provided with:
 - (i) three secure parking stalls;
 - (ii) air conditioning; and
 - (iii) highspeed internet.

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**PART 3
PROJECT SCHEDULE**

3.1 Diligent Performance of Project Work

The Design-Builder will:

- (a) commence the Project Work promptly following the Effective Date;
- (b) pursue the Project Work diligently to ensure that each of the milestone events for the completion of the Project Work, in each case as identified in the Project Schedule, as amended from time to time in accordance with Section 3.2 [Project Schedule] of this Schedule, is achieved at or before the milestone date specified therefor in the Project Schedule; and
- (c) perform the Project Work in material conformity with the Works Schedule, as amended from time to time in accordance with Section 3.3 [Works Schedule] of this Schedule, and with the Construction Management Plan, as amended from time to time in accordance with Section 3.9 [Construction Management Plan] of this Schedule.

3.2 Project Schedule

- (a) The Project Schedule sets out the dates for the Key Works Milestones which the Design-Builder is to achieve in the performance of the Project Work provided for in the Project Requirements.
- (b) The Design-Builder will submit to the Province's Representative for review in accordance with the Review Procedure an update of the Project Schedule to reflect any extension of any dates included therein as agreed or determined in accordance with Part 7 [Changes] or Part 8 [Supervening Events] of this Agreement, or any proposed amendments to the Project Schedule contemplated by Section 6.15(e) of this Agreement. No other revision of the Project Schedule is permitted unless the Province, in its discretion, consents.

3.3 Works Schedule

- (a) The Design-Builder will prepare and submit to the Province's Representative for review in accordance with the Review Procedure:
 - (i) within 45 days of the Effective Date, a revision of the Works Schedule provided pursuant to Schedule 22 [Closing Deliveries] reflecting the actual progress of the Project Work to the date of submission and the expected progress of the Project Work thereafter, up to and including the achievement of Substantial Completion by the Substantial Completion Target Date and Total Completion by the Total Completion Target Date, which will be in all respects compliant with the Project Schedule;
 - (ii) at any time a revised Project Schedule is submitted in accordance with Section 3.2(b) of this Schedule, a revised Works Schedule which will be in all respects compliant with such revised Project Schedule; and

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- (iii) on the fifth Business Day of each month:, a revised Works Schedule reflecting the actual progress of the Project Work to the last calendar day of the previous month and the expected progress of the Project Work thereafter, up to and including the achievement of Substantial Completion by the Substantial Completion Target Date and Total Completion by the Total Completion Target Date.
- (b) The initial Works Schedule and any revised Works Schedule submitted in accordance with this Section 3.3 will:
 - (i) meet the requirements set out in Appendix 3D [Works Schedule Requirements]
 - (ii) be in accordance with Good Industry Practice;
 - (iii) satisfy the Design and Construction Requirements;
 - (iv) be in sufficient detail so as to enable the Province to resource itself appropriately and so as to permit the Province to plan adequately for the availability of external resources;
 - (v) be in all respects compliant with the Project Schedule; and
 - (vi) include all additional information reasonably requested by the Province so as to enable the Province to monitor the progress of the Project Work.
- (c) If the actual progress of the Project Work does not comply with the Project Schedule, then the Design-Builder will, at the same time the Design-Builder submits its revised Works Schedule under Section 3.3(a) of this Schedule, submit to the Province's Representative a detailed recovery plan showing how any delay to the Project Work can be recovered to be in compliance with the Project Schedule.
- (d) The Design-Builder will provide the Province with any further information reasonably requested by the Province following receipt of the revised Works Schedule and or the recovery plan required under Section 3.3(c) of this Schedule within five Business Days of receiving a request for same from the Province.

3.4 Four Week Lookahead Schedule

- (a) The Design-Builder will provide, for information and not under the Review Procedure, the Four Week Lookahead Schedule on a weekly basis until the Substantial Completion Date. The reporting period for the first Four Week Lookahead Schedule will be the first full week following the Effective Date and the following four weeks.
- (b) The Design-Builder will develop the Four Week Lookahead Schedule based on the detailed work plans prepared by field personnel of the Design-Builder and its Subcontractors, and will present the Four Week Lookahead Schedule in Microsoft Excel format or in an alternate format as approved by the Province, acting reasonably.

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- (c) The Design-Builder will ensure the Four Week Lookahead Schedule is a true and comprehensive reflection of the Project Work to be performed during the relevant reporting period.

3.5 180-Day Lookahead Schedule

- (a) On the Effective Date, the Design-Builder will provide, for information and not under the Review Procedure, the 180-Day Lookahead Schedule. The 180-Day Lookahead Schedule will include:
 - (i) resource ramp up to support mobilization and the start of construction;
 - (ii) pre-construction studies and investigations;
 - (iii) development and submission of the Construction Management Plan, preconstruction management plans and other plans required by this Agreement to be submitted within the first 180 calendar days after the Effective Date;
 - (iv) permitting activities and design deliverables;
 - (v) pre-construction procurement to support mobilization and start of construction; and
 - (vi) any additional information reasonably requested by the Province so as to enable the Province to monitor the progress of the Project Work.
- (b) The Design-Builder will provide a revised 180-Day Lookahead Schedule on the fifth Business Day of each month during the 180 calendar days following the Effective Date, updating completed and forecasted Project Work activities.
- (c) The format and software for the 180-Day Lookahead Schedule will be either Primavera P6, or Microsoft Excel. If the Design-Builder uses Primavera P6, the 180-Day Lookahead Schedule must be a separate source from the Works Schedule and contain significantly more detail than the Works Schedule.

3.6 Acceleration and Recovery of Project Schedule

- (a) In addition to the Province's rights under Section 8.1(c) of this Agreement, the Province may, at any time, deliver to the Design-Builder a Province Change Notice contemplating the acceleration of the performance of the Project Work or any component thereof at the Province's convenience, and the terms of Schedule 11 [Changes] will apply. Notwithstanding the delivery of such Province Change Notice, the Province may at any time issue a Change Directive to accelerate the performance of the Project Work or any component thereof at the Province's convenience.
- (b) In the event of any delay to the Project Work by an act, error or omission of the Design-Builder or any party for which the Design-Builder is responsible, including any Subcontractors, or by an event for which the Design-Builder is not expressly given relief under this Agreement (in either case, a "**Design-Builder Delay**"), then the Design-Builder

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will not be entitled to, nor will the Design-Builder make any claim for compensation or an extension of the time for the performance of the Project Work, in either case as a result of a Design-Builder Delay.

- (c) Each recovery plan submitted by the Design-Builder under this Part will:
 - (i) be in report format;
 - (ii) provide a detailed description of the delay to the progress of the Project Work, and the impact to the last Works Schedule to which there has been no objection in accordance with the Review Procedure;
 - (iii) include a revised Critical Path Schedule;
 - (iv) describe the measures the Design-Builder proposes for the Project Work delay to be recovered to be in compliance with the Project Schedule;
 - (v) include a time impact analysis, or similar analysis technique using Primavera P6 as approved by the Province acting reasonably, to determine the true impact of the delay, together with detailed narrative of the analysis to substantiate the results; and
 - (vi) if requested by the Province, include any alternative recovery options and the estimated costs of those options.
- (d) If at any time the Province, acting reasonably, determines that the Project Schedule will not be met due to a Design-Builder Delay, the Province may deliver written notice to the Design-Builder directing the Design-Builder to recover the Project Work, at no extra cost or expense to the Province, so as to bring the performance of the Project Work back into compliance with the Project Schedule and the Design-Builder will promptly comply with such direction notwithstanding any disagreement or dispute with respect to whether the delay is a Design-Builder Delay.
- (e) The Design-Builder acknowledges that in the event of any dispute or disagreement over the cause of a delay to the Project Work that results in a non-compliance with the Project Schedule, including with respect to any claim of the Design-Builder to entitlement to relief under this Agreement, the Design-Builder will be required to produce a recovery plan in accordance with Section 3.6(c) of this Schedule and comply with any notification from the Province pursuant to Section 3.6(d) of this Schedule or Section 8.1(c) of this Agreement, and to the extent the Design-Builder is required to recover or accelerate the Project Work pursuant to either Section 3.6(d) of this Schedule or Section 8.1(c) of this Agreement, the costs associated with such recovery or acceleration will be resolved in accordance with Schedule 16 [Dispute Resolution Procedure].

3.7 Conflict between Project Schedule and Works Schedule

In the event of any conflict between the Project Schedule and the Milestones in the Works Schedule, the Project Schedule will prevail.

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3.8 Works Schedule Review Meetings

- (a) Within five Business Days following the submission of any revised Works Schedule, the Design-Builder and the Province will meet to discuss, at a minimum:
 - (i) planned progress versus actual progress achieved during the past reporting period;
 - (ii) any revisions made by the Design-Builder in the revised Works Schedule to the logic, activities, or durations within the last Works Schedule to which there has been no objection in accordance with the Review Procedure;
 - (iii) any changes to the critical path of the Project Work, including addition or removal of activities;
 - (iv) any issues that may have a potential impact on the ability of the Design-Builder to achieve the Project Schedule; and
 - (v) any other matter raised by the Province.
- (b) Within five Business Days following each Works Schedule review meeting, the Design-Builder will prepare and submit to the Province's Representative for review in accordance with the Review Procedure meeting minutes of the Works Schedule review meeting.

3.9 Construction Management Plan

- (a) The Design-Builder will prepare and submit to the Province's Representative for review in accordance with the Review Procedure, within 60 days after the Effective Date, a plan (the "**Construction Management Plan**"). At a minimum the initial Construction Management Plan will cover the first year of Construction activities following the Effective Date.
- (b) The Construction Management Plan will describe how the key components of the Construction will be carried out and the connection to the Works Schedule including, at a minimum, the following:
 - (i) identify and describe construction methodologies and work procedures for significant Project Work before initial implementation and when subject to change for, including the following:
 - (A) access to facilitate rock excavation, Foundation, Substructure, Superstructure and Retaining Structure construction;
 - (B) rock and other slope excavation and stabilization including haul and disposal of waste materials;
 - (C) installation of temporary and permanent rockfall protection;
 - (D) debris flow/flood and avalanche mitigation during construction;
 - (E) aggregate/borrow pit operations, production and reclamation;

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- (F) disposal sites/stockpiles;
 - (G) geotechnical field investigations, including any ML/ARD assessment;
 - (H) geotechnical instrumentation;
 - (I) protection of the public, workers and Infrastructure;
 - (J) Foundation and Substructure construction including piles, ground anchors and other supporting structures;
 - (K) Construction of Superstructure including formwork, girder erection/launching, deck joint installation and wearing surface placement;
 - (L) care of ground water and surface water including control of sedimentation; and
 - (M) implementation of detours, lane shifts and other traffic management operations;
- (ii) identify and describe post construction methodologies and work procedures for significant post construction Project Work between Substantial Completion and the end of the General Project Work Defect Warranty Period before initial implementation and when subject to change for, including the following:
- (A) final baseline settlement surveys of walls and structures at Substantial Completion and at end of General Project Work Defect Warranty Period.;
 - (B) pavement roughness survey;
 - (C) falling weight deflectometer (FWD) pavement structure strength survey;
 - (D) updated Pit Development Plans for each pit used;
 - (E) waste disposal site surveys; and
 - (F) end of warranty inspections of the Project Work; and
- (iii) for each of the components set out in paragraphs (i) and (ii) above, include details to describe each of the following:
- (A) key issues and constraints affecting Construction and strategies to manage such issues and constraints;
 - (B) construction sequencing and staging including details to describe implementation of temporary roadway alignments and detours, lane and/or closures, temporary works, temporary bridge laydown areas, material supply routes, fabrication facilities and sources, and batching plants;

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- (C) excavation management identifying controls being adopted to avoid or minimize impacts to known archaeology or historic sites, as well as other sites that may be encountered during construction;
 - (D) construction approach to managing the interface between the Project Work and the Winter Maintenance Contractor, CPKC and EMS access requirements in accordance with Part 4 [CPKC Interface] and Part 6 [Operation and Maintenance] of this Schedule and Part 3 [Traffic Management] of Schedule 4;
 - (E) proposed construction and erection strategy for all Structures including associated roadway and CPKC traffic management requirements;
 - (F) list of all relevant permits required;
 - (G) utility relocation, protection, installation and co-ordination;
 - (H) description of the construction controls to be used to comply with the requirements of Schedule 6 [Environmental Obligations], including noise and vibration mitigation during Construction (including pile installation), hours of work and limits on vibrations caused by Construction operations; and
 - (I) monitoring programs for adjacent existing facilities such as buildings, utilities and other facilities.
- (c) If the Design-Builder wishes to make any amendment to the Construction Management Plan, the Design-Builder will:
- (i) provide the Province's Representative with a report identifying the reasons for such amendment to the Construction Management Plan; and
 - (ii) submit to the Province's Representative for review in accordance with the Review Procedure a revised Construction Management Plan.

**PART 4
CPKC INTERFACE**

4.1 CPKC Agreement and CPKC Reference Documents

- (a) The Design-Builder:
- (i) acknowledges the terms of the CPKC Agreement;
 - (ii) will comply with, observe and abide by and cause its Subcontractors and employees of any of them to comply with, observe and abide by the terms of the CPKC Agreement if and to the extent such terms are expressly set out in this Agreement, including in this Part, or compliance with such terms by the Design-Builder is expressly provided for in this Agreement, including in this Part;

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- (iii) will not do or omit to do or permit to be done or omitted anything that would result in the Province being in default of any terms of the CPKC Agreement; and
 - (iv) will provide all such assistance as is required by the Province, acting reasonably, in connection with any Dispute (as that term is defined in the CPKC Agreement) between the Province and CPKC under the CPKC Agreement, and, subject only to Section 17.1 [Disputes] of this Agreement, will be bound by the resolution of any such Dispute in accordance with the CPKC Agreement.
- (b) Without limiting any other requirements of this Agreement, the Design-Builder will carry out all Project Work that may impact the Railway Operations, including all construction methods pertaining thereto, in accordance with the CPKC Reference Documents.

4.2 Railway Impact Assessment Report

- (a) By no later than 90 days after the Effective Date, the Design-Builder will prepare and submit to the Province's Representative, for consent by the Province in accordance with the Consent Procedure as contemplated in Section 4.7 [Review and Consent] of this Schedule, a report (the "**Railway Impact Assessment Report**"), consistent in substance with ISO 31000: 2018 (or equivalent generally-accepted risk management program), to assess design, construction and operational impacts of the Project Work on the CPKC facilities and the Railway Operations and to address, at a minimum, the Design-Builder Railway Protection Measures, the issues identified in the Performance Requirements set out in Section 4.6 [Railway Protection Performance Requirements] of this Schedule and, to the extent not already so identified, the following issues:
- (i) traffic management protocol for CPKC work crews transiting the Project Site on Highway 1 and the Jumping Creek Forest Service Road, and with the Design-Builder being responsible for traffic control on the Jumping Creek Road and the Jumping Creek Forest Service Road including flagging to safely manage all conflicts between users, including CPKC, TAMS, logging operations and Design-Builder operations;
 - (ii) protection of the CPKC facilities including track and Railway Operations during Construction;
 - (iii) all reasonable efforts to ensure no Interference;
 - (iv) surface drainage and groundwater changes within and from the Project Site as may affect the CPKC infrastructure;
 - (v) communication and coordination with CPKC during Construction;
 - (vi) CPKC track availability;
 - (vii) compliance of Construction with Laws relating to railway safety; and
 - (viii) each detonation of explosives that could potentially have an impact on the CPKC infrastructure or Railway Operations (each, a "**Restricted Detonation**") to be

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carried out in accordance with Section 4.6(b)(i) of this Schedule, and all other detonations of explosives that are not Restricted Detonations,

and will include both relevant narrative description and illustrative drawings, as applicable. This initial submission of the Railway Impact Assessment Report will include all areas of the Project and address, at a conceptual level, all issues identified and, at a minimum, will cover the first year of Construction activities following the Effective Date.

- (b) The Design-Builder will incorporate into the Design mitigation measures for all impacts identified in the Railway Impact Assessment Report.
- (c) Continuously during Design, the Design-Builder will monitor its efforts to mitigate the risks to the Railway Operations identified in the Railway Impact Assessment Report and, within 15 days after each of the following milestones is achieved:

- (i) completion of all Interim Designs; and
- (ii) completion of all Final Designs,

prepare and submit to the Province's Representative an updated Railway Impact Assessment Report for review by the Province in accordance with the Review Procedure as contemplated in Section 4.7 [Review and Consent] of this Schedule, to report on the status of such mitigation efforts and on any new issues that may impact the Railway Operations which the Design-Builder has identified during Design (including proposed mitigations to address such new issues). Subsequent submittals of updated Railway Impact Assessment Reports may add to previously-updated Railway Impact Assessment Reports in an organized, logical and stepwise manner as the Design work progresses.

- (d) The Design-Builder may, at its discretion, develop and submit with the initial or any updated Railway Impact Assessment Report any number of identified construction means and methods proposed to be available to be utilized by the Design-Builder depending on the actual ground conditions encountered as Construction progresses. Any of such identified construction means and methods, once consented to by the Province in the applicable initial or updated Railway Impact Assessment Report, may then be used by the Design-Builder, upon notification to the Province's Representative and the CPKC Field Representative, as different ground conditions are encountered as Construction progresses.
- (e) In the event that the Design-Builder proposes to use any substantially new construction means and methods other than those previously included in any Railway Impact Assessment Report in accordance with Section 4.2(d) of this Schedule, the Design-Builder will notify the Province's Representative and the CPKC Field Representative of such proposed use of such construction means and methods and, if reasonably determined to be required by the Province's Representative and the CPKC Field Representative, will prepare and submit to the Province's Representative prior to the implementation of such proposed use an updated Railway Impact Assessment Report for review by the Province in accordance with the Review Procedure as contemplated in Section 4.7 [Review and Consent] of this Schedule, identifying such proposed use of such construction means and methods.

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4.3 Communication and Coordination with CPKC

- (a) The Design-Builder will appoint a competent and qualified person to act as its railway coordinator and risk assessment manager (the “**Railway Coordinator**”) in respect of railway matters relating to the Project.
- (b) By no later than 90 days after the Effective Date, the Design-Builder will prepare and submit to the Province’s Representative, for consent by the Province in accordance with the Consent Procedure as contemplated in Section 4.7 [Review and Consent] of this Schedule, a CPKC Communication and Engagement Plan. Such plan will include, but not be limited to, a protocol for communicating and engaging with CPKC on such a basis as to efficiently manage the exchange of information relating to those aspects of the Construction that may affect the Railway Operations. Such communication and engagement protocol will address, at minimum, a process for reporting safety concerns, ground and drainage condition reports, notification to CPKC of access requests and notification of Emergency Situations.
- (c) The Railway Coordinator will:
 - (i) be responsible, during Design and Construction, for communicating and coordinating with the CPKC Field Representative;
 - (ii) coordinate with CPKC the performance of the Proposed Drainage Work and those other parts of the Project Work that may impact Railway Operations to assure the safe, timely, efficient and successful interface of such work;
 - (iii) act as Design-Builder’s direct point of contact with CPKC during Design and Construction;
 - (iv) ensure all requisite inspections of CPKC facilities are completed in a timely manner; and
 - (v) ensure the Design-Builder’s compliance with this Part 4.
- (d) The Design-Builder acknowledges and agrees that the Province may provide to the CPKC Field Representative the Design-Builder’s progress reports and Project meeting minutes, subject to any and all redactions of confidential matters from such reports and minutes as the Province determines to be appropriate.
- (e) The Design-Builder acknowledges and agrees that it will cooperate with the Province and CPKC, recognizing that coordination of the Design-Builder’s employees, agents, personnel and contractors with CPKC’s employees, agents, personnel and contractors is an important component of the Project Schedule and the timing of the Project Work under this Agreement.
- (f) During Construction of the Project, the Railway Coordinator will meet with the Province’s Representative and the CPKC Field Representative at least monthly, or with such other frequency as may be warranted by the Project Work then proposed, to:

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- (i) review planned activities for that month that may affect Railway Operations;
- (ii) identify specific risks to Railway Operations;
- (iii) confirm the Design-Builder's mitigation strategy for any Railway Interference or Emergency Situation that may arise as a result of the planned activities;
- (iv) consider any unresolved issues affecting or potentially affecting Railway Operations; and
- (v) review any concerns from CPKC in connection with the protection of Railway Operations and the avoidance of any Emergency Situation or Railway Interference (i.e. flagging, track blocks, or the status of sight lines).

4.4 Paramourncy of Public and Party Safety

- (a) The parties acknowledge and agree that the safety of the public, the parties, CPKC, the parties' and CPKC's respective employees and agents, are and must be paramount at all times during the term of this Agreement.
- (b) The Design-Builder further acknowledges that CPKC is responsible for maintaining continuous Railway Operations in order to meet its service requirements as set out in the *Canada Transportation Act* (Canada) and its service obligations to its customers; accordingly, the Design-Builder agrees to perform its obligations pursuant to this Agreement using all reasonable efforts not to cause Interference or an Emergency Situation.

4.5 Design-Builder Railway Protection Measures

- (a) In addition to, and without derogating from, the Design-Builder's obligation to meet or exceed the Performance Requirements described below in Section 4.6 [Railway Protection Performance Requirements] of this Schedule, the Design-Builder will develop technical mitigations to protect the CPKC infrastructure and the Railway Operations from the carrying out of the Construction by the Design-Builder (the "**Design-Builder Railway Protection Measures**"). The Design-Builder will submit to the Province's Representative for the review of the Province pursuant to the Review Procedure as contemplated in Section 4.7 [Review and Consent] of this Schedule, any and all Design-Builder Railway Protection Measures.
- (b) The Design-Builder will not commence Construction in any specific part of the Project Site unless and until the Province has reviewed pursuant to the Review Procedure as contemplated in Section 4.7 [Review and Consent] of this Schedule any Design-Builder Railway Protection Measures applicable to such specific part of the Project Site.

4.6 Railway Protection Performance Requirements

The Design-Builder will meet the following performance requirements (the "**Performance Requirements**") for protection of the Railway Operations and the CPKC infrastructure during Construction:

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(a) Inspection

Prior to commencement of Construction in any area that may affect the CPKC infrastructure or the Railway Operations, the Design-Builder and the Province will, together with the CPKC Field Representative, complete a joint visual inspection of the CPKC infrastructure in the vicinity of such area. The Design-Builder will organize and lead the inspection and will document all findings in a report entitled “Pre-Construction Condition Survey of Existing CPKC Infrastructure”, and the Design-Builder will submit such report to the Province’s Representative, for review by the Province in accordance with the Review Procedure as contemplated in Section 4.7 [Review and Consent] of this Schedule. The “Pre-Construction Condition Survey of Existing CPKC Infrastructure” report will include, but will not be limited to, the following:

- (i) rail bridges;
- (ii) all drainage infrastructure including ditches and culverts;
- (iii) all rock and soil slopes;
- (iv) all trackwork and related infrastructure;
- (v) all existing rock fall mitigation measures including, but not limited to, rock catchment fences, berms, and stopping walls; and
- (vi) areas of existing rock fall accumulation at track level and source areas in and above the CPKC infrastructure.

(b) Blasting and Grading

- (i) Each Restricted Detonation must only be undertaken with required track protection in place as provided in the applicable blasting procedures and monitoring plan under Section 4.8(c) of this Schedule.
- (ii) The Design-Builder will plan each Restricted Detonation to incorporate the following sequence of work, in the order provided, such that the blast is achievable within each available blasting window:
 - (A) traffic on Highway 1 is stopped;
 - (B) railway traffic has cleared the work area and required track protection is in place as provided in the applicable blasting procedures and monitoring plan under Section 4.8(c) of this Schedule;
 - (C) the detonation of explosives is initiated and completed;
 - (D) confirmation is received that the detonation of explosives proceeded as planned and there are no undetonated explosives within the blast or, if there are any undetonated explosives, any hazards related to such undetonated explosives have been mitigated;

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- (E) the slopes between the work area and the CPKC tracks are free from any hazardous condition and it is safe for workers to enter the area below the blast site; and
 - (F) the tracks are inspected by CPKC for any debris or other damage that may have been caused by the blast.
 - (iii) Blasting activities other than Restricted Detonations may be undertaken by the Design-Builder in accordance with the applicable requirements of this Agreement at any time.
 - (iv) The Design-Builder will ensure that all Construction means and methods do not cause, and do not have the potential of triggering, generating or increasing the frequency and magnitude of, geohazards to the CPKC infrastructure, whether during or post-Construction. The Design-Builder will ensure that all Construction activities, including blasting operations, do not cause any unintended alteration to, or placement of any debris or materials on, the slope between Highway 1 and the CPKC tracks, that increases the geohazard risk to CPKC existing as at the Effective Date. The Design-Builder will prevent any Construction equipment, material, rock fall, and fly rock from leaving the Project Site and interfering with the CPKC tracks or the Railway Operations.
 - (v) Ground disturbances caused by the Design-Builder for the Project works, including temporary disturbance during construction and permanent disturbance for post construction, must not increase the volume of loose material available to be mobilized between Highway 1 and the CPKC tracks during periods of surface water runoff.
- (c) Drainage
- (i) The Design-Builder acknowledges that between LKI 43.0 and LKI 44.2 drainage downslope of Highway 1 generally flows via existing ditches, swales and overland into CPKC property, and then crosses the Jumping Creek Forest Service Road through culverts or over the road before approaching CPKC infrastructure. The Design-Builder will ensure that such drainage is not in any way increased towards CPKC infrastructure. The Design-Builder will develop a hydraulic model for the existing and proposed conditions that demonstrates how flows will not increase at any of the existing culverts crossing the CPKC railway line as a result of the Project Work. Such hydraulic model will include Highway 1, Jumping Creek Forest Service Road and all land and infrastructure that drains towards CPKC infrastructure. Overland sheet flow and all concentrated flow paths will be included in the model, capturing runoff from precipitation and snow melt from both snow pack and snow storage. The highway surface, slopes, culverts, bridge decks, drain pipes, ditches, swales, and all other relevant infrastructure and drainage systems will be included. Runoff events modelled will include the 2, 5, 10, 25, 50, 100 and 200 year peak instantaneous return periods for present day hydrologic conditions. Flow increases will be mitigated by directing additional runoff east to cross culverts where increased runoff will not impact CPKC infrastructure.

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- (ii) The Design-Builder will ensure, where practicable, that all temporary and permanent drainages are directed away from the slope between Highway 1 and the CPKC infrastructure.

(d) Landslide Risks

The Design must address all identified Landslide risks to the CPKC infrastructure and the Railway Operations. The Design-Builder will conduct monitoring prior to and during Construction to ensure there is no destabilization of identified and potential Landslides. If a Landslide is triggered or reactivated during Construction, the Design-Builder will carry out repair works as required to stabilize the Landslide in accordance with Section 8.10A [Landslides] of this Agreement so that the Landslide does not cause an Interference.

(e) Debris Flow Hazards

The Design must ensure that any of the Design-Builder's proposed Construction modifications to the drainage systems between Highway 1 and the CPKC tracks or above Highway 1 do not increase the downslope debris flow risk to the Railway Operations. The Design-Builder will submit to the Province's Representative, for review by the Province in accordance with the Consent Procedure as contemplated in Section 4.7 [Review and Consent] of this Schedule, all analysis and calculations associated with its assessment of the downslope debris flow risk, as part of its detailed Design submission.

(f) Flagging

- (i) The Design-Builder will be responsible for provision of all railway flagging required from time to time in connection with the Project Work in accordance with the CPKC Third Party Flagging Information Guide.
- (ii) Without limiting the generality of the foregoing, the Design-Builder will provide flag persons for any Project Work that might reasonably be expected to cause a potential hazard to the Railway Operations, as determined by CPKC. All such requisite flag persons will be provided in accordance with the following requirements and procedures:
 - (A) each period during which flag persons will be required will be of no less than 2 weeks' duration (a "**Required Flagging Period**");
 - (B) each request for flag persons will be for two flag persons per each 12 hour shift during the applicable Required Flagging Period, inclusive of travel time; and
 - (C) each request will be submitted no less than 60 days prior to the commencement of the applicable Required Flagging Period.

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4.7 Review and Consent

- (a) Without limiting any other submission requirements set out in this Part, the Design-Builder will submit to the Province's Representative information and documentation related to any and all aspects of the Design and Construction:
- (i) that relate to:
- (A) Project Work proposed to be carried out on any part of the Highway-Occupied Railway Lands or the Temporary Licence Areas; or
- (B) Proposed Drainage Work,
- for consent by the Province in accordance with the Consent Procedure, and the procedure for consent by CPKC in accordance with Section 8.5 of the CPKC Agreement; or
- (ii) that relate to other Project Work that might reasonably be expected to have an impact on the Railway Operations:
- (A) for review or consent by the Province in accordance with the Review Procedure or the Consent Procedure, as applicable, and
- (B) in accordance with the procedure for review by CPKC in accordance with Section 8.6 of the CPKC Agreement,

in each case in accordance with Table 4.7(a) below:

Table 4.7(a)

Schedule Reference	Article / Section Reference	Submission Document Name	Province Review Procedure or Consent Procedure	CPKC Review or Consent under CPKC Agreement	For Information only
		Drainage Design Report			
4	Part 1 Section 7.2	Components not on Railway Lands	Consent	Review	
4	Part 1 Section 7.2	Components on Railway Lands	Consent	Consent	
		Geotechnical Reports			
4	Part 2 Section 2.8.5	Components not on Railway Lands	Review	Review	

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Schedule Reference	Article / Section Reference	Submission Document Name	Province Review Procedure or Consent Procedure	CPKC Review or Consent under CPKC Agreement	For Information only
4	Part 2 Section 2.8.5	Components on Railway Lands	Consent	Consent	
		Avalanche Reports			
4	Part 1 Section 10.5 and Part 2 Section 2.8.7	Highway Avalanche Hazard Assessments and Design Report	Review	Review	
		Traffic Management Plan			
4	Part 3, Section 4.1	The movement of CPKC crews on or through the Project Site	Consent	Review	
		Construction Environmental Management Plan			
6	Part 2 Section 2.6(b)	Revegetation Plan on Railway Lands	Consent	Consent	
		Temporary Works			
4	Part 2 Section 2.15	Temporary Drainage during construction	Review	Review	
4	Part 2 Section 2.15	Temporary Geotechnical Mitigation during construction	Review	Review	
4	Part 2 Section 2.15	Any Temporary Works on Railway Lands	Review	Consent	

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Schedule Reference	Article / Section Reference	Submission Document Name	Province Review Procedure or Consent Procedure	CPKC Review or Consent under CPKC Agreement	For Information only
Various	Various	Technical Memoranda, Reports and / or Non-Conformity Reports related to impacts or design changes affecting CPKC			For Information only, unless the applicable document materially changes something that CPKC previously consented to, in which case the document will be re-submitted to CPKC for Consent under CPKC Agreement

- (b) Pursuant to the Review Procedure (as modified in and for the purposes of this Part), the Province will, as soon as practicable and, subject to Section 3.2 [Incomplete Information] of Schedule 2, in any event within two days of actual receipt thereof, forward one copy of the relevant submission document to CPKC or its designated consultant for review by CPKC. The Province will, within 10 Business Days of actual receipt of the submission document from the Design-Builder, return to the Design-Builder one copy of the relevant submission document endorsed “received” or “received with comments” or “comments”, together with, in addition to the Province’s own comments (if any), any applicable comments provided by CPKC.
- (c) Pursuant to the Consent Procedure (as modified in and for the purposes of this Part), the Province will as soon as practicable and, subject to Section 3.2 [Incomplete Information] of Schedule 2, in any event within two days of actual receipt thereof, forward one copy of the relevant submission document to CPKC for review or consent by CPKC, as the case may be. The Province will, within 20 Business days of actual receipt of the submission document from the Design-Builder, return to the Design-Builder one copy of the relevant submission document endorsed as “accepted” or “rejected” together with, in addition to the Province’s own comments (if any), any applicable comments provided by CPKC, and, in the case of any submission document returned endorsed “rejected”, the Province will also provide with such returned document the grounds for such rejection.

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- (d) Without limiting any right of the Design-Builder to refer any matter to the Dispute Resolution Procedure in accordance with Schedule 2 [Representatives, Review Procedure and Consent Procedure], in the event that:
 - (i) CPKC makes a request pursuant to Section 8.7(a) of the CPKC Agreement for any further or other information, data, documents or steps; or
 - (ii) any submission document provided by the Design-Builder pursuant to the Review Procedure or the Consent Procedure in accordance with this Part is returned endorsed:
 - (A) “received with comments” or "comments" provided by CPKC;
 - (B) “accepted” but with comments provided by CPKC; or
 - (C) “rejected” by CPKC,

and in each case the Province has required compliance by the Design-Builder with such request, comments or rejection provided by CPKC, the Design-Builder may dispute that the request for such further or other information, data, documents or steps is reasonable, or that the provision of any such comments or such rejection by CPKC is on grounds permitted by Section 8.8 of the CPKC Agreement, as the case may be, by referring the matter to the Dispute Resolution Procedure within 10 days of the Design-Builder's receipt of such request for further or other information, data, documents or steps or returned submission document, as applicable, but not thereafter, and the Design-Builder acknowledges and agrees to CPKC's participation in any resulting proceedings in respect of such Dispute in accordance with the Dispute Resolution Procedure. If it is then resolved in accordance with the Dispute Resolution Procedure that:

- (iii) the request for such further or other information, data, documents or steps:
 - (A) was not reasonable, then the Design-Builder shall not be required to provide such further or other information, data, documents or steps and the request therefor by CPKC shall constitute a Compensation Event and the provisions of Part 8 [Supervening Events] shall apply; or
 - (B) was reasonable, then the Design-Builder shall provide such further or other information, data, documents or steps; or
- (iv) the provision of any such comments or any such rejection by CPKC, as applicable:
 - (A) was not on such permitted grounds, then such submission document will thereupon be deemed to have been endorsed "received" or "accepted", as the case may be, and the provision of such comments or the rejection of such submission document by CPKC shall constitute a Compensation Event and the provisions of Part 8 [Supervening Events] shall apply; or

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- (B) was on such permitted grounds, then such submission document shall be revised and re-submitted by the Design-Builder pursuant to the Review Procedure or the Consent Procedure, as the case may be.
- (e) In the event that, notwithstanding that the Province has provided consent to any submission pursuant to this Article that is required in accordance with the Consent Procedure (as modified in and for the purposes of this Part), CPKC has not, within 45 days following the provision of such consent by the Province, taken all such actions as are required from CPKC, including providing any consent in accordance with Section 8.5 of the CPKC Agreement or issuing any licence or other permit to enter onto the Highway-Occupied Railway Lands or Temporary Licence Areas, as may be required in order to permit the Design-Builder to proceed to implementation of the relevant submission, then such failure of CPKC to take such actions, or the provision of such notice by CPKC, as applicable, shall constitute a Compensation Event and the provisions of Part 8 [Supervening Events] shall apply.
- (f) The Design-Builder acknowledges that the Province will engage with CPKC or its designated consultant(s), as the Province determines appropriate, during the conduct of the Review Procedure or Consent Procedure, as the case may be, for all submissions provided by the Design-Builder in accordance with this Part.
- (g) The Design-Builder will provide the submission documents identified in Table 4.7(g) below to the Province's Representative, for the Province's and CPKC's respective records.

Table 4.7(g)

Schedule/ Article/Section Reference	Submission Document Name	Purpose
Schedule 4, Part 2, 2.8	Final Design submissions for: (a) Drainage (b) Geotechnical relating to geohazards (c) Site restoration (d) Environmental including Environmental Design Drawings	Record
Schedule 4, Part 2, 2.12	IFC Drawings for: (a) Drainage (b) Geotechnical relating to geohazards (c) Site restoration (d) Environmental including Environmental Design Drawings	Record
Schedule 3, Appendix 3C, 1	Record drawings for: (a) Drainage (b) Geotechnical relating to highway geohazards (c) Site restoration (d) Environmental including Environmental Design	Record

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4.8 Managing Interference with Railway Traffic

- (a) The Design-Builder will use all reasonable efforts to ensure that the Construction does not at any time cause or necessitate any unplanned interruption or stoppages of Railway Operations.
- (b) The Design-Builder will use all reasonable efforts to ensure that the Construction does not at any time cause Interference or the occurrence of an Emergency Situation.
- (c) The Design-Builder will prepare and submit to the Province's Representative, for the consent of the Province in accordance with the Consent Procedure as contemplated in Section 4.7 [Review and Consent] of this Schedule, a progressive blasting procedures and monitoring plan for each rock cut location requiring a Restricted Detonation, specific to protection of CPKC infrastructure and Railway Operations, including, in accordance with Section 4.6(b) of this Schedule:
 - (i) each proposed Restricted Detonation;
 - (ii) the Design-Builder's proposal for the required track protection to be put in place for each such Restricted Detonation; and
 - (iii) the Design-Builder's proposal for provision of suitable standby equipment, with a response time of no more than 15 minutes, for each such Restricted Detonation.

The Design-Builder will not conduct any Restricted Detonation at any such rock cut location unless and until the Province has consented pursuant to the Consent Procedure as contemplated in Section 4.7 [Review and Consent] of this Schedule to the applicable blasting procedures and monitoring plan for such rock cut location.

- (d) By no later than 90 days after the Effective Date, the Design-Builder will provide to the Province's Representative, for review by the Province in accordance with the Review Procedure as contemplated in Section 4.7 [Review and Consent] of this Schedule, a preliminary schedule for any required railway flagging necessary to undertake any Construction. The Design-Builder acknowledges that scheduling and approval of such railway flagging will be in the sole, absolute and unfettered discretion of CPKC.
- (e) The Design-Builder will provide suitable standby equipment (excluding Hi-rail equipment), with a response time of no more than 15 minutes, during any Construction activities that might reasonably be expected to cause an Emergency Situation or Interference, which activities will include Restricted Detonations and downslope access Construction and excavations.
- (f) In the event that any Project Work has caused, or may cause, an Emergency Situation or Interference, the Design-Builder will immediately notify the Province.
- (g) If any Project Work causes or contributes to any Emergency Situation or unauthorized Interference, then the Design-Builder will:

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- (i) take no further action that may exacerbate the Emergency Situation or unauthorized Interference;
- (ii) immediately work to resolve the underlying cause of the Emergency Situation or unauthorized Interference, to the Province's reasonable satisfaction; and
- (iii) remedy any physical damage to the Railway Operations or the lands owned, occupied, leased or licensed by CPKC (excluding the Highway-Occupied Railway Lands) on which CPKC conducts such Railway Operations, caused by such Emergency Situation or unauthorized Interference, to the Province's reasonable satisfaction.

4.9 Highway 1 Traffic Management

Without limiting the generality of Part 4 [Traffic Management] of this Schedule, the Design-Builder will provide CPKC with access to and along Highway 1 through the Project Site and to and along the Jumping Creek Forest Service Road on the following basis:

- (a) The Design-Builder will provide access to CPKC in the event of an Emergency Situation on a priority, but not guaranteed, basis. Such access will be on the same basis as for emergency services, as described in Section 1.5(b) of Part 3 [Traffic Management] of Schedule 4. The Design-Builder will use all reasonable efforts to provide to CPKC safe passage as promptly as possible.
- (b) The Design-Builder acknowledges that CPKC ordinarily transfers train crews, engine crews, maintenance crews and engineering crews (each a "Crew") on and along Highway 1 from time to time on a 24 hours per day, seven days per week, basis. If, during Construction, a 2 Hour Full Closure of Highway 1 is in effect at the proposed time of transfer of any such Crew, then provided that CPKC has notified the Design-Builder no less than 45 minutes in advance of the time CPKC needs to make such transfer (such notice to include the approximate time such transfer will occur), the Design-Builder will pilot the applicable Crew(s) through the Project Site on a priority but not guaranteed basis. The Design-Builder will be permitted to delay or deny such access if it considers that it cannot then provide to CPKC safe passage along Highway 1.
- (c) The Design-Builder will use all reasonable efforts to avoid undue interference with CPKC's use in the ordinary course of Jumping Creek Forest Service Road.

4.10 Railway-Related Construction Schedule

- (a) By no later than 90 days after the Effective Date, the Design-Builder will prepare and submit to the Province's Representative for review by the Province in accordance with the Review Procedure as contemplated in Section 4.7 [Review and Consent] of this Schedule a baseline Construction schedule consistent in substance with the Works Schedule described in Schedule 3 [Project Schedule] and capturing all Construction works that potentially could impact the Railway Operations, including:
 - (i) construction of the Design-Builder Railway Protection Measures on the Project Site adjacent to the CPKC infrastructure;

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- (ii) all road construction activities that potentially could impact Railway Operations;
 - (iii) all Proposed Drainage Work, and other structure construction activities that potentially could impact Railway Operations; and
 - (iv) drilling and blasting, earthworks and Structure construction adjacent to the CPKC infrastructure.
- (b) The Design-Builder will also provide to the Province's Representative and CPKC Field Representative its construction four-week look-ahead schedules and all schedule updates during the Construction. All schedules will be prepared in Microsoft Project (.mpp) and in PDF.

4.11 Design-Builder Responsibility for Certain CPKC Costs

The Design-Builder will be responsible for all costs and expenses incurred by CPKC in connection with the following:

- (a) all requisite railway flagging for all Construction that may reasonably be expected to cause a potential hazard to the Railway Operations, as determined by CPKC; and
- (b) all Design-Builder Railway Protection Measures,

and if either the Province or BCTFA is invoiced or otherwise charged directly for any such costs or expenses, the Province or BCTFA (as the case may be) may pay such costs and expenses and, subject always to the Province's right of set-off pursuant to Section 1.4 [Province's Right of Set-Off] of Schedule 10, the Design-Builder, upon demand, will forthwith reimburse the Province or BCTFA, as applicable, for any amount so paid.

4.12 Performance Measures

- (a) Table 4.12 below sets out:
 - (i) the performance measures to be met by the Design-Builder in relation to all requirements of this Part for the protection of Railway Operations and the CPKC railway line during Construction; and
 - (ii) the timing for each such performance measure, where applicable.
- (b) In respect of any performance measure set out in such Table with a designation of "Major" or "Severe" in the column entitled "Performance Mechanism Index", such designation indicates the basis on which NCE Points will be assigned in accordance with Appendix 9A [Assignment of NCE Points] to Schedule 9, and NCE Points may be assigned in accordance with Section 6.1 [Nonconformity Reporting Process] of Schedule 7 for any other performance measures set out in such Table.
- (c) Any timing requirements in such Table will be in addition to, and will not replace, any other timing requirements provided in this Agreement.

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Table 4.12

Reference of this Schedule	Deliverables/Performance Requirement	Timing	Performance Mechanism Index
4.2(c)	Updated Railway Impact Assessment Report	Within 15 days after each of the following milestones is achieved: (i) completion of all Interim Designs; and (ii) completion of all Final Designs.	Major
4.3(b)	CPKC Communication and Engagement Plan	Initial plan no later than 90 days following the Effective Date	
4.6(b)	The Design-Builder must prevent any rock fall caused by Construction from leaving the Project Site and interfering with the CPKC tracks or Railway Operations.	Each event	Severe
4.6(d)	If a Landslide is activated during Construction, the Design-Builder will carry out the repair works required to stabilize the Landslide in accordance with Section 8.10A [Landslides] of this Agreement so that the Landslide does not affect the Railway Operations.	Complete required repair works as per agreement with the Province's Representative and CPKC Field Representative	Severe
4.6(a)	The Design-Builder will perform and document joint visual inspections, with CPKC and the Province, of all items listed in Section 4.6(a) of this Schedule prior to and after Construction.	Complete joint visual inspections prior to commencement of Construction in any area that may affect the CPKC infrastructure or the Railway Operations, and no later than 60 days after Substantial Completion	

4.13 Conditions Precedent to Commencement of Certain Project Work

The Design-Builder Builder acknowledges and agrees that it shall be a condition precedent to commencement of any Proposed Drainage Work, and any specific Construction on any specific part of the Highway-Occupied Railway Lands or Temporary Licence Areas that:

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- (a) the Province has consented pursuant to the Consent Procedure (such Consent Procedure to incorporate the procedure for consent by CPKC pursuant to Section 8.5 of the CPKC Agreement) to the applicable component of the Design;
- (b) where applicable, the Design-Builder has secured all approvals, permits and authorizations required under applicable Laws for any such Construction on the specific part of the Highway-Occupied Railway Lands or Temporary Licence Areas, as applicable, within which such Construction will take place; and
- (c) where applicable, the Design-Builder has obtained from CPKC, if required, a licence or other permit to enter onto such specific part of the Highway-Occupied Railway Lands or Temporary Licence Areas, as applicable, to perform the relevant Construction.

**PART 5
UTILITIES**

5.1 Design-Builder Responsibility

The Design-Builder will not construct, install or permit the construction or installation of any Utilities on, in, under or over the Project Site or any part thereof without the prior consent of the Province (which consent may be given or withheld in the discretion of the Province); provided that the Design-Builder will not be in default under this Section as a result of the exercise by a Utility Supplier of its rights under a Utility Agreement or as a result of any Utility Work carried out in compliance with Section 5.5 [Utility Work] of this Schedule and any other relevant provisions of this Agreement. Without limiting the generality of the foregoing, at no time will the Design-Builder use or permit the use of the Project Site or any Project Infrastructure for gas, oil or other petroleum product pipelines or infrastructure in connection therewith (other than those (if any) existing on the Effective Date) without the prior written consent of the Province (which consent may be given or withheld in the discretion of the Province).

5.2 Protection of Utilities

Except for Utility Work carried out in compliance with Section 5.5 [Utility Work] of this Schedule and any other relevant provisions of this Agreement, and except as may otherwise be agreed in writing by the relevant Utility Supplier in its discretion, all Utilities located as at the Effective Date or thereafter on, in, under or over the Project Site (including Utilities within any excavation) are to remain in service and be protected and preserved by the Design-Builder during and after the performance of the Project Work and any other works carried out in the course of the Project.

5.3 Location

The Design-Builder will be responsible for confirming the actual locations of all Utilities now or hereafter located on, in, under or over the Project Site and the Project Infrastructure and ensuring that its Subcontractors and employees of any of them are made aware of such locations as necessary to ensure compliance at all times with the provisions of this Schedule. The Design-Builder will not rely on location plans, as-built drawings supplied by Utility Suppliers or other similar documents for confirming locations of Utilities.

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5.4 Utility Policy Manual

The Design-Builder will abide by, observe, comply with and perform and cause its Subcontractors and employees of any of them to abide by, observe, comply with and perform the terms of all applicable sections of the Utility Policy Manual.

5.5 Utility Work

- (a) The Design-Builder will be responsible for securing all temporary and permanent Utilities required in connection with or as part of the Project Work, and for all Utility Work to be carried out in connection with or as part of the Project Work.
- (b) All Utility Work undertaken by the Design-Builder will be designed by, and all relevant plans in relation thereto sealed by, a Professional Engineer specializing in the particular sector of engineering associated with the relevant Utility Work.
- (c) Subject to the rights of Utility Suppliers under the Utility Agreements, and except as expressly provided otherwise in this Agreement, as between the Province and the Design-Builder, all Utility Work will be carried out by or under the supervision of and at the risk, cost and expense of the Design-Builder, including schedule risk of the Design-Builder, whether or not, as between the Design-Builder and a Utility Supplier, such Utility Work is to be performed by or under the supervision of or at the risk, cost and expense of a Utility Supplier, and without limiting the generality of the foregoing, the Design-Builder will be responsible for:
 - (i) obtaining from the relevant Utility Supplier, any Relevant Authority or any other Interested Party all rights of entry or access to the relevant Utilities that are necessary or expedient in connection with the Utility Work;
 - (ii) identifying all requirements in respect of the Utility Work, including determining with the Utility Supplier the most effective strategies for undertaking the Utility Work;
 - (iii) liaising, arranging, coordinating and entering into all necessary agreements with relevant Utility Suppliers, Relevant Authorities and other Interested Parties in connection with the Utility Work, including obtaining any necessary consents or approvals in connection therewith, providing access for inspections and providing information and plans during and following completion of the Utility Work;
 - (iv) ensuring that all Permits required by Applicable Laws in connection with the Utility Work are obtained, including preparing all required documentation in connection therewith and ensuring that such Permits are maintained and, to the extent necessary, updated following completion of any Construction;
 - (v) observing and complying with any instructions or directions relating to the Utility Work that may be issued by the Province, including where issued by the Province expressly on behalf of a relevant Utility Supplier, Relevant Authority or other Interested Parties;

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- (vi) securing or causing to be secured the entry into or execution of all relevant construction and maintenance agreements, service contracts, and other agreements in connection with the Utility Work;
 - (vii) when any Utility Work affecting Utilities referred to in a Utility Agreement are to be carried out, prior to commencing such Utility Work and in accordance with any notice requirements provided under the relevant Utility Agreements, giving written notice to the relevant Utility Supplier confirming that the Utility Work is being carried out by or on behalf of the Design-Builder pursuant to this Agreement;
 - (viii) performing any warranty work required in respect of Utility Work;
 - (ix) ensuring that any Utility Work to be performed by a Utility Supplier is performed so as not to impair or delay performance by the Design-Builder of any other element of the Project Work;
 - (x) giving written notice as required by the relevant Utility Supplier when any Project Work affecting a Utility or Utility Work is to be carried out, before commencing such Project Work or Utility Work, and when such work has been completed, calling for inspections and, where applicable, tie-ins;
 - (xi) ensuring that there is no disruption of any existing Utility caused by the Project Work unless approved in writing by the relevant Utility Supplier, and any such permitted disruption will be subject to any terms or conditions imposed by such Utility Supplier; and
 - (xii) all electrical distribution or transmission and all telecommunication crossings whether underground or overhead.
- (d) Without limiting Section 5.5(c)(xii) of this Schedule, the Project Work will include the decommissioning and disposal of direct buried telecommunication duct near the MacDonald Snowshed, all in accordance with the Utility Agreement with Telus, the Utility Policy Manual and in conformity with all applicable Telus standards. The Design-Builder will decommission and dispose of any abandoned direct buried telecommunication ducts within the Project Site. The Design-Builder will supply and install two - 50 mm diameter orange HDPE conduits, in accordance with the Utility Policy Manual and Telus requirements, only for four lane Bridge Structures. Conduits are not required for Half Bridges. All conduits will be extended 5 m beyond approach slab and the ends of conduits will be terminated in a vault.
- (e) Notwithstanding the requirements in Section 5.2 [Protection of Utilities] of this Schedule and the Utility Policy Manual, the Design-Builder will provide a 250 mm steel casing pipe to accommodate the three 50 mm water supply lines for the TAMS that cross Highway 1 on the Project Site generally as shown on the Reference Concept, which casing will:
- (i) cross Highway 1 at 90 degrees;
 - (ii) have a minimum depth cover of 1.8 m (top of casing to any finished surface), complete with casing end seals;

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- (iii) extend beyond the toe of the road prism so casing ends can be exposed in future without disturbing the highway embankment; and
- (iv) have a Design that is consistent with current standards for materials and/or technology, including meeting all Canadian Food Inspection Agency quality standards, and that is submitted to the Province's Representative in accordance with the Review Procedure.

All service connections from the water supply lines will be maintained at all times during Construction. The Design-Builder will be responsible for relocating the existing water supply lines and any other TAMS infrastructure the relocation of which is required in accordance with the Design, provided that any such relocation of any TAMS infrastructure other than the existing water supply lines that cross Highway 1 will require the consent of the Province's Representative in accordance with the Consent Procedure. The Design-Builder will be responsible for reinstating all TAMS infrastructure impacted by the Project Work in a condition and function (gravity fed) that is equal to or better than existing and that would not result in additional infrastructure operation or maintenance cost to TAMS. The Design-Builder will minimize any service disruptions, will provide TAMS with two weeks' notice of any planned service disruption, and will ensure that any service disruption is less than 24 hours in duration and, unless approved otherwise by the Province's Representative, occurs on a Saturday. The Design-Builder will ensure that the Project Work does not cause, directly or indirectly, any impact on the water quality supplied to TAMS. The Design-Builder will ensure that the Project Work in the vicinity of the TAMS infrastructure does not cause, directly or indirectly, any impact to the TAMS infrastructure.

5.6 Design-Builder Responsible for Utility Costs

- (a) The Design-Builder will:
 - (i) contract directly with the relevant Utility Suppliers for all electricity, gas, water, sewer, telephone and communications services and other Utilities and services supplied to the Project Site and which are used or consumed in the performance of the Project Work, and the Design-Builder will pay for all costs and expenses of such Utilities and services until Total Completion; and
 - (ii) notwithstanding any contrary provisions in existing Utility Agreements related to payment responsibilities, be responsible for all costs and expenses arising from or in connection with the Utility Work, save to the extent expressly otherwise provided in Section 5.7 [Province Assistance with Utility Matters] of this Schedule.
- (b) If the Province or BCTFA are invoiced for any such costs or expenses in relation to Utilities or Utility Work which are the responsibility of the Design-Builder or, if such costs and expenses are otherwise charged directly to the Province or BCTFA, the Province or BCTFA may pay such costs and expenses and, upon demand, the Design-Builder will forthwith reimburse the Province or BCTFA, as applicable, for any amount so paid or, if the Province so elects, the Province may deduct any amount so paid or to be paid by the Province from any payments owing by the Province to the Design-Builder in accordance with this Agreement.

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5.7 Province Assistance with Utility Matters

- (a) Without prejudice to Section 5.10 [New and Amended Utility Agreements] of this Schedule, and provided the Design-Builder has taken and continues to take all reasonable steps to obtain and to satisfy any conditions or requirements for obtaining from the relevant Utility Supplier, Relevant Authority, Interested Parties, private owner or other person the rights of entry or access to any Utilities, or any other action, necessary or expedient to carry out any Utility Work required for the conduct of the Project Work within a reasonable time and on reasonable terms, then the Design-Builder may request the assistance of the Province (at the expense of the Design-Builder) in obtaining such rights of entry, access or other action, in which event the Province, to the extent it has the legal ability to do so under existing Laws, will use reasonable efforts to provide such assistance.
- (b) In the event of a dispute between the Design-Builder and a Utility Supplier as to whether the Design-Builder is entitled to the benefit of or to exercise rights under any Utility Agreement which dispute, despite the reasonable and diligent efforts of the Design-Builder, has not been resolved within a reasonable period of time, the Province, at the request and expense of the Design-Builder, will use reasonable efforts subject to the scope of the Province's legal rights under the terms of the relevant Utility Agreement to assist the Design-Builder in taking the benefit of or exercising the relevant rights under the Utility Agreement.
- (c) For further clarity, the assistance which the Design-Builder may request that the Province consider providing in accordance with and subject to the limitations of this Section 5.7 may include the facilitation by the Province of processes associated with and contemplated therein for the resolution of disputes or the acquisition or exercise of rights associated with Utility Work or Utility Agreements, and may also include, where permitted in accordance with the terms of any Utility Agreement without the consent of the relevant Utility Supplier, the assignment of rights under such Utility Agreement to the Design-Builder.
- (d) Notwithstanding Sections 5.7(a) through 5.7(c) of this Schedule, and without prejudice to the Province's rights to dispute what is reasonable on any other grounds, the Province may, in its discretion, determine that it is not reasonable for any assistance requested by the Design-Builder pursuant to Sections 5.7(a) through 5.7(c) of this Schedule to involve the Province initiating or participating in formal legal proceedings with any Utility Supplier, Relevant Authorities, Interested Party and/or any private owner or other person.

5.8 Utility Agreements

In the exercise of its rights and performance of its obligations under this Agreement the Design-Builder agrees to comply with, observe and abide by and to cause its Subcontractors and employees of any of them to comply with, observe and abide by the terms of all Utility Agreements (whether existing on the Financial Submittal Date or entered into or amended thereafter in accordance with Section 5.10 [New and Amended Utility Agreements] of this Schedule). The Design-Builder will not do or omit to do or permit to be done or omitted anything that would result in the Province or BCTFA being in default of any terms of the Utility Agreements.

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5.9 Rights under Utility Agreements

Unless otherwise expressly set out in this Agreement, the Design-Builder will be responsible for satisfying itself as to the extent to which it is entitled to take the benefit of or exercise rights under any Utility Agreement and, without limiting any other disclaimer or release of liability provided herein, the Province makes no representation or warranty whatsoever in that regard.

5.10 New and Amended Utility Agreements

The Province and BCTFA may enter into new Utility Agreements or amendments to existing Utility Agreements (which may include the grant of new Encumbrances or the amendment of existing Encumbrances affecting the Project Site or any part thereof) after the Financial Submittal Date to permit or facilitate the design, construction, installation, operation, repair, management, maintenance, rehabilitation, reconstruction and/or relocation of any existing or new Utilities. If the Province or BCTFA enters into any such new Utility Agreement or amendment that affects the Project Site or the conduct of the Project Work, the Province will:

- (a) give notice to the Design-Builder and provide the Design-Builder with particulars of the effect of the new Utility Agreement or amendment as it relates to the Project Site and the conduct of the Project Work;
- (b) use or cause to be used reasonable efforts to include provisions in the new Utility Agreement or amendment requiring the Utility Supplier to use reasonable efforts in exercising its rights thereunder as they relate to the Project Site so as to avoid or, if unavoidable, minimize physical disruption to the operation of the Project Infrastructure or physical damage to the Project Infrastructure; and
- (c) unless such new Utility Agreement was entered into to facilitate the Project Work, or as part of or for the purposes of the acquisition of Province Lands pursuant to Schedule 8 [Lands], issue in respect of such new Utility Agreement a Province Change and the provisions of Part 7 [Changes] of this Agreement will apply accordingly.

5.11 Indemnity by Design-Builder

The Design-Builder will indemnify and hold harmless the Province and the Province Indemnified Persons, and each of them, in respect of any and all Direct Losses and Claims (except only to the extent such Direct Losses and Claims are caused directly by a Province Non-Excusable Event), which the Province and the Province Indemnified Persons, or any of them, may suffer or incur arising as a result of the provision of any assistance by the Province to the Design-Builder in accordance with either Section 5.7(a) or Section 5.7(b) of this Schedule, regardless of whether or not the Design-Builder ultimately obtains the relevant rights of entry, access or other action, or is able to take the benefit of or exercise any rights under the relevant Utility Agreement, as the case may be.

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**PART 6
OPERATION AND MAINTENANCE**

6.1 Responsibility for Operation and Maintenance - General

The Design-Builder will carry out the operation and maintenance of the Project Infrastructure (the “**Operation and Maintenance**”) in accordance with the requirements set out in this Article in such a manner as to comply with this Agreement, commencing for the entire Project Site at the time of the commencement of Construction work on the Project Site and continuing to the Substantial Completion Date or, if earlier, the Termination Date.

6.2 Operation and Maintenance – Clarifications

- (a) Subject to Section 6.2(b) of this Schedule, the Design-Builder will not be responsible for routine winter maintenance of the Project Infrastructure, which will continue to be provided by the Ministry’s highway maintenance contractor (the “**Winter Maintenance Contractor**”) in accordance with the Highway Maintenance Specifications and the Highway Maintenance Specifications Local Area Specifications.
- (b) The Design-Builder will be responsible for winter maintenance of the Jumping Creek Road and the Jumping Creek Forest Service Road as required for its own purposes only, and should be aware of any avalanche exposure that may exist along either the Jumping Creek Road or the Jumping Creek Forest Service Road.
- (c) The Design-Builder will be responsible for dust control on the Jumping Creek Road and the Jumping Creek Forest Service Road during active Construction activities.
- (d) The Design-Builder will be responsible for maintaining the Jumping Creek Road and the Jumping Creek Forest Service Road to a condition the same as they are found at the start of the Project and, when the Project is complete, leave these roads in the same condition as existed at the start of the Project.
- (e) The Design-Builder will be responsible for maintaining all Structures within the Project Site in accordance with the Highway Maintenance Specifications.
- (f) For clarity, the MacDonald Snowshed is not Project Infrastructure within the Project Site and is not therefore to be maintained by the Design-Builder in accordance with this Article, but the Design-Builder will, in accordance with Section 10.2(g) of this Schedule, permit the Province and its maintenance contractors to enter upon the Project Site for the purpose of access to and from the MacDonald Snowshed for annual seasonal cleaning and other maintenance activities.

6.3 Operation and Maintenance - Specifications

The Design-Builder will carry out Operation and Maintenance in accordance with the Highway Maintenance Specifications and the Highway Maintenance Specifications Local Area Specifications with the following amendments:

- (a) Any and all references to “Contractor” are to be construed as the Design-Builder.

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- (b) Section 1.2, Services, b) Quantified Maintenance Services is replaced by the following:
- “Consist of the planned maintenance, repair, replacement or new installation of all infrastructure identified as Quantified Maintenance Services in Schedule 1 Specifications and includes work activities that are reasonably predictable or seasonal, that are of a minor restorative nature.”
- (c) The following items will not apply to the Design-Builder:
- (i) Section 1.2 Services, c) Additional Maintenance Services;
 - (ii) Section 2 Routine Maintenance Services Cap; and
 - (iii) Section 3 Warranty.
- (d) Section 1.4, Specification Format, the 6th bullet, Routine Maintenance Service Cap and the 7th bullet, Warranty, will not apply.
- (e) Section 1.5, Interpretation, e) is replaced by the following:
- “When the statements “as directed by the Province”, “as approved by the Province”, or “as determined by the Province” are used, this means the Province may provide the direction, approval or determination from the Province’s Representative in accordance with the Consent Procedure”
- (f) With reference to the Highway Maintenance Specifications, maintenance services that will apply to the Design-Builder (Included) and will not apply to the Design-Builder (Excluded) are set out in Table 6.3a as follows:

Table 6.3a

Highway Maintenance Specifications	Maintenance Services
1 Surface Maintenance	
1.01 Asphalt Pavement Maintenance	Included
1.02 Surface Treatment	Excluded
1.03 Highway and Shoulder Grading and Re-Shaping	Included
1.04 Dust Control and Base Stabilization	Excluded
1.05 Surface and Shoulder Gravelling	Included
1.06 Road Base Maintenance	Included
1.07 Surface Cleaning	Included
1.08 Debris Removal	Included
1.09 Cattle Guard System Maintenance	Excluded
1.10 Raised Hard Surfaced Infrastructure and Safety Device Maintenance	Included
1.11 Railway Crossing Approach Maintenance	Excluded

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Highway Maintenance Specifications	Maintenance Services
2 Drainage Maintenance	
2.01 Ditch Maintenance	Included
2.02 Drainage Appliance Maintenance	Included
2.03 Shore, Bank and Watercourse Maintenance	Included
3 Winter Maintenance	
3.01 Highway Snow Removal	Excluded
3.02 Snow and Ice Bonding Prevention and Control	Excluded
3.03 Other Snow Removal and Ice Control ⁽¹⁾	Excluded
3.04 Snow Avalanche Response	Excluded
4 Roadside Maintenance	
4.01 Vegetation Control	Included
4.02 Brush, Tree and Danger Tree Removal	Included
4.03 Litter Collection and Graffiti Removal Maintenance	Included
4.04 Rest Area Facility Maintenance (Truck Parking Site)	Excluded
4.05 Fence Maintenance	Excluded
4.06 Roadside Catchment Appurtenances Maintenance	Included
5 Traffic Maintenance	
5.01 Sign System Maintenance	Included
5.02 Existing and Temporary Pavement Markings and Eradication	Included
5.03 Traffic Management	Refer to Part 4 [Traffic Management] of this Schedule
6 Structures Maintenance	
6.01 Bridge Deck Maintenance	Included*
6.02 Structures Cleaning Maintenance	Included*
6.03 Structures Drainage Maintenance	Included*
6.04 Bridge Joint Maintenance	Included*
6.05 Bridge Bearing Maintenance	Included*
6.06 Bailey and Acrow Bridge Maintenance	Included*
6.07 Structure Minor Coating	Included*
6.08 Concrete Structure Maintenance	Included*
6.09 Steel, Aluminum and Multiplate Structure Maintenance	Included

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Highway Maintenance Specifications	Maintenance Services
6.10 Bridge Piling Maintenance	Included*
6.11 Retaining Wall Maintenance	Included*
6.12 Bridge Railing Maintenance	Included*
6.13 Timber Truss Bridge Maintenance	Excluded
6.14 Timber and Log Bridge Maintenance	Excluded
7 Network Management	
7.01 Highway Incident Response	Refer to Part 4 [Traffic Management] of this Schedule
7.02 Major Event Response	Refer to Part 4 [Traffic Management] of this Schedule
7.03 Highway Inspection	Refer to Part 4 [Traffic Management] of this Schedule
7.04 Highway Safety Patrol	Refer to Part 4 [Traffic Management] of this Schedule
7.05 Communications	Refer to Part 4 [Traffic Management] of this Schedule

Notes:

* Only as it pertains to new Infrastructure built by the Design-Builder that forms part of the Project Infrastructure used by the public.

- (g) With reference to the Highway Maintenance Specifications Local Area Specifications, maintenance services that will apply to the Design-Builder (Included) and will not apply to the Design-Builder (Excluded) are set out in Table 6.3b as follows:

Table 6.3b

Highway Maintenance Specifications Local Area Specifications	Maintenance Services
1 SELKIRK	
1.01 Definitions	
1.02 Communications Centre - Revelstoke	Excluded
1.03 Highway Crossing Infrastructure	Included
1.04 Invasive Plants Management	Included
1.05 Salt Containment Infrastructure Maintenance	Excluded
1.06 Snow Avalanche Response – 38100 Highway 1 West of Revelstoke	Excluded
1.07 Snow Avalanche Response – 38100 Highway 1 East of Revelstoke	Excluded
1.08 Snow Avalanche Traffic Management	Excluded

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Highway Maintenance Specifications Local Area Specifications	Maintenance Services
1.09 Snowshed Maintenance	Excluded
1.10 Vehicle Inspection Station Maintenance	Excluded

- (h) The Summer Classification will be “1” and the Winter Classification will be “A”.

6.4 [Not Used]

6.5 Operation and Maintenance Manager

- (a) The Design-Builder will designate an Operation and Maintenance Manager (the “**Operation and Maintenance Manager**”), who will be responsible for:
- (i) day-to-day Operation and Maintenance of Project Infrastructure in accordance with the requirements set out in this Article;
 - (ii) incorporating local user and stakeholder input into the Operation and Maintenance of the Project Infrastructure; and
 - (iii) coordinating and planning Operation and Maintenance activities with all adjacent operators.
- (b) The Operation and Maintenance Manager will have the following experience:
- (i) directly overseeing the operation and maintenance, during construction, of transportation infrastructure comparable to the Project Infrastructure;
 - (ii) managing the day-to-day operations of highways and facilities; and
 - (iii) managing maintenance resources, including labour, equipment, material, facilities, suppliers and subcontractors.

6.6 Operation and Maintenance Plan

The Design-Builder will develop, implement and update an operation and maintenance plan (the “**Operation and Maintenance Plan**”) that demonstrates compliance with the requirements of this Article. The Operation and Maintenance Plan will be submitted to the Province’s Representative no later than 60 days from the Effective Date in accordance with the Review Procedure, and will include at a minimum:

- (a) detailed description of the roads and Detours including road name, length;
- (b) mapping or drawings that displays the road and Detour locations and extents of the Project Site;
- (c) the Design-Builder’s specific approach, processes, resources, work programming, facilities and activities for meeting its Operation and Maintenance responsibilities;

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- (d) applicable specifications for the Operation and Maintenance activities performed;
- (e) details regarding the maintenance and operation of all New Project Infrastructure including rockfall and avalanche catchment installations such as ditches and attenuators;
- (f) organizational structures, including Subcontractors, for achieving the Operation and Maintenance work;
- (g) format of Operation and Maintenance Records; and
- (h) references to any other relevant documents and management plans, including its commitment and approach to providing the input to the Highway Maintenance Contractor for reporting on the following items as specified in the Highway Maintenance Agreement;
 - (i) Article 11.1(w);
 - (ii) Article 15.5(a), (d) and (e);
 - (iii) Article 15.6; and
 - (iv) Article 15.11(a), and (b).

**PART 7
PROJECT WORK DEFECTS AND WARRANTIES**

7.1 Representation, Warranty and Covenant as to Project Work

The Design-Builder represents and warrants to and covenants with the Province that:

- (a) all Design, Construction and other Project Work provided, performed or carried out by or on behalf of the Design-Builder pursuant to this Agreement and (to the extent constructed, installed, altered, upgraded or augmented by the carrying out of the Project Work or to the extent, in order to comply with its obligations under this Agreement, any component thereof ought to have been constructed, installed, altered, upgraded or augmented by the carrying out of the Project Work) all Project Infrastructure will conform to, comply with and satisfy all of the requirements of this Agreement, Good Industry Practice and all professional engineering principles generally accepted as standards of the industry in the Province of British Columbia;
- (b) the Project Work and (to the extent constructed, installed, altered, upgraded or augmented by the carrying out of the Project Work or to the extent, in order to comply with its obligations under this Agreement, any component thereof ought to have been constructed, installed, altered, upgraded or augmented by the carrying out of the Project Work) the Project Infrastructure will be free of defects;
- (c) all materials furnished under this Agreement will be of good quality and fit for the intended purpose;
- (d) each item of equipment will, under normal use and maintenance:

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- (i) conform to and perform in accordance with the specifications, requirements and standards set out therefor in the Design and Construction Requirements, in accordance with this Agreement; and
- (ii) be free from defects in manufacturing, materials and workmanship;
- (e) all installation and repair workmanship performed by the Design-Builder or any Subcontractor as part of the Project Work and any corrective action will be performed diligently and will meet the specifications, requirements and standards set out therefor in the Design and Construction Requirements; and
- (f) all equipment (including spare parts) which has been manufactured by suppliers other than the Design-Builder has been obtained through authorized commercial distribution channels for use in Canada and the Design-Builder has the right to incorporate such equipment in the Project Work and transfer such equipment to the Province on the terms and conditions set out in this Agreement.

7.2 Project Work Defect Warranty

Without limiting or derogating from the other warranty obligations of the Design-Builder contained in this Agreement (including this Schedule), the Design-Builder, at its own cost and expense (but without prejudice to the Province's obligations under Section 4.1(d) of Schedule 10 [Payment]), will correct to the satisfaction of the Province, acting reasonably, as required by and in accordance with Section 7.4 [Correction of Project Work Defects] of this Schedule, all Project Work Defects arising during the General Project Work Defect Warranty Period and of which the Province notifies the Design-Builder within thirty days following the end of the General Project Work Defect Warranty Period (or, with respect to defects in manufacturing, materials or workmanship of equipment, within 25 Business Days after the defects are discovered by the Province, unless the Design-Builder is already aware or ought reasonably to be aware of such defects).

7.3 Risks of Defects

- (a) The Design-Builder will carry out in accordance with Part 7 [Project Work Defects and Warranties] of this Schedule, as part of the Project Work, any remedial or other works required as a result of any Project Work Defect and, except as otherwise expressly provided elsewhere in this Agreement, in respect of any Project Work Defect:
 - (i) any such defect comprising a Nonconformity will be addressed by the Design-Builder in accordance with Part 6 [Nonconformities] of Schedule 7;
 - (ii) all costs of and associated with such defect and any remedial or other works required as a result of such defect will be borne by the Design-Builder; and
 - (iii) neither the Province nor BCTFA will have any liability to the Design-Builder or any of its Subcontractors (whether in contract, tort, by statute or otherwise howsoever and whether or not arising out of any negligent act or negligent omission on the part of the Province or BCTFA or any of their respective employees, agents, contractors or subcontractors of any tier or employees of any of them) in respect of any Loss or Claim arising out of or in connection with the

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existence of any such defect or any remedial or other works required as a result of any such defect.

- (b) Any Latent Defects will be remedied in accordance with Section 7.5 [Reporting and Rectification of Latent Defects] of this Schedule.

7.4 Correction of Project Work Defects

- (a) As soon as reasonably practicable, and in any event within ten Business Days after the earlier to occur of the Design-Builder becoming aware of a Project Work Defect required to be corrected pursuant to Section 7.2 [Project Work Defect Warranty] of this Schedule and receipt by the Design-Builder of written notice from the Province specifying such a Project Work Defect, the Design-Builder will deliver a proposal for correction of such Project Work Defect, which proposal will be to the satisfaction of the Province, acting reasonably, provided that, in case of an Emergency requiring immediate corrective action, the provisions of Section 11.2 [Province's Emergency Rights] of this Agreement will apply. Such proposal will include a:
 - (i) description of the Project Work Defect;
 - (ii) description of the root cause of the Project Work Defect;
 - (iii) description of the proposed solution to correct the Project Work Defect;
 - (iv) proposed implementation plan for the solution to resolve the Project Work Defect to the satisfaction of the Province, acting reasonably; and
 - (v) timeline to correct the Project Work Defect.

As soon as reasonably practicable and in any event within five Business Days after delivery of a proposal to the Province, the Province will provide the Design-Builder with any comments it may have on the proposal. As soon as reasonably practicable and in any event within five Business Days after receipt of the Province's comments, the Design-Builder will deliver to the Province a revised proposal that incorporates the comments received from the Province and is satisfactory to the Province, acting reasonably. The Design-Builder will promptly implement and comply with such proposal. Notwithstanding anything in this Section 7.4, in case of an Emergency requiring immediate corrective action, the Province may exercise its rights under the provisions of Section 11.2 [Province's Emergency Rights] of this Agreement.

- (b) The Design-Builder will initiate an on-site investigation into a Project Work Defect within 24 hours after the earlier to occur of the Design-Builder becoming aware of a Project Work Defect and receipt by the Design-Builder of written notice from the Province specifying such Project Work Defect. As soon as reasonably practicable thereafter, the Design-Builder will submit to the Province's Representative a report describing the workaround that the Design-Builder proposes to implement as a temporary solution until the Design-Builder finally corrects the Project Work Defect. If the Province's Representative accepts such workaround by written notice to the Design-Builder, then the Design-Builder will promptly implement such workaround.

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- (c) If the Design-Builder becomes aware of a Project Work Defect of which it has not previously been notified by the Province, the Design-Builder will notify the Province thereof in writing within five Business Days.
- (d) If the Design-Builder does not correct a Project Work Defect in accordance with Section 7.4(a) of this Schedule within the agreed time, or should the Design-Builder fail to provide a proposal within the ten Business Day period referred to in Section 7.4(a) of this Schedule or fail to provide a proposal satisfactory to the Province in accordance with Section 7.4(a) of this Schedule, or should the Province disapprove of the actions being taken by the Design-Builder in the case of emergency conditions, notwithstanding anything to the contrary contained in this Agreement and without limiting the rights of the Province pursuant to Part 11 [Province's Monitoring and Step-In Rights] of this Agreement and Sections 10.3 [Province Access] and 10.4 [Uncovering of Work] of this Schedule, the Province may, upon five Business Days' written notice to the Design-Builder, perform some or all of the remedial Project Work required to correct or eliminate such Project Work Defect, either through its own forces or through the use of contractors designated by the Province, in which case all reasonable direct costs incurred by the Province (including costs of the Province's own personnel, materials and services) in remedying such Project Work Defect will be payable on demand by the Design-Builder to the Province, provided that:
 - (i) if, prior to the expiry of the General Project Work Defect Warranty Period, the Design-Builder fails on demand either to pay any such costs to the Province or satisfy any Claim made by the Province pursuant to Section 9.1 [Indemnification by Design-Builder] of this Agreement (including Section 9.1(d)(vii) thereof) in respect of a Project Work Defect, the Province will be entitled to discharge the relevant claim for such costs by applying an amount from the Warranty Holdback (whether, in accordance with this Agreement, retained from the Progress Payments in accordance with Schedule 10 [Payment] or taken into account in the calculation of any termination sum in accordance with Schedule 14 [Compensation on Termination]), up to an amount in aggregate equal to the amount of such costs or the relevant Claim; and
 - (ii) the Design-Builder's obligation to pay such costs or indemnify the Province, as the case may be, will only be discharged to the extent of the amount so applied and/or demanded by the Province.
- (e) Between 30 to 60 days prior to the expiry of the General Project Work Defect Warranty Period, the Design-Builder will organize and jointly complete together with the Province an on-site inspection of the Project Work. Following the completion of such inspection, the Design-Builder will prepare and submit to the Province's Representative in accordance with the Consent Procedure a list of outstanding Project Work Defects identified by such inspection, which the Design-Builder will correct in accordance with this Section 7.4 prior to the expiration of the General Project Work Defect Warranty Period.
- (f) If, at the expiry of the General Project Work Defect Warranty Period, any Project Work Defect that has been identified by the Province or included in the list prepared in accordance with Section 7.4(e) of this Schedule has not been corrected by the Design-Builder in accordance with this Section 7.4 (other than any Project Work Defect in respect of which the Province has applied an amount from the Warranty Holdback in accordance

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with Section 7.4(d) of this Schedule), then the Province will be entitled to retain from the Warranty Holdback (whether, in accordance with this Agreement, retained from the Progress Payments in accordance with Schedule 10 [Payment and Performance Mechanism] or taken into account in the calculation of any termination sum in accordance with Schedule 14 [Compensation on Termination]) up to an amount in aggregate equal to 200% of the Province's estimate of the costs for remedying each such Project Work Defect, provided that, following the correction of any such Project Work Defect by the Province, the Province will pay (without interest) to the Design-Builder the excess (if any) of the amount so retained or demanded over the actual costs incurred by the Province in remedying such Project Work Defect.

7.5 Reporting and Rectification of Latent Defects

- (a) Without prejudice to any other reporting requirement under this Agreement, in the event that a Latent Defect becomes apparent at any time during the Term, the Design-Builder will promptly and in any event within 10 days of becoming aware of such Latent Defect give notice to the Province's Representative identifying the Latent Defect in reasonable detail.
- (b) Upon the occurrence of either of the following:
 - (i) the Design-Builder notifying the Province of a Latent Defect; or
 - (ii) the Province becoming aware of a Latent Defect and notifying the Design-Builder thereof,

the Province will as soon as reasonably practicable do one of the following in its discretion for each Latent Defect:

- (iii) retain the Design-Builder to complete the rectification of such Latent Defect by initiating a Province Change in respect of such rectification work under Section 7.1 [Province Changes and Value Engineering Proposals] of this Agreement, with the compensation and relief to which the Design-Builder is entitled being determined in accordance with Schedule 11 [Changes], provided that any entitlement which the Design-Builder would have had under Part 8 [Supervening Events] of this Agreement if such Latent Defect had constituted a Compensation Event under Section 7.5(b)(iv) of this Schedule, including relief from delays and Direct Losses resulting from the Design-Builder's compliance with its obligations under Section 7.6 [Traffic Management and Public Safety with Defects] of this Schedule in respect of such Latent Defect will be included in the compensation and relief to which the Design-Builder is entitled for such Province Change; or
- (iv) have such rectification work carried out by its own labour forces (including day labour retained by the Province) or by a Third Party Contractor, in which event the existence of such Latent Defect and the Design-Builder's obligations arising as a result of such Latent Defect, including its resulting obligations as Prime Contractor and its obligations under Section 7.6 [Traffic Management and Public Safety with Defects] of this Schedule, as well as the acts and omissions of the Province or such Third Party Contractor, as the case may be, in carrying out such rectification work

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will constitute a Compensation Event and the provisions of Part 8 [Supervening Events] will apply, except only that, for the purposes of Section 8.1(b)(iv) of this Agreement in the case of any Latent Defect, the time period referred to therein will not apply in respect of any such Compensation Event in respect of such Latent Defect.

7.6 Traffic Management and Public Safety with Defects

For greater certainty, the Design-Builder will be responsible in accordance with this Agreement for all Traffic Management and other procedures and arrangements for the safety of the public using the Project Infrastructure for which it is otherwise responsible under the terms of this Agreement irrespective of any defect in the Project Infrastructure, including any Project Work Defect or Latent Defect.

7.7 Terms of Subcontractor Warranties

Without limiting or derogating from any warranty obligations of the Design-Builder contained in this Agreement, but subject to any express terms or conditions otherwise agreed by the Province, in its discretion, the Design-Builder will:

- (a) ensure that all Subcontracts contain provisions which:
 - (i) impose on the relevant Subcontractor the same warranties as are contained in this Agreement in relation to all Design, Construction and other Project Work provided, performed or carried out and materials supplied by such Subcontractor; and
 - (ii) acknowledge that such warranties are for the benefit of the Province and its assignees as well as the Design-Builder or, as the case may be, the Subcontractor that is the beneficiary of any warranties contained in the relevant Subcontract and are assignable in accordance with the terms of this Agreement;
- (b) obtain or cause to be obtained any industry standard warranties which may be available which exceed the requirements of this Section 7.7 (including in respect of the term of such warranties) and which are customarily available at no additional cost, including against defects in materials and workmanship from each Subcontractor in respect of Design, Construction and other Project Work provided, performed or carried out and materials and Equipment supplied by that Subcontractor under its Subcontract; and
- (c) at the request of the Province, cooperate with and assist the Province in the enforcement of any claims under warranties contained in any Subcontract or otherwise given by a Subcontractor.

7.8 Assignment of Warranties to Province

- (a) The Design-Builder:
 - (i) hereby absolutely assigns, on the terms set out in Section 7.8(b) of this Schedule, to the Province all warranties contained in any Subcontract to which the Design-Builder is a party; and

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- (ii) will cause, by ensuring that relevant Subcontractors include relevant provisions in all Subcontracts to which the Design-Builder is not a party, all warranties contained in any such Subcontract to be absolutely assigned to the Province, on the terms set out in Section 7.8(b) of this Schedule.
- (b) Notwithstanding the provisions of Sections 7.8(a)(i) and 7.8(a)(ii) of this Schedule, the Design-Builder or the Subcontractor that is the beneficiary of any warranties contained in the relevant Subcontract will be permitted to enjoy the benefit of and enforce the warranties referred to in, respectively, Sections 7.8(a)(i) and 7.8(a)(ii) of this Schedule as if the assignment made in Section 7.8(a)(i) of this Schedule and any assignments made pursuant to Section 7.8(a)(ii) of this Schedule had not been made until the earlier of:
 - (i) the date on which the Province gives the Design-Builder or the relevant Subcontractor, as the case may be, a written notice stating that a Design-Builder Default has occurred and that the Province is exercising its rights pursuant to the relevant assignment;
 - (ii) the Termination Date; and
 - (iii) the end of the Term.
- (c) Prior to, and as a condition of the release of, the Warranty Holdback, the Design-Builder will deliver to the Province a list, description and copy of all Subcontracts pursuant to which the benefit of any warranty has been assigned to the Province as required by this Section 7.8.
- (d) Without limiting the provisions of Section 17.8 [Further Assurances] of this Agreement, the Design-Builder will:
 - (v) cause to be included in any Subcontract to which it is a party a notice from the Design-Builder to the relevant Subcontractor of the assignment made in Section 7.8(a)(i) of this Schedule and an acknowledgment of such notice from the relevant Subcontractor; and
 - (vi) cause to be included in any Subcontract to which it is not a party a notice from the Subcontractor that is the beneficiary of any warranties contained in the relevant Subcontract to the Subcontractor that is the provider of such warranties of the assignment made pursuant to Section 7.8(a)(ii) of this Schedule and an acknowledgment of such notice from the Subcontractor that is the provider of such warranties.

**PART 8
HEALTH AND SAFETY**

8.1 Site Safety and Security

- (a) The Design-Builder will:
 - (i) at all times throughout the Term have full regard for the safety of all persons:

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- (A) on the Project Site (whether lawfully or not), including users of the Project Facilities; and
 - (B) at all other locations where Project Work is being performed; and
- (ii) during the Access Period (and any period during which access to any other area is made available to the Design-Builder pursuant to Section 1.1(c) of Schedule 8 [Lands]) maintain the Project Site and any such other area in a manner and in an orderly state that ensures the safety of such persons and that is appropriate to the avoidance of danger to such persons.
- (b) Without limiting Section 8.8 [Responsibility for Participants and Trespassers] of this Agreement or any other provision of this Agreement, the Design-Builder will, in respect of any part of the Project Site, at all times take such measures as are reasonably required, including hoarding and fencing where appropriate, in respect of the Project Work being carried out by it to prevent the trespass and access onto such part of the Project Site of any persons not entitled to be there or of any creatures.
- (c) The Design-Builder will take action in accordance with Laws to remove forthwith from the Project Site any person for whom the Design-Builder is responsible at law, including any Subcontractor and any employees of any of them who engages in misconduct or is incompetent or negligent in the performance of any duties, or whose presence on the Project Site is otherwise undesirable.

8.2 Design-Builder as Prime Contractor

- (a) By entering into this Agreement, the Design-Builder agrees that:
 - (i) it is the Prime Contractor for the Project Site;
 - (ii) it will at all times until the Substantial Completion Date be qualified to fulfil all functions and duties of the Prime Contractor as required under all Health and Safety Laws; and
 - (iii) it will take all steps or measures necessary, through such arrangements as are appropriate, to fulfil all of its obligations, functions and duties as Prime Contractor in compliance with all Health and Safety Laws.
- (b) Without limiting the Design-Builder's obligations to fulfill, as of and from the Effective Date until the Substantial Completion Date, all duties and functions of the Prime Contractor, the Design-Builder will, by not later than 30 days after the Effective Date, and in any event before the commencement of any of the Project Work at the Project Site:
 - (i) designate a qualified coordinator (the "**Qualified Coordinator**") who will be an individual qualified within the contemplation of the WCA and the OHS Regulation (including being knowledgeable of the Project Work, the hazards involved and the means to control the hazards, by reason of education, training, experience or a combination thereof) to discharge the responsibilities of a "qualified coordinator" as described in the WCA and the OHS Regulation;

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- (ii) deliver to the Province's Representative:
 - (A) written notice of the designation of the Qualified Coordinator under Section 8.2(b)(i) of this Schedule;
 - (B) a copy of the "notice of project" for the Project required and described in the WCA and the OHS Regulation and to be delivered by the Design-Builder in accordance with the WCA and the OHS Regulation; and
 - (C) written notice confirming that the Health and Safety Program has been initiated and is readily available in accordance with the WCA and the OHS Regulation; and
- (iii) provide, post and maintain two "Prime Contractor" signs at the Project Site in form, content, and at locations, satisfactory to the Province's Representative.

8.3 Health and Safety Program

Notwithstanding any limitation in the OHS Regulation regarding the number of workers in any work force, the Design-Builder will prepare and submit to the Province's Representative for review in accordance with the Review Procedure, within 90 days after the Effective Date, a formal written health and safety program including any site-specific plans which may be required by Health and Safety Laws or this Agreement (together, the "**Health and Safety Program**") in respect of the Project Site that:

- (a) complies with Good Industry Practice;
- (b) complies with all Health and Safety Laws;
- (c) is designed to prevent injuries and occupational diseases within the contemplation of the WCA and the OHS Regulation;
- (d) provides for the establishment and maintenance of a system or systems and a process or processes to ensure compliance with all Health and Safety Laws and to satisfy the Design-Builder's obligations in respect of occupational health and safety under this Agreement;
- (e) without limiting the foregoing, deals specifically with controlling the hazards relating to the Project Work and hazards at the Project Site, including such hazards as may be identified in hazard identifications provided in the Disclosed Data, and as such hazard identifications are updated by the Design-Builder from time to time throughout the Access Period for the relevant portion of the Project Site;
- (f) implements the Health and Safety Policy and Program (as defined in the BCIB-Contractor Agreement);
- (g) satisfies and addresses all health and safety requirements contained in the Conditions of Access and this Part; and
- (h) implements the Avalanche Safety Plan in accordance with Appendix 4C [Snow Avalanche Safety Measures] of Schedule 4.

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The Design-Builder will prepare and submit to the Province's Representative in accordance with the Review Procedure updates to the Health and Safety Program as required from time to time to ensure that the Health and Safety Program at all times complies with the requirements of this Agreement.

8.4 Design-Builder's Occupational Health and Safety Obligations

- (a) The Design-Builder will at all times until the Substantial Completion Date:
 - (i) implement and maintain the Health and Safety Program, including any site-specific safety requirements;
 - (ii) observe and comply with, and ensure that the performance of the Project Work (including by conducting worker safety orientations, health and safety meetings, safety inspections and accident and incident investigations) complies at all times with, all Health and Safety Laws, and maintain:
 - (A) records, including minutes of safety meetings and tailgate meetings relating to the performance of the Project Work; and
 - (B) evidence that health and safety orientation and training for workers within the Project Site is being conducted in accordance with Health and Safety Laws;
 - (iii) continue to assess, mitigate and disclose potential hazards;
 - (iv) provide first aid services, equipment and supplies and provision of personal protective equipment and supplies required under Health and Safety Laws;
 - (v) develop and maintain a site drawing showing the boundaries of the Project Site with project layout, first aid locations, emergency transportation provisions (including distance to, location of and directions to the closest medical facility) and the evacuation procedures and muster points relating to the Project Site;
 - (vi) ensure that, in relation to the Project Work, all assessments, levies, penalties, fees and fines which may be made under any Health and Safety Laws are punctually paid as they become due;
 - (vii) record, collect and retain all occupational health and safety Records, including notices, reports, directives and penalty assessments, in respect of the Project and the Project Work required by and in accordance with all Health and Safety Laws and the BCIB-Contractor Agreement;
 - (viii) establish and maintain a joint health and safety committee and ensure that such committee fulfills its functions under Health and Safety Laws; and
 - (ix) submit to the Province's Representative by the fifth day of each month a monthly site safety statistical reports setting out leading indicators and lagging indicators for the previous month's activities, in form and content satisfactory to the Province.

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- (b) At the request of the Province from time to time, the Design-Builder will:
 - (i) deliver to the Province's Representative evidence of the Design-Builder's implementation and maintenance of the Health and Safety Program in accordance with Section 8.3 [Health and Safety Program] of this Schedule and that a system or systems or a process or processes have been put into place to ensure compliance with Health and Safety Laws and to satisfy the Design-Builder's obligations in respect of occupational health and safety under this Agreement;
 - (ii) provide the Province's Representative with evidence satisfactory to the Province of compliance by the Design-Builder with its obligations in respect of Health and Safety Laws in accordance with this Agreement, including where applicable the compliance of the Design-Builder and its agents and Subcontractors and its or their directors, officers, employees and workers with all applicable Health and Safety Laws, including being registered, in good standing and current in respect of all assessments, levies, penalties, fees and fines thereunder; and
 - (iii) make available to the Province's Representative access to and copies of any Records maintained by the Design-Builder in accordance with the Health and Safety Program and the Quality Management System.
- (c) In the event of an accident or incident arising from performance of the Project Work that requires notification to the Workers' Compensation Board, the Design-Builder will ensure that a copy of such notification is provided to the Province at the same time as the notification is delivered to the Workers' Compensation Board, and provide ongoing information to the Province, up to and including a final Corrective Action close-out report, on the progress of any investigation resulting from such notification, accident or incident.
- (d) Without limiting any of the Province's other rights and remedies under this Agreement, including any other review and audit rights specified in this Agreement, the Province may conduct any inspections, reviews, and audits, including External Quality Audits, in accordance with Schedule 7 [Quality Management] with respect to any of the Design-Builder's obligations in this Part.
- (e) Within 72 hours of such a request, make available to the Province's Representative access to and copies of any Records maintained by the Design-Builder as contemplated this Section.

8.5 Refusal to Recognize Design-Builder as Prime Contractor

If the Workers' Compensation Board refuses to recognize or accept the Design-Builder at any time as the Prime Contractor for the Project Site, including by making a declaration or determination to that effect, then:

- (a) the Design-Builder will not be relieved of any obligations, duties and liabilities as Prime Contractor but will be responsible to the Province and BCTFA and to those for whom the Design-Builder would have been responsible if the Design-Builder had been accepted or recognized by the Workers' Compensation Board as the Prime Contractor for fulfilling all obligations, duties and liabilities imposed on the Province or BCTFA or any contractor or

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subcontractor of any tier of the Province or BCTFA pursuant to Health and Safety Laws in the same manner and to the same extent and for the same purposes as if the Design-Builder undertook the obligations of a Prime Contractor for the Project Site at all times throughout the Access Period for the relevant portion of the Project Site (which obligations include, for greater certainty, the liability for any assessments, levies, penalties, fees or fines assessed, levied or charged from time to time against the Design-Builder or against the Province or BCTFA based on the number of employees employed in relation to the Project or otherwise); and

- (b) if the Workers' Compensation Board recognizes or accepts, including by making a declaration or determination to that effect, any Subcontractor as the Prime Contractor, then the Design-Builder will not be considered to be in breach of this Agreement solely by reason of the refusal to accept the Design-Builder as the Prime Contractor or the declaration or determination by the Workers' Compensation Board to that effect, provided that and only to the extent that:
 - (i) the Design-Builder has not failed to observe, abide by or comply with any term of this Agreement;
 - (ii) such refusal to recognize or accept, or other declaration or determination, of the Workers' Compensation Board was for a reason other than a failure by any person, including for greater certainty by the Design-Builder, to discharge the duties as a Prime Contractor under the Health and Safety Laws;
 - (iii) the Design-Builder has not entered into a contract with any person, including any Subcontractor, under which that person has agreed to be the Prime Contractor in connection with the Project or any part of the Project Site and, for greater certainty, nothing in this paragraph prevents the Design-Builder from entering into such arrangements as are appropriate to fulfil its obligations as the Prime Contractor;
 - (iv) the Design-Builder indemnifies and holds harmless the Province and the Province Indemnified Persons, and each of them, in connection with any and all Direct Losses or (except only to the extent such Direct Losses are caused directly by a Province Non-Excusable Event) arising in connection with any matter contemplated under this Section 8.5 (including for greater certainty any assessments, levies, penalties, fees or fines assessed or charged against the Province and the Province Indemnified Persons, or any of them, based on the number of employees employed in relation to the Project or otherwise); and
 - (v) the Design-Builder will make, do, execute and cause to be made, done and executed all further and other acts, deeds, instruments, agreements and assurances as the Province or BCTFA may require for the performance of the Design-Builder's obligations as Prime Contractor in accordance with Section 8.2(a) of this Schedule.

8.6 Appointment of other Prime Contractors by Province

- (a) Notwithstanding Section 8.2(a) of this Schedule, there may be circumstances in which the Design-Builder will be required to perform parts of the Project Work under the direction

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of another Prime Contractor (in this Section 8.6, the “**Other Prime Contractor**”) who has been appointed by the Province or BCTFA in connection with specified works and activities that may be undertaken and performed at any specified location or locations in the Project Site (in this Section 8.6, the lands and/or premises upon which the relevant parts of the Project Work are to be performed, the “**Separate Site**”). The Province will provide prior written notice of any such circumstances, and will notify the Design-Builder of the identity of the Other Prime Contractor, the location or locations of the Separate Site, the period of time in question and reasonable particulars of the work for which the Other Prime Contractor is in law responsible.

- (b) The Design-Builder agrees that, on receipt of written notice from the Province pursuant to Section 8.6(a) of this Schedule, the Design-Builder will cease to be the Prime Contractor in respect of such Separate Site for the specified period and will at all times in good faith and at the cost of the Design-Builder:

- (i) coordinate with and comply with the occupational health and safety requirements of the Other Prime Contractor while on the Separate Site, including requirements of the Other Prime Contractor to coordinate health and safety activities;
- (ii) ensure compliance with the health and safety program of the Other Prime Contractor by the Design-Builder and all Subcontractors while on the Separate Site, including by developing a system to ensure such compliance and, upon the request of the Province, deliver to the Province evidence that such system is in place and being adhered to; and
- (iii) coordinate the health and safety activities of the Other Prime Contractor while on the balance of the Project Site,

in each case to ensure at all times that the workers on the Separate Site do not create a hazard for the workers on the balance of the Project Site, and vice versa.

- (c) Upon receipt from the Province of written notice of the conclusion of the works and activities referred to in a notice delivered under Section 8.6(a) of this Schedule, the Design-Builder will reassume and thereafter fulfil the responsibilities of the Prime Contractor as otherwise set out in this Agreement at the Separate Site.

8.7 Notice of Failure to Comply with Health and Safety Requirements

- (a) In this Section 8.7, the terms “**employer**” and “**workers**” do not include the Design-Builder, or any Subcontractor, or BCIB, or the employees of any of them, including the Employees (as defined in the BCIB-Contractor Agreement).
- (b) If the Design-Builder determines in its reasonable discretion that any employer or its workers:
 - (i) has created an unsafe or harmful condition;
 - (ii) has done or omitted to do something that constitutes an unsafe or harmful act; or

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- (iii) has failed to comply with Health and Safety Laws or the Health and Safety Program,

and that, on written notice from the Design-Builder to the employer of such condition, act or failure, the employer has failed or refused to take action to correct the condition, act or failure, including any condition, act or failure of any of the employer's workers, the Design-Builder may issue a notice (in this Section 8.7, a "**Notice of Failure to Comply**") to the applicable employer stipulating in reasonable detail the basis for the issuance of the Notice of Failure to Comply, and will deliver a copy of any Notice of Failure to Comply so issued to the Province.

- (c) Upon issuance of a Notice of Failure to Comply by the Design-Builder under Section 8.7(b) of this Schedule, the Design-Builder may suspend all or any part of the Project Work at the location specified in the Notice of Failure to Comply if the Design-Builder believes such action is necessary to ensure that any risk to workers is eliminated or minimized, and will provide to the Province, promptly and in reasonable detail, confirmation of all such action so taken by the Design-Builder in respect of such Notice of Failure to Comply.
- (d) Upon receipt of a copy of a Notice of Failure to Comply from the Design-Builder under Section 8.7(b) of this Schedule, the Province may take whatever action in accordance with Section 11.3 [Province's Other Step-In Rights] of this Agreement the Province deems necessary to ensure that any risk to workers is eliminated or minimized.
- (e) On rectification of the matter set out in a Notice of Failure to Comply, the Design-Builder will withdraw such Notice of Failure to Comply by endorsing on a copy thereof confirmation of the rectification, and the Design-Builder will deliver a copy of the endorsed Notice of Failure to Comply to the applicable employer and to the Province. If the Design-Builder suspended all or any part of the Project Work under Section 8.7(c) of this Schedule, the Design-Builder will resume such Project Work.
- (f) The Province will be deemed to have relied on the terms of and the reasons set out in the Notice of Failure to Comply, notwithstanding any subsequent investigation or inquiry of the matter by the Province, which the Province may but will not be obligated to undertake, and the Design-Builder will indemnify and hold harmless the Province and the Province Indemnified Persons, and each of them, in connection with any and all Direct Losses or Claims (except only to the extent such Direct Losses or Claims are caused directly by a Province Non-Excusable Event) arising in connection with the issuance of any Notice of Failure to Comply issued by the Design-Builder and any acts or omissions of the Province in reliance on such Notice of Failure to Comply.

**PART 9
REGULATORY REQUIREMENTS**

9.1 Permits

- (a) The Design-Builder will, or will cause the Subcontractors, as the case may be, at its or their sole cost, to:

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- (i) obtain all Permits (excluding Province Permits) by the time required or contemplated by the terms of this Agreement to permit it to perform its relevant obligations hereunder;
 - (ii) renew, amend or extend, as applicable, all Permits (including Province Permits) by the time required or contemplated by the terms of this Agreement to permit it to perform its relevant obligations hereunder; and
 - (iii) comply with and maintain in good standing each Permit (including each Province Permit) in accordance with its terms, including complying with all requirements and obligations in respect of all Province Permits.
- (b) Where Permits that are the Design-Builder's obligation to obtain, renew, amend or extend under Section 9.1(a) of this Schedule have requirements that may impose any conditions, liabilities, obligations or costs on the Province or BCTFA or on any person other than the Design-Builder, the Subcontractors and other persons for whom the Design-Builder is in law responsible, the Design-Builder will, prior to obtaining, renewing, amending or extending such Permits, seek the acceptance of the Province, acting reasonably, pursuant to the Consent Procedure, provided, however, that, except as provided in Section 2.1(f)(i) of Schedule 2 [Review Procedure and Consent Procedure], neither the Province nor BCTFA will be responsible for obtaining or for any delay in obtaining or failure to obtain any such Permit, renewal, amendment or extension.
- (c) Where the Design-Builder, or any Subcontractor, as the case may be, is unable to apply for or to obtain, renew, amend or extend any Permit that is the Design-Builder's obligation to obtain, renew, amend or extend under this Section 9.1 without obtaining information or administrative assistance from the Province or BCTFA or without submitting the application for such Permit or renewal or extension in the name of the Province or BCTFA, each of the Province and BCTFA will at the Design-Builder's cost and expense provide such information and administrative assistance as the Design-Builder may reasonably request and the Province or BCTFA, as the case may be, may reasonably be able to provide and, if requested, will execute such applications as are required to be in its name to assist the Design-Builder or such Subcontractor, as the case may be, in obtaining, renewing, amending or extending such Permit.
- (d) The Design-Builder at its expense will provide or cause to be provided such information, documentation and administrative assistance as may be requested by the Province and as the Design-Builder may reasonably be able to provide and, if requested, will execute such applications as are required to be in its name, to enable the Province or BCTFA to apply for, obtain and (without limiting the Design-Builder's obligations under Section 9.1(a) of this Schedule) renew, amend or extend, and comply with and demonstrate compliance with requirements and obligations under, Province Permits.
- (e) The Design-Builder will indemnify and hold harmless the Province and the Province Indemnified Persons, and each of them, in respect of any and all Direct Losses and Claims that the Province and the Province Indemnified Persons, or any of them, may suffer or incur in connection with or arising out of:

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- (i) the satisfaction and performance during the Term of all conditions, liabilities and obligations imposed on the Province or BCTFA by Permits obtained, renewed or extended by the Design-Builder in accordance with Section 9.1(b) of this Schedule and the payment of all costs in respect thereof;
- (ii) the provision of information or administrative assistance by the Province or BCTFA and the execution of any applications by the Province or BCTFA in accordance with Section 9.1(c) of this Schedule and the payment of all costs in respect thereof, regardless of whether or not the Design-Builder ultimately is able to obtain, renew, amend or extend the relevant Permit as a result of the provision of such assistance or the execution of such applications by the Province or BCTFA;
- (iii) any inability of the Province or BCTFA to obtain or, as applicable, renew or extend any Province Permit or any increased cost to the Province or BCTFA of obtaining or, as applicable, renewing or extending any Province Permit, as a result of any breach of this Agreement by, or any negligent act or omission of, the Design-Builder or any Subcontractor, or any other person for whom the Design-Builder is in law responsible; or
- (iv) any cost to the Province or BCTFA of complying with any condition included in any Province Permit to the extent that such condition was included in the Province Permit as a result of any act or omission of the Design-Builder, any Subcontractor, or any other person for whom the Design-Builder is in law responsible.

9.2 Agreements with Governmental Authorities

- (a) The Design-Builder, subject to Section 9.2(b) of this Schedule but without limiting any other provision of this Agreement, will enter into or cause to be entered into any agreement with any Governmental Authority or other person required in connection with the Project or to enable the Design-Builder to perform the Project Work in accordance with the terms of this Agreement, provided that, if either or both of the Province and BCTFA will be bound or affected in any way by any such agreement, the Design-Builder will submit a request for consent to the terms of such agreement to the Province's Representative pursuant to the Consent Procedure (such consent not be unreasonably withheld) before entering into the agreement.
- (b) If the Province consents to either or both of the Province and BCTFA being a party or parties to any agreement referred to in Section 9.2(a) of this Schedule, the Design-Builder will assist the Province and/or BCTFA (as the case may be) in entering into such agreement; provided, however, that the Design-Builder will not be relieved of any of its obligations under Section 9.2(a) of this Schedule or any other provision of this Agreement as a result of any such consent of the Province or assistance provided by the Design-Builder; and provided further that, if either or both the Province and BCTFA incurs or will incur any liability or obligation under any such agreement, the form and substance of the agreement will be subject to the prior approval of the Province and/or BCTFA (as the case may be) (which approval may be granted or withheld by the Province or BCTFA in its discretion) and, as between the Province and/or BCTFA (as the case may be) and the Design-Builder, unless otherwise agreed in writing by the parties, the Design-Builder will discharge such liabilities and perform such obligations and will indemnify and hold

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harmless the Province and the Province Indemnified Persons, and each of them, in respect of any failure of the Design-Builder to discharge such liabilities or perform such obligations.

**PART 10
USE, ACCESS AND UNCOVERING OF WORK**

10.1 Public Use and Access

- (a) The Design-Builder will keep open for public use at all times from and after they are made available to the Design-Builder for the purposes of the Project Work pursuant to Section 2.3 [Commencement of Access to Project Site] of Schedule 8 until the expiry of the Access Period in respect of the part of the Project Site upon which they are situated, all parts of the Project Facilities that are open for public use as at the date they are made available to the Design-Builder for the purposes of the Project Work pursuant to Section 2.3 [Commencement of Access to Project Site] of Schedule 8, except for temporary or permanent lane closures or diversions of traffic flow instituted:
 - (i) by the Design-Builder in accordance with the provisions of the Traffic Management Plan or any other provision of Schedule 4 [Design and Construction Technical Requirements];
 - (ii) by the Minister or any other Governmental Authority under the *Transportation Act* (British Columbia), the *Motor Vehicle Act* (British Columbia), the *Community Charter* (British Columbia) or any other Laws; or
 - (iii) by the Police or fire, ambulance or other emergency services authorities,

and, except as otherwise expressly provided in this Agreement, the Design-Builder will not have any Claim whatsoever against the Province, BCTFA, any Governmental Authority, the Police or any fire, ambulance or other emergency services authority for or in respect of the exercise of any such rights or powers or the discharge of any such duties or functions by any such authority affecting all or any part of the Project Site or the Project Infrastructure at any time.

- (b) The Design-Builder may not charge tolls or any other user charges for the use of the Project Facilities.
- (c) Subject to temporary and permanent closures or diversions of traffic flow with respect to the Project Facilities permitted by Sections 10.1(a)(i) to 10.1(a)(iii) of this Schedule, the Design-Builder will cause all Project Work to be carried on so as not to interfere unnecessarily with, and so as to minimize any necessary interference with, the convenience of the public in respect of, and the access of the public to and use of, any public or private streets, roads and highways other than the Project Facilities, whether under the control or in the possession of the Province, BCTFA or any other person.

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10.2 Access to Project Site and Project Infrastructure by Others

The Design-Builder will, subject to and in accordance with the health and safety procedures established by the Design-Builder pursuant to Sections 8.3 [Health and Safety Program] and 8.4 [Design-Builder's Occupational Health and Safety Obligations] of this Schedule for the time being in force in relation to the relevant parts of the Project Site, ensure that at all times:

- (a) the Province, BCTFA and the Province's Representative, the Federal Government, and any contractors, consultants or other persons authorized by any of them, including Third Party Contractors, have access to the Project Site and the Project Infrastructure in accordance with Section 10.3 [Province Access] of this Schedule, and BCIB has access to the Project Site in accordance with the BCIB-Contractor Agreement;
- (b) the Province and BCTFA have access to the Project Site and the Project Infrastructure to fulfil any statutory, public or other duties or functions;
- (c) the Owner's Engineer and the Independent Engineer have access to the Project Site and the Project Infrastructure as reasonably required to carry out their respective responsibilities in respect of the Project in accordance with this Agreement;
- (d) inspectors and other persons authorized to act on behalf of the Province and BCTFA have access to the Project Site for inspection and acceptance purposes prior to the Total Completion Date, subject to reasonable notice being given to the Design-Builder;
- (e) the owners or operators of any Third Party Facilities and their employees, agents and contractors have unrestricted access to the Project Site and the Project Infrastructure at all reasonable times during the Access Period in respect of the applicable part of the Project Site, subject to reasonable notice being given by such persons to the Design-Builder, to install, operate, manage, maintain, repair, rehabilitate or reconstruct such Third Party Facilities, provided that, subject to the applicable requirements of Laws and the requirements of this Agreement, the Design-Builder may limit such access so as to not unnecessarily impede or restrict traffic flows or any Project Work being carried out by the Design-Builder;
- (f) all Relevant Authorities and Utility Suppliers have access to the Project Site and the Project Infrastructure throughout the Access Period in respect of the applicable part of the Project Site in order to carry out any work (including surveys and inspections) in accordance with or to exercise any right or power or perform any duty or obligation under any Laws or the Utility Agreements, subject to reasonable notice being given by such Relevant Authority or Utility Supplier to the Design-Builder, and provided that, subject to the applicable requirements of the Relevant Authority, Utility Supplier or Laws and the requirements of this Agreement (as the case may be), the Design-Builder may limit such access so as to not unnecessarily impede or restrict traffic flows or any Project Work being carried out by the Design-Builder; and
- (g) without prejudice to any access rights of any such person as a member of the general travelling public, the Province, BCTFA, Third Party Contractors, owners or operators of Third Party Facilities, Relevant Authorities and Utility Suppliers are permitted to enter upon the Project Site and the Project Infrastructure for the purposes of access to and from

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any other lands or facilities adjacent to or in proximity to the Project Site and the Project Infrastructure (including any other street, road or highway) owned or operated by such person or in which such person has any interest, provided that, subject to the requirements of Laws and the requirements of this Agreement, the Design-Builder may limit such access so as to not unnecessarily impede or restrict traffic flows or any Project Work being carried out by the Design-Builder.

10.3 Province Access

The Province, BCTFA, the Province's Representative, the Federal Government, and any contractors, consultants or other persons authorized by any of them, including Third Party Contractors, will:

- (a) have unrestricted access at all reasonable times throughout the Term to the Project Site and the Project Infrastructure in order to do any or all of the following:
 - (i) perform any obligations or functions or exercise any rights of the Province's Representative, the Province or BCTFA under this Agreement;
 - (ii) fulfil any statutory, public or other powers, authorities, discretions, duties or functions;
 - (iii) conduct any study, test or trial for purposes of research initiated by the Province or BCTFA or any other person authorized by the Province or BCTFA; and
 - (iv) construct, operate, manage, maintain, repair, rehabilitate or reconstruct on the Project Site any Infrastructure other than, prior to the Substantial Completion Date, the Project Infrastructure;
- (b) have reasonable access at all reasonable times and upon reasonable prior notice to any site or workshop where Plant is being manufactured for the purposes of general inspection and auditing and of attending any test or investigation being carried out in respect of the Project Work; and
- (c) have the right to attend regular Project Site and other similar progress meetings,

provided that any access granted in accordance with this Section 10.3 will be exercised in accordance with any health and safety procedures established by the Design-Builder pursuant to Sections 8.3 [Health and Safety Program] and 8.4 [Design-Builder's Occupational Health and Safety Obligations] of this Schedule for the time being in force in relation to the areas to which such access is granted, provided that nothing in this Section 10.3 will be construed so as to impede the proper performance of the roles, functions and duties of the Province and BCTFA as set out in this Agreement and under Laws.

10.4 Uncovering of Work

- (a) The Design-Builder will ensure that the Province's Representative is afforded advance notice of and a full opportunity to witness inspection and test activity in accordance with the Inspection and Testing Plan and other relevant provisions of this Agreement. If the Design-Builder does not provide such notice and opportunity, the Design-Builder will at the request of the Province uncover any relevant part of the Project Work which has been

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covered up or otherwise put out of view or remove any relevant part of the Project Work that has been proceeded with in order to permit the Province to witness the relevant inspection or test activity. The Design-Builder will bear all costs of any such uncovering or removal, regardless of whether or not any defect is discovered in the relevant Project Work.

- (b) The Province will have the right to request the Design-Builder to open up and inspect any part or parts of the Project Work where the Province (following consultation with the Design-Builder) reasonably believes that such part or parts of the Project Work is or are defective or that the Design-Builder has failed to comply with the requirements of this Agreement, and the Design-Builder will comply with such request. If the Province exercises such right, it will consult with the Design-Builder as to the timing of the opening up and inspection of the relevant part or parts of the Project Work with a view to avoiding or, if unavoidable, minimizing any delay caused to the conduct of the remaining Project Work.
- (c) If the Province requires an uncovering of the Project Work pursuant to Section 10.4(b) of this Schedule and such Project Work is not subsequently found to be defective and is found to have complied with the requirements of this Agreement, then such uncovering of the Project Work will constitute a Compensation Event and the provisions of Part 8 [Supervening Events] of this Agreement will apply.

PART 11

CERTIFICATION OF SUBSTANTIAL COMPLETION AND TOTAL COMPLETION

11.1 Deliverables for Substantial Completion

Without limiting the Design-Builder's obligations under this Agreement, the Design-Builder will deliver the applicable deliverables set out in this Part and the deliverables set out in Part I [Deliverables for Substantial Completion] of Appendix 3C to this Schedule prior to Substantial Completion.

11.2 Deliverables for Total Completion

Without limiting the Design-Builder's obligations under this Agreement, the Design-Builder will deliver the deliverables set out in Part II [Deliverables for Total Completion] of Appendix 3C to this Schedule prior to Total Completion.

11.3 Requirements for Substantial Completion

Substantial Completion will only be achieved after:

- (a) any and all Construction Certificates have been issued in respect of the New Project Infrastructure in accordance with Section 6.1 [Construction Certificates] of Part 2 of Schedule 4;
- (b) a Stage 4 Road Safety Audit Certificate in respect of the New Project Infrastructure has been issued in accordance with Section 13.4.5 [Stage 4: Post Construction Road Safety Audit] of Part 1 of Schedule 4; and

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- (c) all relevant quality inspections and audits have been satisfactorily completed in accordance with the Design Management Plan, the Quality Documentation and other relevant provisions of this Agreement and provided to the Province demonstrating that the New Project Infrastructure has been Substantially Completed in accordance with all applicable Project Requirements and other requirements of this Agreement.

11.4 Notice of Substantial Completion

- (a) The Design-Builder will issue to the Owner's Engineer and the Province's Representative a notice informing them at least 15 Business Days but no more than 30 Business Days prior to the date upon which the Design-Builder expects Substantial Completion. If the Design-Builder has at any time reason to believe that the said date expected for Substantial Completion will be delayed or achieved earlier by more than five Business Days, it will issue a fresh notice informing the Owner's Engineer and the Province's Representative of the new date expected for Substantial Completion.
- (b) At the same time that the Design-Builder delivers a notice under Section 11.4(a) of this Schedule, the Design-Builder will submit to the Province's Representative for review, acting reasonably, in accordance with the Review Procedure, and to the Owner's Engineer an updated list of any defects or deficiencies in the Project Work (the "**Final Deficiency List**"), which list will:
 - (i) identify all outstanding defects or deficiencies in the Project Work that the Design-Builder expects to remain outstanding as of Substantial Completion and required to be corrected by the Design-Builder in order to achieve Total Completion, which defects or deficiencies will include any failure by the Design-Builder to deliver a deliverable required by Section 11.1 [Deliverables for Substantial Completion] of this Schedule prior to Substantial Completion;
 - (ii) include the Design-Builder's estimate of the cost to remedy each such defect or deficiency (the amount of such costs being, if not objected to by the Province's Representative after review, acting reasonably, in accordance with the Review Procedure, or, if objected to, as agreed or determined in accordance with the Review Procedure or the Dispute Resolution Procedure, as the case may be, the "**Agreed Remedy Cost**"); and
 - (iii) the Design-Builder's proposed Corrective Action and date for the remedy of each such defect or deficiency, which date will be no later than the Total Completion Target Date.

11.5 Inspection for Substantial Completion

Upon the Design-Builder issuing a notice contemplated in Section 11.4 [Notice of Substantial Completion] of this Schedule, and subject to the delivery to the Owner's Engineer and the Province's Representative of Construction Certificates in respect of the Substantial Completion of all of the New Project Infrastructure and all other relevant Certificates and supporting documentation in accordance with the Design and Certification Procedure, the Province will cause the Owner's Engineer to commence, within 10 Business Days of receipt of such notice, an inspection of the New Project Infrastructure to determine whether Substantial Completion has been achieved and whether the Final Deficiency List is correct.

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11.6 Issuance of Certificate of Substantial Completion and Signing of Final Deficiency List

- (a) The Province will cause the Owner's Engineer, within 25 Business Days of the commencement of the inspection under Section 11.5 [Inspection for Substantial Completion] of this Schedule, to either:
 - (i) issue the Certificate of Substantial Completion, stating the Substantial Completion Date, to the Province and the Design-Builder; or
 - (ii) notify the Design-Builder and the Province's Representative of its decision not to issue the applicable Certificate of Substantial Completion and state the reasons in detail for such decision, including what further work may be required to achieve Substantial Completion.
- (b) The Province will cause the Owner's Engineer, within 15 Business Days after the commencement of the inspection under Section 11.5 [Inspection for Substantial Completion] of this Schedule, to either:
 - (i) sign the Final Deficiency List to reflect the Owner's Engineer's determination that the Final Deficiency List is correct; or
 - (ii) notify the Design-Builder and the Province's Representative of its decision not to sign the Final Deficiency List and state the reasons in detail for such decision, including what further defects or deficiencies in the Project Work should be added to the Final Deficiency List.

11.7 Refusal to Issue Certificate of Substantial Completion or Sign Final Deficiency List

- (a) The Owner's Engineer will refuse to issue the Certificate of Substantial Completion, only if the New Project Infrastructure is not Substantially Complete, or any other conditions or requirements under the Agreement to the achievement of Substantial Completion have not been satisfied or complied with.
- (b) The Owner's Engineer will refuse to sign the Final Deficiency List only if the Owner's Engineer does not agree that such list correctly sets out the defects or deficiencies in the Project Work as of Substantial Completion and that are required to be remedied in order to achieve Total Completion.

11.8 Completion of Further Work for Substantial Completion

- (a) In the event of service of a notice by the Owner's Engineer under Section 11.6(a)(ii) of this Schedule, the Design-Builder will issue to the Owner's Engineer a notice not less than five Business Days but no more than 10 Business Days prior to the date upon which the Design-Builder expects to complete such further work or other measures necessary or appropriate to remedy or remove the cause of the Owner's Engineer's refusal to issue the Certificate of Substantial Completion.
- (b) In the event of service of a notice by the Owner's Engineer under Section 11.6(a)(ii) of this Schedule, the Design-Builder will amend the Final Deficiency List to include:

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- (i) the further defects or deficiencies in the Project Work to be added to the Final Deficiency List;
 - (ii) the Design-Builder's estimate of the cost to remedy each such further defect or deficiency (the amount of such costs being, if not objected to by the Province's Representative after review, acting reasonably, in accordance with the Review Procedure, or, if objected to, as agreed or determined in accordance with the Review Procedure or the Dispute Resolution Procedure, as the case may be, the Agreed Remedy Cost in respect of such defects or deficiencies); and
 - (iii) the Design-Builder's proposed Corrective Action and date for the remedy of each further defect or deficiency, which date will be no later than the Total Completion Target Date.
- (c) Upon the Design-Builder notifying the Owner's Engineer and the Province's Representative that such further work or measures necessary or appropriate have been completed or, as the case may be, the Final Deficiency List has been amended in accordance with Section 11.8(b) of this Schedule, the Province will cause the Owner's Engineer to commence within 10 Business Days of the notice of completion an inspection of such further work or measures and/or to review the amended Final Deficiency List and the provisions of Section 11.4 [Notice of Substantial Completion] of this Schedule through to this Section 11.8, inclusive, will apply *mutatis mutandis*.

11.9 Outstanding Work for Total Completion

- (a) The Province will be entitled to hold back from the Progress Payments the amount permitted by Section 4.1 [Deficiency Holdback] of Schedule 10 on account of any defects or deficiencies in the Project Work as identified on the Final Deficiency List signed by the Owner's Engineer pursuant to Section 11.6(b)(i) of this Schedule.
- (b) Notwithstanding the issue of a Certificate of Substantial Completion, the Design-Builder will promptly complete all outstanding Project Work required to achieve Total Completion as soon as practicable.

11.10 Requirements for Total Completion

Total Completion will only be achieved after:

- (a) the completion of the remedy of all Final Deficiency List Deficiencies;
- (b) the Design-Builder has provided to the Province's Representative all required deliverables in accordance with Section 11.2 [Deliverables for Total Completion] of this Schedule;
- (c) all relevant quality inspections and audits, including inspections and audits respecting impacts to the Project, have been satisfactorily completed in accordance with the Design Management Plan, the Quality Documentation and other relevant provisions of this Agreement and provided to the Province demonstrating that Total Completion has been completed in accordance with all applicable Project Requirements and other requirements of this Agreement; and

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- (d) all demolition, removal and disposal of Infrastructure will have been completed in accordance with Article 11 [Demolitions, Removals and Disposal] of Part 1 of Schedule 4.

11.11 Notice of Total Completion

The Design-Builder will issue to the Owner's Engineer and the Province's Representative a notice informing them at least 15 Business Days but no more than 30 Business Days prior to the date upon which the Design-Builder expects Total Completion. If the Design-Builder has at any time reason to believe that such expected date for Total Completion will be delayed or achieved earlier by more than five Business Days, it will issue a fresh notice informing the Owner's Engineer and the Province's Representative of the new date expected for Total Completion.

11.12 Inspection for Total Completion

Upon the Design-Builder issuing a notice contemplated in Section 11.11 [Notice of Total Completion] of this Schedule and subject to the delivery to the Owner's Engineer and the Province's Representative of Construction Certificates for the Total Completion of all of the New Project Infrastructure and all other relevant Certificates and supporting documentation in accordance with the Design and Certification Procedure, the Province will cause the Owner's Engineer to commence, within 10 Business Days of receipt of such notice, an inspection of the New Project Infrastructure to determine whether Total Completion has been achieved.

11.13 Issuance of Certificate of Total Completion

The Province will cause the Owner's Engineer, within 20 Business Days of the commencement of the inspection pursuant to Section 11.12 [Inspection for Total Completion] of this Schedule, to either:

- (a) issue the Certificate of Total Completion, stating the Total Completion Date, to the Province and the Design-Builder; or
- (b) notify the Design-Builder and the Province's Representative of its decision not to issue the Certificate of Total Completion and state the reasons in detail for such decision.

11.14 Refusal to Issue Certificate of Total Completion

The Owner's Engineer will refuse to issue the Certificate of Total Completion only if the New Project Infrastructure is not Totally Complete, or any other conditions or requirements under the Agreement to the achievement of Total Completion have not been satisfied or complied with.

11.15 Completion of Further Work for Total Completion

In the event of service of a notice by the Owner's Engineer under Section 11.13(b) of this Schedule, the Design-Builder will issue to the Owner's Engineer a notice not less than five Business Days but no more than 10 Business Days prior to the date upon which the Design-Builder expects to complete such further work or other measures necessary or appropriate to remedy or remove the cause of the Owner's Engineer's refusal to issue the Certificate of Total Completion. Upon the Design-Builder notifying the Owner's Engineer and the Province's Representative that such further work or measures necessary or appropriate have been completed, the Province will cause the Owner's Engineer to commence within 10 Business Days of the notice of completion an inspection of such further work or measures and the provisions

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of Sections 11.11 [Notice of Total Completion] of this Schedule through to this Section 11.15, inclusive, will apply *mutatis mutandis*.

11.16 Submissions by Province

The Province may, at any time, following receipt of notice given by the Design-Builder pursuant to either of Section 11.4 [Notice of Substantial Completion] or Section 11.11 [Notice of Total Completion] of this Schedule, as applicable, and prior to the Owner's Engineer issuing or notifying the Design-Builder and the Province's Representative of its decision not to issue a Certificate of Substantial Completion or Certificate of Total Completion, as the case may be, provide the Owner's Engineer and the Design-Builder with the Province's submissions as to whether the conditions for issuance of such Certificate of Substantial Completion or Certificate of Total Completion, as the case may be, have been satisfied and, if applicable, any reasons as to why the Province considers that such Certificate of Substantial Completion or Certificate of Total Completion, as the case may be, should not be issued. The Owner's Engineer will consider such submissions in determining whether to issue such Certificate of Substantial Completion or Certificate of Total Completion, as the case may be.

11.17 No Limitation

The issuance of the Certificate of Substantial Completion or the Certificate of Total Completion will be without prejudice to and will not in any way limit the rights and obligations of the parties under and in accordance with this Agreement.

11.18 Disputed Certificate

If there is any dispute between the parties as to the decision of the Owner's Engineer to issue or not to issue any Certificate of Substantial Completion or any Certificate of Total Completion in accordance with this Schedule, then either the Province or the Design-Builder may refer such dispute for resolution under the Dispute Resolution Procedure.

11.19 Certificate Effective Pending Dispute

Notwithstanding any other provision in this Agreement or Schedule 16 [Dispute Resolution Procedure], if the Owner's Engineer has issued any Certificate of Substantial Completion or any Certificate of Total Completion and the Province or the Design-Builder has referred a dispute in respect thereof for resolution under the Dispute Resolution Procedure pursuant to Section 11.18 [Disputed Certificate] of this Schedule, then for all purposes of this Agreement such Certificate of Substantial Completion or such Certificate of Total Completion, as the case may be, will be deemed to have been issued unless and until it is determined in accordance with the Dispute Resolution Procedure that it was improperly issued by the Owner's Engineer in accordance with the terms of this Part.

**PART 12
COMPLETION PLAN**

12.1 Completion Plan

The Design-Builder will:

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- (a) submit a completion plan (the “**Completion Plan**”) in accordance with the Review Procedure prior to the first anniversary of the Effective Date; and
- (b) submit the final Completion Plan in accordance with the Review Procedure not less than 180 days prior to the Substantial Completion Target Date.

12.2 Completion Plan General Content

The Completion Plan will include as a minimum:

- (a) the Design-Builder’s detailed completion procedure that supports Substantial Completion and Total Completion in accordance with this Schedule;
- (b) a comprehensive list and projected dates of all Substantial Completion and Total Completion activities, including key milestones;
- (c) a proposal for including the Owner’s Engineer and Province's Representative for joint reviews, walkthroughs, testing, or inspection activities in support of the completion process;
- (d) a process for the Design-Builder, the Owner’s Engineer and the Province's Representative to identify, accept and document each of the Final Deficiency List Deficiencies;
- (e) a process for the Design-Builder to manage the remedy of the Final Deficiency List Deficiencies prior to Total Completion;
- (f) a proposal for providing evidentiary documentation for meeting the Substantial Completion and Total Completion obligations in accordance with this Schedule; and
- (g) a process for the handover of the New Project Infrastructure.

12.3 Substantial Completion Content

The Completion Plan will include all activities, processes and documentation demonstrating Substantial Completion of the New Project Infrastructure, including:

- (a) the requirements as set out in Section 11.1 [Deliverables for Substantial Completion] of this Schedule;
- (b) the requirements as set out in Section 11.3 [Required Activities for Substantial Completion] of this Schedule including:
 - (i) a list of all Design Certificates and the Construction Certificates;
 - (ii) a list of all third parties’ approvals required in connection with the Project Work; and
 - (iii) a list of all Utility Supplier approvals required in connection with the Project Work.

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12.4 Total Completion Content

The Completion Plan will include all activities, processes and documentation demonstrating Total Completion, including the requirements as set out in the following:

- (a) Section 11.2 [Deliverables for Total Completion] of this Schedule; and
- (b) Section 11.10 [Requirements for Total Completion] of this Schedule.

**PART 13
SURVIVAL**

13.1 Survival

Notwithstanding any other provision of this Agreement, the provisions of Section 5.11 [Indemnity by Design-Builder], Section 7.1 [Representation, Warranty and Covenant as to Project Work], Section 7.2 [Project Work Defect Warranty], Section 7.4 [Correction of Project Work Defects], Section 7.6 [Traffic Management and Public Safety with Defects], Section 7.7 [Terms of Subcontractor Warranties], Section 7.8 [Assignment of Warranties to Province], Section 8.4(b)(iv), Section 8.7(f), Section 9.1(e) and Section 9.2(b) of this Schedule will survive the expiry or any earlier termination of this Agreement.

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**APPENDIX 3A
PROJECT SCHEDULE**

Key Works Milestone	Date
Effective Date	July 31, 2024
Substantial Completion Date	November 30, 2027
Total Completion Date	June 20, 2028

SCHEDULE 3: DESIGN AND CONSTRUCTION GENERAL REQUIREMENTS

**APPENDIX 3B
FORM OF CERTIFICATES FOR SUBSTANTIAL COMPLETION AND TOTAL
COMPLETION**

1. Certificate of Substantial Completion
2. Certificate of Total Completion

SCHEDULE 3: DESIGN AND CONSTRUCTION GENERAL REQUIREMENTS

Appendix 3B: Form of Certificates for Substantial Completion and Total Completion

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Certificate Form 1

Certificate Ref. No. []

CERTIFICATE OF SUBSTANTIAL COMPLETION

Agreement between His Majesty the King in right of the Province of British Columbia, BC Transportation Financing Authority and Emil Anderson Construction (EAC) Inc. dated July 31, 2024 ("the Agreement") relating to the Project. Defined terms and expressions used in the Agreement have the same meanings in this Certificate.

Form of Certificate of Substantial Completion to be used by the Owner's Engineer in accordance with Section 11.6 of Schedule 3 to the Agreement.

1. Confirmation was given on [date] by the Design-Builder that the New Project Infrastructure has been Substantially Completed in accordance with the Agreement and that all conditions to achievement of Substantial Completion as set out in the Agreement have been met.
2. A Road Safety Audit Certificate (Stage 4) was issued on [date].
3. Construction Certificates for the Substantial Completion of the New Project Infrastructure were issued on [dates].
4. This document will serve as the Certificate of Substantial Completion.
5. The Final Deficiency List signed by the Owner's Engineer is appended.
6. The Substantial Completion Date will be [date].

Signed.....

Owner's Engineer

Name.....

Title.....

Date.....

Professional Registration Number:

Affix Professional Seal

SCHEDULE 3: DESIGN AND CONSTRUCTION GENERAL REQUIREMENTS

Appendix 3B: Form of Certificates for Substantial Completion and Total Completion

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Certificate Form 2

Certificate Ref. No. []

CERTIFICATE OF TOTAL COMPLETION

Agreement between His Majesty the King in right of the Province of British Columbia, BC Transportation Financing Authority and Emil Anderson Construction (EAC) Inc. dated July 31, 2024 ("the Agreement") relating to the Project. Defined terms and expressions used in the Agreement have the same meanings in this Certificate.

Form of Certificate of Total Completion to be used by the Owner's Engineer in accordance with Section 11.13 of Schedule 3 to the Agreement.

1. Confirmation was given on [date] by the Design-Builder that Total Completion has been achieved in accordance with the Agreement.
2. Construction Certificates for the Total Completion of the New Project Infrastructure were issued on [dates].
3. This document will serve as the Certificate of Total Completion.
4. The Total Completion Date will be [date].

Signed:

Owner's Engineer

Name:

Title.....

Date.....

Professional Registration Number:

Affix Professional Seal

SCHEDULE 3: DESIGN AND CONSTRUCTION GENERAL REQUIREMENTS

APPENDIX 3C

DELIVERABLES FOR SUBSTANTIAL COMPLETION AND TOTAL COMPLETION

PART I DELIVERABLES FOR SUBSTANTIAL COMPLETION

1. Records Documentation

- (a) Prior to Substantial Completion, the Design-Builder will compile a complete set of Construction Records and Quality Records, including record drawings, for the New Project Infrastructure and submit the finalized Construction Records and Quality Records to the Province's Representative for record purposes.
- (b) Record drawings will be provided in the following formats:
 - (i) one full set of digitally signed and sealed PDF drawings; and
 - (ii) one full set of DWG drawings.
- (c) All Construction Records and Quality Records compiled by the Design-Builder will be available to the Province and the Owner's Engineer upon request.
- (d) The Design-Builder will ensure that all changes to drawings are properly and completely identified for record purposes. The drawing numbers will remain the same as the originals. All Construction Records will be stand-alone documents drafted in the format and to the standards of the original Design drawings.

2. Evidence of Assignments and Transfers of Property and Warranties

The Design-Builder will deliver the following to the Province, or at the discretion of the Province to BCTFA or other third party designated by the Province:

- (a) written confirmations or acknowledgements of:
 - (i) the assignment of Subcontractor warranties as required by Section 7.8 [Assignment of Warranties to Province] of this Schedule; and
 - (ii) where not previously provided pursuant to Section 2.7(c) of this Agreement, the transfer of any other assets required to be transferred prior to the Substantial Completion Date to the Province or any other person under the terms of this Agreement; and
- (b) copies of all materials comprising the Project Intellectual Property, and transfers, assignments and waivers in respect of same in accordance with the provisions of this Agreement.

3. Operations and Maintenance Manuals

Prior to Substantial Completion, the Design-Builder will provide the Province any and all operation and maintenance manuals required in accordance with this Schedule and Schedule 4 [Design and Construction Technical Requirements], such manuals having been reviewed in advance in accordance with the Review Procedure.

SCHEDULE 3: DESIGN AND CONSTRUCTION GENERAL REQUIREMENTS

Appendix 3C: Deliverables for Substantial Completion and Total Completion

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4. Training and Orientation

Prior to Substantial Completion, the Design-Builder will provide to the Province any and all training and orientation required to operate or maintain any special equipment or special Infrastructure implemented as part of the Project Facilities.

5. Spare Parts

Prior to Substantial Completion, the Design-Builder will provide to the Province a minimum of one set of spare parts required for any special equipment or special Infrastructure implemented as part of the Project Facilities.

6. Cleaning

The Design-Builder will:

- (a) remove all surplus material, equipment, sanitary facilities and any other Construction Plant, and all waste, material, debris, and rubbish from the Project Site;
- (b) remove all temporary fences and roads from the Project Site;
- (c) leave the Project Work, the Project Site and the Project Infrastructure to the extent that such infrastructure has been constructed, installed, altered, upgraded, and/or augmented by the carrying out of the Project Work in a safe and orderly condition, including by ensuring that such areas have been returned to their original condition, as applicable, or are 'broom clean' and graded to an even clean surface;
- (d) flush clean all drainage systems on or in respect of any Project Infrastructure; and
- (e) remove all graffiti from the Project Infrastructure.

7. Keys, Codes and Passwords

The Design-Builder will:

- (a) in respect of all locks, supply and install permanent cores;
- (b) deliver the following keys to the Province or a third party designated by the Province:
 - (i) the permanent keys to all permanent cores installed under paragraph (a) above;
 - (ii) the keys to all traffic sign housings;
 - (iii) the keys to all groundwater monitoring and geotechnical instrumentation sites;
 - (iv) the lifting keys for all types of chamber covers; and
 - (v) all other keys to all buildings, structures or other facilities forming part of the Project Infrastructure; and

SCHEDULE 3: DESIGN AND CONSTRUCTION GENERAL REQUIREMENTS

Appendix 3C: Deliverables for Substantial Completion and Total Completion

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- (c) deliver the codes and passwords to all computers and computerized systems installed as part of the Project Work, control of which is required to be transferred to the Province or a third party designated by the Province.

PART II DELIVERABLES FOR TOTAL COMPLETION

1. Asset Inventory Data

- (a) Prior to Total Completion, the Design-Builder will collect and provide asset inventory data for the Province's electronic asset inventory records for all New Project Infrastructure. Such asset inventory data will be provided for the following Province corporate asset inventory systems:

Province System	Inventory
Bridge Management Information System (BMIS)	Structures – Bridges, Major Retaining Walls, Major Culverts, Tunnels, and Major Sign Structures.
Roadway Pavement Management Systems (RPMS)	Pavements – including but not limited to Travelled Lanes, Shoulders, medians, rest area parking, and other areas specified to be treated to adjacent highway standard. The Shoulder and surface type are also recorded in CHRIS.
Corporate Highway and Resource Information System (CHRIS)	- Basic inventory – highway reference point (RFI landmark), highway profile, maintenance class, surface type, special lane profile (where applicable); - Other Structures – including but not limited to retaining walls less than 2.0 m high, minor culverts; - Other drainage appliances – including but not limited to curb and gutter, catch basins, flumes, and manholes; - Signs – including but not limited to regulatory, warning, guide, informational, advisory, construction and maintenance, and route markers, but excluding electronically controlled messages/displays; - Pavement markings – including but not limited to longitudinal, transverse and intersection markings, thermoplastic markings and HRPM; - Other inventory – including but not limited to walls, fences, gates, guardrails and reflectors, and linear safety features; and - Rockfall and Snow Avalanche attenuator and stopping systems.

- (b) Inventory data collected will be in the format prescribed in the applicable Province manual for the relevant provincial system.
- (c) The Design-Builder will provide all additions and amendments to the asset inventory for RPMS and CHRIS electronically to the Province's Representative to upload into the corporate asset inventory system. The file(s) will be compatible with the software used by the Province for managing the asset inventory.

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- (d) For BMIS, the Design-Builder will provide inventory data to the Province's Representative to enter into the BMIS electronic program. The information supplied will be generated in accordance with the definitions utilized within the BMIS. Clearance data, general arrangement data and Structure location information will be provided to the Province's Representative to be input into BMIS 30 days prior to opening the Structure to public vehicle use. All remaining inventory data is to be provided to the Province's Representative for input into BMIS within 12 months and in any event prior to Total Completion of such Structure.
- (e) The Design-Builder will provide the Province with a complete electronic list of all electrical inventory.
- (f) Unless specified otherwise, electronic files will be compatible with the most recent version of either Microsoft Office or Adobe Acrobat Reader, and all supplied electronic files will be on a USB data storage device and be clearly labelled as to the content.
- (g) The actual extent of data fields requiring populating, particularly for asset inventory being entered into CHRIS, will be by agreement between the Design-Builder and the Province's Representative.

SCHEDULE 3: DESIGN AND CONSTRUCTION GENERAL REQUIREMENTS

**APPENDIX 3D
WORKS SCHEDULE REQUIREMENTS**

1. GENERAL REQUIREMENTS

- (a) The Design-Builder will develop the Works Schedule using Oracle Primavera P6 scheduling software.
 - (i) The initial Works Schedule and any revised Works Schedule will be exported from the Primavera P6 data file and submitted in both .XER file format and PDF format.
 - (ii) The Design-Builder will use the same source data file for producing the Works Schedule (including the Critical Path Schedule) and any revised Works Schedule submitted in accordance with this Agreement.
- (b) The Design-Builder will apply critical path methodology that uses the sequence of activities that represents the longest path through the Works to determine the shortest possible duration to complete the Project Work.
- (c) The Design-Builder will develop the time-distance schedule using TILOS scheduling software.
 - (i) The time-distance schedule will be exported from the Primavera P6 data file and submitted in PDF format.
 - (ii) The activities shown in the time-distance schedule must include, at a minimum:
 - (A) design;
 - (B) procurement of critical long lead items;
 - (C) all planning activities, including development and delivery of all submittals and management plans;
 - (D) construction, erection and installation activities; and
 - (E) the Key Works Milestones, Payment Milestones, Interface Milestones, Primary Works Milestones and Secondary Works Milestones (together, the “**Milestones**”).
- (d) The Narrative Report in the Works Schedule provided pursuant to Schedule 22 [Closing Deliveries] will include the following at a minimum:
 - (i) the basis of determination of durations of Project Work activities, in the form of a table listing the production rates and quantities for each of the Project Work activities related to the construction, erection, or installation of the Project Work elements described in Section 2(f)(v) of this Appendix;
 - (ii) assumptions made in the Works Schedule development;

SCHEDULE 3: DESIGN AND CONSTRUCTION GENERAL REQUIREMENTS

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- (iii) defined work breakdown structure, in accordance with the work breakdown structure guideline provided by the Province in the Data Room;
 - (iv) naming or coding convention for activity IDs with, at a minimum, activity IDs including identification of Project phase, discipline, and work areas/zones;
 - (v) identification of each of the working calendars used including the working days, non-working days, and hours of work; and
 - (vi) Critical Path Schedule analysis that identifies general schedule risks, concerns, and potential mitigation measures to address risks, and processes to manage risks.
- (e) Each Narrative Report in a revised Works Schedule will at a minimum:
 - (i) identify the progress of the Project Work relative to the Project Schedule and, if the actual progress of the Project Work is forecasted to result in a non-compliance with the Project Schedule, the Design-Builder will identify the activities responsible for the delay;
 - (ii) describe the Project Work completed during the reporting period, including the submittals provided to the Province's Representative and status of review under the Review Procedure or Consent Procedure (as applicable), the delivery of materials and their quantities, and the Project Work elements completed or in progress compared to the planned work forecasted in the previous Work Schedule;
 - (iii) identify current and upcoming potential issues or concerns that, if not addressed in a timely manner, may delay the Project Work;
 - (iv) identify changes to the revised Works Schedule, including the addition or deletion of activities, the addition or deletion of constraints, changes to the working calendar or hours of work, changes to the original durations of activities that have not started and changes and shifts of dates for the Milestones;
 - (v) critical path analysis identifying and explaining any changes made to the previous Critical Path Schedule, including the addition or removal of activities; and
 - (vi) if applicable, a recovery plan in accordance with Section 3.3(c) of Schedule 3.
- (f) For each Project Work activity, the Design-Builder will:
 - (i) provide a unique activity ID that will be alpha-numeric and follow a systematic naming convention to align with the work breakdown structure. Activity IDs in a revised Works Schedule will not be changed without the approval of the Province, acting reasonably, and any deleted activities should be placed in a separate WBS located at the end of the Works Schedule titled "Deleted Activities" so that the Activity ID may not be reused; and

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- (ii) provide a unique name or description using consistent and intuitive terminology comprehensible to the Province. All revisions to the name or description of an existing activity in a revised Work Schedule must be noted in the Narrative Report together with a rationale, and any deletion of activity should be retired to a “Deleted” WBS, but the activity should not be deleted.
- (g) The Design-Builder will identify the dependency of each activity on other activities. Additionally, the Design-Builder will:
 - (i) use closed-sequence logic for each Milestone. For clarity, each Milestone will have at least one predecessor except for the first Milestone denoting the Effective Date and have at least one successor except for the last Milestone denoting the Total Completion date, and each Milestone except for the first and last will have a start and a finish relationship;
 - (ii) not use a negative lag between any Project Work activities and/or Milestones;
 - (iii) no positive lag should be used between Project Work activities and/or Milestones on a finish-to-start (FS) relationship type;
 - (iv) for any two Project Work activities or Milestones with a start-to-start (SS) relations define a lag no longer than the duration of the predecessor duration;
 - (v) use unconstrained sequencing logic for all Project Work activities and/or Milestones, except for those listed in Appendix 3B [Project Schedule]; and
 - (vi) for every imposed date constraint used the Design-Builder will provide a narrative detailing the reason for using the imposed date constraint.

2. WORKS SCHEDULE DETAILED REQUIREMENTS

Each Works Schedule submitted under Section 3.3 of Schedule 3 will:

- (a) have the data date of the initial Works Schedule equal to the Effective Date;
- (b) have the last calendar day of the month as the cut-off date of the reporting period, unless otherwise agreed in writing by the Province and the Design-Builder;
- (c) have the data date hours set to 23:59;
- (d) include the current progress of the Project Work as of the data date of the revised Works Schedule, including:
 - (i) the actual start date for all in progress activities;
 - (ii) the actual start and end date for all completed activities;
 - (iii) the actual completion date for each Milestone achieved;

SCHEDULE 3: DESIGN AND CONSTRUCTION GENERAL REQUIREMENTS

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- (iv) the current forecast duration, start date and end date for all incomplete activities; and
- (v) the current forecast date to achieve each of the remaining Milestones;
- (e) not change the actual as-built information described in Section 2(d)(i) through (iii) of this Appendix unless agreed in writing by the Province and the Design-Builder;
- (f) provide a detailed breakdown of the Project Work into details of Design, procurement, and Construction indicating:
 - (i) the sequencing of Project Work activities;
 - (ii) key dates for design submissions;
 - (iii) a breakdown of the design components including the following:
 - (A) the roadway for Highway 1 and each access road separately;
 - (B) each Bridge;
 - (C) each wall;
 - (D) Construction staging;
 - (E) the MacDonald Disposal Site;
 - (F) environmental works; and
 - (G) Utility Work;
 - (iv) a breakdown of the Works Schedule into the main procurement components, including the following:
 - (A) Subcontractors and vendors;
 - (B) electrical and mechanical equipment;
 - (C) fire and life safety systems;
 - (D) structural steel fabrication and delivery;
 - (E) precast girders; and
 - (F) masonry and tiles; and formwork, rebar, concrete;
 - (v) a breakdown of the Works Schedule into the main Construction components including the following:

SCHEDULE 3: DESIGN AND CONSTRUCTION GENERAL REQUIREMENTS

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- (A) construction mobilization;
- (B) each major rock cut;
- (C) each element of road construction including embankment construction to subgrade, graveling, paving, barriers, line painting and signing;
- (D) each Bridge separately;
- (E) each wall separately;
- (F) each access road separately;
- (G) the MacDonald Disposal Site;
- (H) Utility Work;
- (I) environmental Permits and works;
- (J) establishment of pre-cast facilities and other production and support facilities;
- (K) construction demobilization; and
- (L) other significant Project Work functions on the critical path;
- (vi) the early and late start completion date for each activity;
- (vii) the proposed duration in working days for each activity;
- (viii) free float and total float time for each activity, including reasonable allowances for the occurrence of events that may delay the Project Work; and
- (ix) the Critical Path Schedule;
- (g) be resource loaded, and provide the total labour for each trade and job classification using trade and job classifications consistent with those set out in the Community Benefits Agreement;
- (h) provide a breakdown into sub-activities such that the duration of any sub-activity is not more than the amount which, based upon the nature of the activity, the Province's Representative reasonably requires to readily monitor the status and progress of such sub-activity and the Project Work, and in any event is not more than 15 days unless a longer duration is required given the nature of the sub-activity and is consistent with Good Industry Practice;
- (i) include a schedule of Permits, detailing when each Permit will be required, when application will be made for each Permit, and when approval is forecasted to be received;

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- (j) include the crewing and equipment assumptions for the activities and the dependency logic that is governed by or represents crewing or equipment availability;
- (k) include each of the Milestones;
- (l) not include open-ended, open-start, or open-finish activities (including activities having no predecessor or successor) except for the first and last activities in the Work Schedule;
- (m) be logic-driven and calculated using the retained-logic scheduling methodology in Primavera P6. Progress override or actual dates methodology in Primavera P6 is not permitted.

3. CRITICAL PATH SCHEDULE

The Critical Path Schedule provided pursuant to Schedule 22 [Closing Deliveries] and any revised Critical Path Schedule will:

- (n) clearly indicate the critical path to the Milestones;
- (o) demonstrate that all activities on the critical path are task-dependent or Milestones; and
- (p) be the result of an unmodified software calculation of the critical path using the critical path method. The Design-Builder will not employ any additional filters or any other manual manipulation whatsoever to calculate the critical path.

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**PART 1
DESIGN AND CONSTRUCTION REQUIREMENTS**

ARTICLE 1 LANING AND GEOMETRICS DESIGN CRITERIA

1.1 Order of Precedence

The Design for the laning and geometrics of Highway 1 and all access roads will be in accordance with the criteria contained in this Article and the following codes and standards, and if there is any conflict between criteria contained in this Article and any of the Reference Documents, the following will apply in descending order of precedence:

- (a) the criteria contained in this Article;
- (b) the applicable Ministry Technical Bulletins and Circulars;
- (c) BC Supplement to TAC;
- (d) TAC Geometric Design Guide;
- (e) DBSS; and
- (f) Forestry Engineering Manual.

1.2 General Requirements

- (a) The laning and geometrics design criteria for the Project Infrastructure are set out in this Article.
- (b) For the purposes of the design of the New Project Infrastructure, Highway 1 will be designed to the Provincial functional classification of a Primary Highway and a design classification of rural arterial divided (RAD).
- (c) Highway 1 will be designed and constructed to, at a minimum:
 - (i) upon completion, meet all requirements set out in this Schedule between LKI 42.95 and LKI 45.6; and
 - (ii) provide a minimum two travel lanes per direction, except at the eastern end of the Project Site where Highway 1 will transition to the existing 2-lane section at LKI 44.97 and LKI 45.01 for eastbound and westbound, respectively.

1.3 Geometric Design Criteria

1.3.1 Highway 1 Design Criteria

Table 1.3.1 [Highway 1 Geometric Design Criteria] provides the highway geometric design criteria that will be applied for the Design and Construction of Highway 1. Site specific additional requirements and/or exceptions (if any) to these requirements will be in accordance with Section 1.3.2 [Highway 1 Design Notes] of this Part.

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Part 1: Design and Construction Requirements

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Table 1.3.1: Highway 1 Geometric Design Criteria

Element	Design Criteria	NOTES
Design Classification	RAD	
Functional Classification	Primary	
Posted Speed	100 km/h	
Design Speed	100 km/h	
Basic Lanes	4	Except at approach to MacDonald Snowshed
Minimum Radius	440 m	See Section 1.3.2.1 of this Part
Equivalent Min. K Factor - Sag - Crest	45 Sag 52 Crest	See Section 1.3.2.2 of this Part
Maximum Grade	6%	See Section 1.3.2.2 of this Part
Minimum Grade	0.5% highway / 1.0% Bridges	See Section 1.3.2.2 of this Part
Maximum Superelevation	0.06 m/m	
Stopping Sight Distance	185 m	See Section 1.3.2.3 of this Part
Decision Sight Distance	315 m	See Section 1.3.2.4 of this Part
Lane Width	3.7 m	
Median Width	2.6 – 3.3 m with CMB	See Section 1.3.2.5 of this Part
Paved Shoulder Width - Outside - Inside	2.5 m outside 1.0 – 1.7 m inside	See Section 1.3.2.6 of this Part
Median Taper Ratio	60:1	
Clear Zone	9.0 m w/ 4:1 foreslope or CRB	See Section 1.3.2.7 of this Part
Design Vehicle	WB-20	

1.3.2 Highway 1 Design Notes

1.3.2.1 Horizontal Curves

- (a) The minimum horizontal curve radii for Provincial rural arterials will be based on a maximum Superelevation of 6%, in accordance with the BC Supplement to TAC. The minimum curve radii will be 440 m, except through the area between approximately LKI 43.9 and LKI 44.3 where a minimum radius of 340m is permitted.
- (b) The radius of successive horizontal curves will not be 50% less, nor 150% greater than the radius of the preceding curve unless a segmental spiral is provided.
- (c) With reference to TAC Geometric Design Guide Sections 3.2.3, 3.2.5(5) and 3.3.5.1(4), broken-back curves are not permitted for the new horizontal geometry.

1.3.2.2 Vertical Alignment

- (a) K-values for sag vertical curves and crest vertical curves will be in accordance with the TAC Geometric Design Guide.

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- (b) Minimum K-values for sag vertical curves will be for non-illuminated roadways.
- (c) Minimum K-values for crest vertical curves will be based on 1.08 m driver height and 0.6 m taillight height. The 66.8 K-value for the existing crest curve approaching the MacDonald Snowshed, approximately LKI 45.3 to LKI 45.6, will be maintained as the minimum through this area.
- (d) The minimum gradient on vertical tangents will be 0.5% on the highway and 1.0% on Bridge Decks.
- (e) Within vertical curves the cross slope will be no less than 0.5%, wherever the longitudinal gradient is in a transition zone and less than 0.5%.
- (f) Bridges will be located away from the low point of a sag curve in the vertical alignment of the road profile.
- (g) The maximum grade will be 6%.

1.3.2.3 Stopping Sight Distance

- (a) The minimum stopping sight distance provided in Table 1.3.1 [Highway 1 Geometric Design Criteria] of this Part is for level roadway.
- (b) The design value for stopping sight distance will be adjusted for grades in accordance with Equation 2.5.3 of the TAC Geometric Design Guide.
- (c) A reduction in the lateral stopping sight distance due to median barrier, median retaining walls, roadside barrier and bridge parapets to an 80 km/h design speed will be acceptable. A reduction of lateral stopping sight distance to 70 km/h design speed will be acceptable through LKI 43.9 to LKI 44.3 section. At locations where median barrier obstructs sight distance, the median and inside shoulder widths will be modified in accordance with Sections 1.3.2.5(b) and 1.3.2.6(b) of this Part.
- (d) A graphical method will be used to determine the achieved stopping sight distance for each travel lane. The graphical method will use a finished grade design model. The design model used will include the roadway Superelevation and the height and location of any obstructions such as concrete median and roadside barriers, cut slopes, and upslope retaining walls that could obstruct sight lines.

1.3.2.4 Decision Sight Distance

Decision sight distance defined by Table 2.5.6 Column C of the TAC Geometric Design Guide will be used.

1.3.2.5 Median Width

- (a) A 2.6 m wide paved median with CMB will be provided except as modified in accordance with Sections 1.3.2.5(b) and 1.3.2.6(b) of this Part.

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Part 1: Design and Construction Requirements

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- (b) The paved median will be increased, up to a maximum width of 3.3 m, on horizontal curves where the stopping sight distance is reduced below what is required for 100 km/h design speed.

1.3.2.6 Paved Shoulder Widths

- (a) The outside paved shoulder width will be 2.5 m.
- (b) The inside paved shoulder width will not be less than 1.0 m. The inside shoulder will be increased to 1.7 m where a 3.3 m median width is used and where the achieved stopping sight distance is limited by median barriers or median retaining walls.

1.3.2.7 Clear Zone Requirements

Clear Zone distances and side slope treatments on Highway 1 will be established in accordance with Section 620 of the BC Supplement to TAC. Clear Zone distance will be minimum 9.0 m with a 4:1 front slope. Concrete barrier will be provided where Clear Zone requirements cannot be met.

1.3.2.8 Traffic Barriers and Railings

- (a) Traffic Barriers will be placed in accordance with the BC Supplement to TAC.
- (b) Concrete median barrier will be installed along Highway 1 in the median. For median locations on Structures, see Article 3 [Structural Design Criteria] of this Part.
- (c) Barrier setback to downslope retaining walls will be in accordance with Figure 440.G of the BC Supplement to TAC.
- (d) Concrete roadside barrier flares will be designed in accordance with Section 640 of the BC Supplement to TAC. The approach barrier flare dimensions will be in accordance with Table 640.A of the BC Supplement to TAC. Concrete roadside barrier at access locations, if applicable, will be configured in accordance with Figure 1 of the Guardrail Placement Guidelines.
- (e) All other median barrier transitions and terminations (including Traffic Barriers with ends protected by terminals, or impact attenuators) will be in accordance with AASHTO MASH, Test Level 3.
- (a) An impact attenuator will be provided at the eastbound entrance to the MacDonald Snowshed without consideration for Zone of Intrusion criteria as detailed in Section 1.3.2.9 [Zone of Intrusion] of this Part.
- (b) An impact attenuator will be provided at the Highway 1 centreline at the east side of the intersection of Highway 1 and Jumping Creek Road.
- (c) A median barrier will be provided along the median of Highway 1 from the impact attenuator at the east side of the intersection of Highway 1 and Jumping Creek Road to the approximate limits of paving as defined in Section 2.4(d) of this Part.

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- (d) Fencing for pedestrians and cyclists will be installed in accordance with Section 660 of the BC Supplement to TAC.

1.3.2.9 Zone of Intrusion

Zone of Intrusion (ZOI) criteria as defined in Section 7.6.2.6 of the TAC Geometric Design Guide will be provided for different types of roadside obstacles or hazards as follows:

- (a) Rigid hazards
 - (i) Rigid hazards will be located outside the cargo box ZOI as defined for a TL-4 barrier in Section 7.6.2.6 and Figure 7.6.3 of the TAC Geometric Design Guide. Examples of a rigid hazard include bridge piers or columns, abutments, upslope retaining walls, overhead signs, utility poles, and high mast lighting including structures that are not equipped with a breakaway support, provided that this requirement will not apply to the eastbound entrance to the MacDonald Snowshed.
 - (ii) The rigid hazard will be shielded from vehicle impact over their full length by a rigid F-shaped concrete barrier with a minimum height of 810 mm. A rigid concrete barrier is defined as being either cast-in-place with structural foundation, pinned, or otherwise not designed to move when impacted.
 - (iii) ZOI barrier protection for rigid hazards will extend a minimum of 3 m up and downstream of any location of potential vehicle snagging on the hazard. The barrier height transition to and from the adjoining barriers will be no steeper than 1(V):10(H).
 - (iv) Rigid hazards may be located inside the above-noted ZOI provided that any location of potential vehicle snagging is shielded by a concrete barrier that reduces the vehicle ZOI. The use of a barrier that reduces the vehicle ZOI requires written acceptance from the Province's Representative in accordance with the Consent Procedure. The Design-Builder will provide evidence that the proposed concrete barrier reduces the ZOI through demonstrated history of use and acceptance by an authority having jurisdiction.
- (b) When shielded, large roadside signs, luminaires, utility pole guy wires and other structures equipped with a breakaway support will be located outside the truck cab ZOI as defined for a TL-4 barrier in Section 7.6.2.6 and Figure 7.6.3 of the TAC Geometric Design Guide. Large roadside signs are defined in Section 7.5.5.2 of the TAC Geometric Design Guide. ZOI barrier protection for these hazards will extend a minimum of 3 m upstream of any location of potential vehicle snagging on the hazard. The barrier height transition to and from the adjoining barriers will be no steeper than 1(V):10(H).
- (c) Small roadside signs are not subject to a ZOI limitation. Small roadside signs are defined in Section 7.5.5.3 of the TAC Geometric Design Guide and include small signs equipped with wooden and telespar breakaway supports.

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1.3.2.10 Impact Attenuators

Impact attenuators will be installed at termination points of the median barriers and at the south edge of the MacDonald Snowshed portal for eastbound traffic. The impact attenuators will conform to the following criteria:

- (a) be one of the products on the Recognized Product List or approved by the Province's Representative in accordance with the Consent Procedure;
- (b) be non-gating;
- (c) be designed for 100 km/h and meet AASHTO MASH, Test Level 3;
- (d) be compatible with and be able to connect to single slope or F-shaped barriers;
- (e) have an overall width of less than 0.6 m;
- (f) be a fully enclosed system or be equipped with a winter cover to prevent snow accumulation; and
- (g) be anchored in accordance with manufacturer's specifications.

For installation of the impact attenuator at the south edge of the MacDonald Snowshed, the existing snowshed infrastructure (vertical wall and curbing) will be retrofitted as necessary to facilitate the connection of the impact attenuator and in accordance with the requirements set out in Sections 1.3.2.10(a) to (g) of this Schedule.

1.3.2.11 Access for Maintenance

For avalanche and rock catchment ditches that are 6 m wide or greater, gravel access pads will be provided to allow access for maintenance vehicles. The gravel access pads will conform to the following criteria:

- (a) The gravel access pad will be 4.0 m wide.
- (b) The grade of the access pad will not be greater than 12.0%.
- (c) The access pad will be located behind precast concrete barriers that can be easily removed when access is required.
- (d) For ditches that are 500 m or less in length then only one access pad is required.
- (e) For ditches that are greater than 500 m in length then two or more access pads will be required. An access pad will be provided at a maximum spacing of 500 m.
- (f) The access pad will have a minimum thickness of 450 mm of granular base material.
- (g) The minimum length of the gravel access pad will be 10 meters at highway grade plus an adequate length of the ramp required for a tandem dump truck to safely access the ditch from the highway grade for both drive-in and back-in operations.

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Any upslope benches or ditches within close proximity to the highway where water, rock or snow can accumulate and directly affect the functionality of the highway or rockfall / avalanche mitigation systems will include provision for access including a continuous 2 m wide machine access for cleanout.

ARTICLE 2 PAVEMENTS

2.1 Order of Precedence

Pavement design and construction will be in accordance with the criteria contained in this Article and the Reference Documents, and if there is any conflict between the criteria contained in this Article and any Reference Document, the following will apply in descending order of precedence:

- (a) the criteria contained in this Article;
- (b) Technical Circular T-01/15; and
- (c) the DBSS.

2.2 General Requirements

- (a) Where Technical Circular T-01/15 refers to the Standard Specifications for Highway Construction, the corresponding sections of the DBSS will apply. Designs using crushed granular equivalency (CGE) factors are not permitted. The use of alternate pavement design methodologies such as the mechanistic empirical design method is not precluded. Guidelines for parameters for design are given in Section 3.6 of Technical Circular T 01/15 and will be considered as minimum criteria. Resilient moduli for subgrades are given in Table 3 of Technical Circular T 01/15 and will be considered as maximum values unless directly determined by resilient modulus testing or by back calculation from falling weight deflectometer (FWD) testing.
- (b) Pavement structural design for Highway 1 will be carried out for a "Pavement Structure Type A" as defined in Technical Circular T 01/15. The minimum final design thickness of asphalt pavement will be 150 mm under the Travelled Lanes and under the paved Shoulders. The minimum thickness of select granular sub-base (SGSB) in rock cut subgrade areas will be 300 mm.
- (c) Further to DBSS Section 165.09 and 194.27, all temporary access, detour and/or haul roads associated with the Project will be designed, constructed and operated in accordance with the requirements of Part 3 [Traffic Management] of this Schedule.
- (d) Detours for Highway 1 traffic will be paved.

2.3 Reference Documents

As per Appendix 1C [Reference Documents] to Schedule 1.

2.4 Asphalt Pavements

- (a) Only asphalt pavements will be accepted.

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- (b) Sulphur modified asphalt pavements are not permitted.
- (c) Graded aggregate seal coat is not permitted.
- (d) Final Travelled Lanes and Shoulders will be paved with new asphalt to the Limits of Construction set out in Table 2.4 below:

Table 2.4: Limits of Construction

Pavement Construction	LKI From	LKI To
Full Depth Pavement:		
Eastbound	43.47	45.42
Westbound	43.46	45.42
Mill and Overlay:		
Eastbound	43.02	43.47
Westbound	43.34	43.46
Eastbound/Westbound	45.42	45.60

- (e) Asphalt overlays, if any, will have a minimum thickness of 50 mm. The requirements of Section 2.7.2 [Pavement Structural Capacity] of this Part are not applicable to mill and overlay within the limits set out in Table 2.4.
- (f) Existing asphalt pavement will be removed in accordance with Section 2.5 [Use of Existing Asphalt Pavement] of this Part, where it would underlie the new Highway 1.
- (g) All asphalt paving of final roadways will be conducted in accordance with DBSS 502 except that all pavement lifts will be 50 mm in compacted depth.
- (h) The pavement will include a Ministry approved asphalt cement meeting the requirements of DBSS 952 except as modified herein.
- (i) Top lift asphalt paving will consist of a Class 1 -16 mm medium mix with a PG64-34 polymer modified asphalt cement. All other lifts of asphalt paving will consist of 19 mm medium mix with PG64-34 polymer modified asphalt cement.
- (j) An antistrip additive, chosen by the Design-Builder from the Recognized Products List, will be added to all asphalt mixes.

2.5 Use of Existing Asphalt Pavement

The Province is taking initiatives to reduce greenhouse gas emissions and has identified the re-use of the existing asphalt pavement as a reduction strategy. All existing asphalt pavements removed from the existing Highway 1 will be fully utilized within the Project in accordance with the following:

- (a) Contrary to DBSS 505, the top lift of asphalt pavement will have zero percent (0%) Recycled Asphalt Pavement (RAP).
- (b) Where the material is to be used in RAP, only asphalt pavement material milled from the Travelled Lanes will be permitted.

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- (c) The Design-Builder may produce crushed base course (CBC), select granular sub-base (SGSB), shoulder build-up or shoulder aggregate by milling the existing pavement and combining it with other natural aggregate products. All milled material used for these purposes will be thoroughly mixed with other granular aggregate material. The amount of asphalt coated milled material by mass will not exceed thirty percent (30%) of the final product; excepting the top 150 mm of CBC which will have a maximum of fifty percent (50%) asphalt coated particles. Aggregate materials that are provided in accordance with DBSS 202 and that contain asphalt coated particles will be tested for conformance with the relevant gradation specifications after the addition of the asphalt coated particles.
- (d) The Design-Builder will ensure the milled material meets the specifications for the intended product in accordance with DBSS 202;
- (e) The Design-Builder will only incorporate ripped pavement in embankment construction provided the ripped material is broken to a maximum size of 150 mm. The resulting material will be thoroughly mixed with other borrow material and will be placed as embankment. Ripped pavements are not acceptable as backfill for Structures. The maximum ripped pavement content of any representative sampling of embankment fill will not exceed 5% by weight and embankments incorporating ripped pavements will meet all applicable geotechnical criteria including for settlement, drainage, and slope stability.
- (f) The Design-Builder may utilize material produced by reclaiming asphalt pavement and some or all of the underlying pavement structure gravels as SGSB. The amount of asphalt coated particles by mass will not exceed thirty percent (30%) of the final product. The Design-Builder will ensure the reclaimed asphalt and base material meets the specifications for the intended product in accordance with DBSS 202. Combination with other natural aggregate may be necessary to meet the specification. Aggregate materials that are provided in accordance with DBSS 202 and that contain asphalt coated particles will be tested for conformance with the relevant gradation specifications after the addition of the asphalt coated particles.
- (g) In areas where the existing Highway 1 is not to be retained in the New Project Infrastructure, the existing asphalt pavement will be removed and scarifying of exposed subgrade will be performed and the surface graded to ensure positive drainage. Scarifying will be in accordance with DBSS 165.09.03 and DBSS 751. Contrary to DBSS 751.31.04, scarified surfaces will be re-vegetated with seeding in accordance with Section 9.3 [Landscaping Requirements] of this Part.

2.6 Tarping Paving Aggregates

As part of the Province's initiative to reduce greenhouse gas emissions, stockpiles of paving aggregates will be protected from exposure to excess moisture from rain and snow.

- (a) The Design-Builder will tarp all pavement aggregate stockpiles produced between September 1 and April 1. Upon completion of the production process, tarps will be placed on the stockpiles to minimize erosion and moisture infiltration. In addition, all paving aggregate stockpiles not utilized prior to September 1 will be tarped;
- (b) For stockpiles utilized between September 1 and April 1, the Design-Builder will ensure these stockpiles are protected from inclement weather by re-tarping at the end of each shift.

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- (c) The Design-Builder will supply tarps made of impervious material with a preference for re-useable, recyclable or bio-degradable material. When using several tarps to cover a stockpile surface, the tarps will be started at the bottom by placing the lowermost tarp first and laying successive tarps in an overlapping shingle fashion to shed water and prevent seepage through the edges.
- (d) Tarps will be secured to prevent them from being dislodged by the weather. Regular inspections will be carried out by the Design-Builder to ensure tarps are being properly retained and that no holes, tears or rips are present. Tarps that have been damaged or removed or are otherwise not functioning as required will be promptly rectified by the Design-Builder.
- (e) Prior to constructing the paving aggregate stockpiles, the Design-Builder will ensure that the bases of the stockpile sites are sloped to facilitate positive drainage away from the stockpiles. If necessary, drainage ditching will be installed around the perimeter of stockpiles to maintain drainage of the base of the stockpiles.
- (f) The Design-Builder will determine and document the moisture content of individual stockpiles during production and prior to asphalt production. Testing frequency will be a minimum of one moisture test per sub-lot per product. Test data will be provided to the Province's Representative upon request.

2.7 Pavement Acceptance at Substantial Completion

- (a) Pavement acceptance at Substantial Completion will be based on a walkover survey carried out with the Province's Representative, roughness testing as per Section 2.7.1 [Smoothness] of this Part, and an assessment of structural adequacy by testing with a falling weight deflectometer as per Section 2.7.2 [Pavement Structural Capacity] of this Part.
- (b) The walkover survey of the final pavement with the Province's Representative will be carried out prior to Substantial Completion to identify workmanship defects as per DBSS 502.32 and Section 11.5 [Inspection for Substantial Completion] of Schedule 3.
- (c) These acceptance criteria are in addition to the requirements outlined in DBSS 502, and acceptance of the Project Work for the purpose of Substantial Completion requires that all of these criteria have been satisfied and that the workmanship defects have been repaired in manner acceptable to the Province's Representative.

2.7.1 Smoothness

- (a) Roughness testing using the International Roughness Index (IRI) will be conducted at the end of Construction in accordance with DBSS 502, however contrary to DBSS 502 the Design-Builder will be responsible for conducting the testing.
- (b) The roughness criteria identified in this Article will take precedence over the DBSS;
- (c) The roughness for all travel lanes will have an IRI measured in accordance with the DBSS of:
 - (i) less than or equal to 0.8 m/km in 10% of Sub-Lots;

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- (ii) less than or equal to 1.0 m/km in 25% of Sub-Lots;
 - (iii) less than or equal to 1.2 m/km in 95% of Sub-Lots; and
 - (iv) less than or equal to 1.6 m/km in 100% of Sub-Lots.
- (d) Contrary to the DBSS, excluded surfaces will be limited to:
 - (i) pavement surfaces within 3 m of a Bridge end;
 - (ii) concrete surfaced Bridges; and
 - (iii) concrete surfaced Bridge approach slabs.
- (e) All pavements must be smooth, free of bumps per DBSS 502.32, segregation and obvious defects.

2.7.2 Pavement Structural Capacity

In addition to the requirements outlined in DBSS 502, the following will apply:

- (a) The Design-Builder will carry out a pavement surface deflection survey using a falling weight deflectometer (FWD) in accordance with ASTM D4694 and ASTM D4695.
- (b) Tests will be carried out at a frequency not exceeding 50 m along each Travelled Lane of new or rehabilitated roads. The test points will be staggered by one-half the spacing along adjacent lanes.
- (c) Testing will only be carried out between May 1 and October 30, and the temperature of the pavement layers will be above 0°C.
- (d) Load applications will consist of a seating load of approximately 20 kN, and loads of 30 kN, 40 kN and 50 kN.
- (e) This testing will be analyzed in accordance with AASHTO Guide for Design of Pavement Structures and a pavement completion report containing the information in Section 2.9 [Pavement Design and Construction Reporting] of this Part will be provided to verify that the constructed pavement structure meets the design requirements for structural adequacy during the Design Life of the pavement.

2.8 Pavement Acceptance at End of General Project Work Defect Warranty Period

- (a) The Design-Builder will conduct pavement surface distress and rutting surveys between 90 days and 40 days prior to the end of the General Project Work Defect Warranty Period and the results will be reported not less than 30 days prior to the end of the General Project Work Defect Warranty Period, or at times agreed with the Province's Representative.
- (b) Pavement surface distress surveys will be conducted and reported in accordance with the Pavement Surface Condition Rating Manual. The Pavement Surface Distress Index (PDI) as described in the Pavement Surface Condition Rating Manual will be calculated using the

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current Ministry PDI model. Within each 50 m section, the PDI will meet or exceed 8.5 on a scale of 1 to 10 (10 being best), at the end of the General Project Work Defect Warranty Period. Without reducing overall pavement thickness, the Design-Builder will rectify, in accordance with the remedial Project Work outlined in DBSS 502, any pavement within the sections which do not meet or exceed a PDI of 8.5.

- (c) Rut depth measurements will be made on final pavements using automated or manual surveying equipment. Without reducing overall pavement thickness, for any pavement that is rutted in any wheel path, in excess of 5 mm, the Design-Builder will rectify the Project Work in accordance with DBSS 502.

2.9 Pavement Design and Construction Reporting

- (a) The Design Management Plan, as described in Article 1 [Design Management Plan and Technical Appraisal Forms] of Part 3 of this Schedule, will contain a work plan outlining the issues, risks and assumptions to be clarified and addressed and planned activities specific to pavement assessment and design, including, but not limited to, the following:
 - (i) a description of the scope and methodology of the proposed site investigations, laboratory and field testing to obtain specific information for the structural design of the pavement and for provision of recommendations for construction of the pavement;
 - (ii) a description of the methodology for carrying out the pavement design; and
 - (iii) a description of methodology for inspections and testing during construction to validate designs including assumptions and recommendations, and also at Substantial Completion and at the end of the General Project Work Defect Warranty Period, to confirm the pavement engineering aspects of the Project Work satisfy acceptance criteria.
- (b) A Pavement Design Report will be prepared for the Project and submitted to the Province's Representative in accordance with Article 2 [Design Submissions, Review and Reports] of Part 3 of this Schedule.
- (c) In addition to the requirements listed elsewhere in this Schedule 4 and the DBSS, the Design-Builder will submit the following documentation for pavement construction:
 - (i) results of roughness testing carried out at the end of pavement construction, as per Section 2.7.1 [Smoothness] of this Part;
 - (ii) results of falling weight deflectometer (FWD) testing at Substantial Completion, as per Section 2.7.2 [Pavement Structural Capacity] of this Part; and
 - (iii) results of a pavement surface distress and rutting survey; carried out prior to the end of the General Project Work Defect Warranty Period, as per Section 2.8 [Pavement Acceptance at End of General Project Work Defect Warranty Period] of this Part and Article 11 [Certification of Substantial Completion and Total Completion] of Schedule 3.

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- (d) All reports and drawings will be sealed by a Professional Engineer.

ARTICLE 3 STRUCTURAL DESIGN CRITERIA

3.1 Order of Precedence

The Design and Construction of Structures will be in accordance with the criteria contained in this Article and the following codes and standards. If there is a conflict between the criteria contained in this Article and any Reference Documents, the following will apply in descending order of precedence:

- (a) the criteria contained in this Article;
- (b) Bridge Standards and Procedures Manual, including the BC Supplement to CHBDC-S6-19;
- (c) DBSS;
- (d) CSA-S6-19; and
- (e) AASHTO LRFD Bridge Design Specifications.

3.2 General Requirements

The following general requirements will apply to all Structures.

3.2.1 Acceptable Products

All products used on the Project will meet the applicable Project Requirements and will be in accordance with the intent of the Recognized Product List. The use of products that are not on the Recognized Products List requires written acceptance from the Province's Representative in accordance with the Consent Procedure.

3.2.2 Unacceptable Materials and Systems

The following are not permitted to be used on the Project:

- (a) stay-in-place metal formwork, including composite or non-composite steel Bridge Decking;
- (b) aluminium, steel grid or composite sandwich Bridge Decking;
- (c) impressed current cathodic protection system;
- (d) modular Bridge Deck joints;
- (e) Bridge Deck heating systems;
- (f) timber components;
- (g) proprietary composite steel/concrete girders;
- (h) full-depth precast Bridge Deck panels;

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- (i) FRP structural products including FRP Bridge Deck systems;
- (j) FRP, epoxy coated, galvanized or proprietary reinforcement;
- (k) asphaltic plug Bridge Deck joints;
- (l) unbonded post-tensioning tendons;
- (m) MSE walls with dry cast concrete block facings;
- (n) metal bin walls;
- (o) hog fuel (wood waste);
- (p) shredded rubber (such as from tires) as fill;
- (q) two stage MSE walls, as referenced in Section 6.19.2.1 of the BC Supplement to CHBDC S6-19;
- (r) MSE walls with polymeric reinforcement used as abutment walls or wing walls;
- (s) piled-raft Structures without a Bridge Deck;
- (t) non-buried Structures with pavement structural fills on top of a structural slab;
- (u) Bridges with Superstructure load paths above the Bridge Deck, including upstand beams, through trusses, arches and cable stays;
- (v) polymer composite based structural products;
- (w) welded shear keys for precast concrete beams and slabs;
- (x) timber lagging walls;
- (y) MSE walls with wire facing
- (z) previously used materials;
- (aa) discontinuous spans between substructure elements; and
- (bb) sheet piles carrying vertical loads.

Exposed steel sheet pile walls are only permitted with the consent of the Province in accordance with the Consent Procedure. These systems may only be considered where: (i) not supporting Highway 1; (ii) not visible to the public; and (iii) not be exposed to chlorides.

3.2.3 Structure Identification Numbers

Structure identification numbers, as assigned by the Province's Representative, will be incorporated into the Structures in accordance with Ministry standard practices. The Province will make available the

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numeral forms for the Design-Builder's use when the Design-Builder is required to imprint an identification number into concrete portions of the Structure. The Design-Builder will return the numeral forms to the Province's Representative in good clean condition upon completion of the Project.

3.3 New Structures - General

This section includes the requirements for all new Structures required for the Project.

3.3.1 Design for Structures

The following requirements will apply to all new Structures:

- (a) The live load classification will be CL-800.
- (b) For fatigue design, the greater of site-specific traffic forecasts over the Design Life of the Structure and Class A Highway ADTT will be used.
- (c) Any Structures designed to provide protection against rockfall will be designed in accordance with the recommendations of a specialist experienced in the design of these Structures and is a Professional Engineer.
- (d) For seismic design, all Structures on or over Highway 1 will be classified as "Major-Route Bridges" and will be designed in accordance with CSA-S6-19. All other Structures (not on or over Highway 1) will be classified as "Other Bridges". If performance-based seismic design is required, the EGBC Seismic Design Guidelines will apply to this Project.

3.3.2 Design Life

- (a) All permanent Structures will be designed to have a durability that ensures a minimum Design Life of 75 years in accordance with CSA-S6-19 without replacement or major repair of all non-replaceable components, including Superstructure (Bridge Deck, girders and other main structural members), Substructure (piers, pier caps, abutments, retaining walls and MSE structures), Foundations (piles, pile caps, footings, soil and rock anchors) and buried structures.
- (b) For any calculations which are time dependent including but not limited to fatigue, corrosion, creep and shrinkage, the length of time will be specified as 100 years.
- (c) Replaceable components will include, as a minimum, the components given in Table 3.3.2 and will have the corresponding Design Life given in Table 3.3.2. The design of the replaceable components will allow for inspection and maintenance access as well as ease of replacement.

Table 3.3.2: Design Life for Replaceable Components

Replaceable Component	Design Life (years)
Bearings	50
Deck Joints	40
Joint Seals	15
Steel Coating System	30
Hand Rails, Fencing and Barriers	40

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Replaceable Component	Design Life (years)
Drainage Systems	40
Sign Support Structures	75

3.3.3 Design of Structures for Snow and Avalanches

- (a) Structures will be designed for both lateral and vertical loading from Avalanches, Avalanche deposits, accumulations of snow from snowfall, sluffing of accumulations and plowed snow, and be designed in accordance with the following:
 - (i) Avalanche loading on a Structure will be determined in accordance with Article 10 [Snow Avalanche Design Criteria] of this Part;
 - (ii) Avalanche and snow loading will be considered an Exceptional Load “F” in accordance with Table 3.1 in CSA-S6-19; and
 - (iii) Bridges and Major Retaining Walls will be designed for a minimum 1 in 300-year Avalanche event.
- (b) All structural components subject to Avalanche loading will be designed such that undesirable failure modes such as concrete or steel member shear failure mode or buckling failure model of steel members are avoided.
- (c) Design of Avalanche mitigation measures such as ditches will include a minimum 1 m deposit of compacted snow already in place at time of the Avalanche design event, for locations where access for maintenance has been provided in accordance with Article 1 [Laning and Geometrics Design Criteria] of this Part.

3.3.4 Design of Structures Supporting Rockfall Attenuator Systems

Rockfall attenuator systems will be designed in accordance with Article 5 [Geotechnical] of this Part. Structures supporting rockfall attenuators will be designed in accordance with the requirements of this Article. For design of these supporting Structures, the rockfall loading will be considered an Exceptional Load “F” in accordance with Table 3.1 in CSA-S6-19.

3.3.5 Inspection and Maintenance Access

- (a) Components that are not completely accessible using conventional and readily available inspection equipment, such as man lifts and snooper trucks, will be provided with permanent access that is suitable for inspection and maintenance activities. Permanent standard size door access will be provided to and inside hollow abutments and piers and towers to allow inspection and maintenance.
- (b) All access to interiors of Structures will be blocked for wildlife access.
- (c) A minimum 6.0 m horizontal clearance will be provided between the pier and abutment wall face to facilitate inspection access.
- (d) A minimum vertical clearance of 2.0 m below the underside of Bridge Deck will be provided for the Bridge Deck on girder Bridges.

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- (e) A minimum vertical clearance of 2.0 m below the underside of concrete box beams will be provided for the concrete box beam Bridges.
- (f) At pier locations, a minimum vertical clearance of 1.0 m below the underside of cap beams will be provided for all Bridges.
- (g) All temporary supporting and formwork materials including Styrofoam will be removed from the completed works unless otherwise consented by the Province.

3.3.6 Clearances

- (a) The minimum vertical clearance between top of finished roadway and overhead obstructions will be in accordance with the BC Supplement to CHBDC S6-19. The Design will ensure that the minimum vertical clearances are met throughout the Design Life of all Structures without additional intervention, such as jacking or pavement removal.
- (b) Structural components including bridge piers, retaining walls, and poles will be outside the Clear Zone of Highway 1, in accordance with Article 1 [Laning and Geometrics Design Criteria] of this Part, unless protected from vehicle collision over their full length by a rigid concrete barrier. Requirements to protect structural and non-structural components in the Zone of Intrusion are included in Article 1 [Laning and Geometrics Design Criteria] of this Part.
- (c) All Structures spanning over Highway 1 will be clear span. Substructure components will not be allowed in the median of Highway 1.
- (d) The minimum vertical clearance below all Bridge soffits will accommodate a 1 in 300-year Avalanche event that takes into account both previously deposited snow on the ground as well as the flowing Avalanche snow. Previously deposited snow on the ground will include:
 - (i) snowfall accumulation;
 - (ii) 1 m depth of snow plowed from the Bridge; and
 - (iii) prior Avalanche deposits, which may be deposits either from large flow avalanches from the Avalanche Path above, or small loose snow Avalanches from adjacent slopes (commonly referred to as sluffs).

The analysis will be completed in accordance with the requirements of Article 10 [Snow Avalanche Design Criteria] of this Part.

3.3.7 Aesthetics

- (a) Structures will be designed in accordance with the guidelines in the Manual of Aesthetic Design Practice using a “Baseline” classification. Aesthetic consideration will include but not be limited to the overall Structure form, harmony in element dimensions, shapes, finishes, columns, and relationship to the surroundings.

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- (b) All formed concrete surfaces will meet the finish requirements of DBSS 415 for precast concrete components, and meet the finish requirements given in Table 3.3.7 for cast-in-place concrete components.

Table 3.3.7: Concrete Surface Finish Requirements

Surfaces submerged or buried	Class 1	DBSS 211.17
Top and inside (exposed) surfaces of curbs, parapets	Class 3	DBSS 211.17
Outer surfaces of curbs, parapets, outer edges of deck	Class 2	DBSS 211.17
Abutments, piers and walls	Class 2	DBSS 211.17
Bearing seats	Steel Trowelled	DBSS 211.14
Top of deck (no membrane)	Transverse Tined	DBSS 413.31.02.05
Sidewalks	Transverse Coarse Broom	DBSS 211.14
Approach slabs	Float	DBSS 211.14
Underside of deck	Class 1 (or better)	DBSS 211.17
Slope pavement	Transverse Coarse Broom	DBSS 211.14

- (c) Anti-graffiti finish will be applied to all exposed concrete surfaces that are visible from Highway 1 as per DBSS 308. This requirement does not apply to concrete barriers.
- (d) The tops of all walls will be finished with a smooth top line to provide an aesthetically pleasing appearance. All MSE walls will have a cast-in-place concrete coping.
- (e) Structural steel and concrete interfaces will be detailed or protected such that no rust staining on the concrete occurs.

3.3.8 Foundations

- (a) Structures will be designed such that all Foundation deformations, clearances, and other performance requirements in this Agreement are met over the Design Life of the Structure.
- (b) Relevant Service Limit State and Ultimate Limit State load combinations for piles, each as defined in CSA S6-19, as well as details of pile splices and tips, will be indicated on the Design drawings. Anticipated pile tip elevation and corresponding pile lengths will be shown on the Design drawings. Maximum (highest elevation) pile tip elevations and corresponding minimum pile lengths will be shown on the drawings.
- (c) Piling will be aligned so that the finished pile is straight from end to end.
- (d) All field splice welding of steel piles will conform in quality and workmanship to the latest edition of CAN/CSA W59. The weld area will be dry and wind free during welding and will cool without chilling following welding. The welding will be undertaken by a company approved by the Canadian Welding Bureau to the requirements of CAN/CSA W47.1 Division 2 or better. All welds will be inspected visually and 100% ultrasonically tested on their full lengths in accordance with ASTM E273 and using acceptance criteria as defined in CAN/CSA W59.

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- (e) Sufficient lengths of pile above cut-off will be allowed so that no part of the pile damaged during installation remains in the completed Project Work.
- (f) All steel pipe piles will be temporarily capped after installation for safety reasons.
- (g) Material for H piles and end plates for pipe piles will conform to CAN/CSA-G40.21-M, Grade 300W. Steel pipes for pipe piles will conform to ASTM A252, Grade 3 or API 5L Grade (X42 or X52). Previously used or coated H piling or pipe piles are not permitted. The boron content of steel pipes will not exceed 0.0008%. Steel pipes produced to ASTM A252 are subject to the following additional requirements:
 - (i) chemical analysis of the material will show an equivalent carbon content of less than 0.43%, and a total carbon content of less than 0.3%.
 - (ii) piles with seams will be fabricated with full penetration butt welds;
 - (iii) welds will be ultrasonically tested by an independent testing firm in accordance with CAN/CSA W59 clause 11 and the extent of ultrasonic testing will be agreed with the Province and as a minimum will include the following for each type and size of steel pipes:
 - (A) 100% on first 2 No pipe segments;
 - (B) 10% on remaining pipe segments; and
 - (C) weld seam within first and last 200 mm of all pipe segments;
 - (iv) the full length of external welds and reasonable accessible internal welds will be visually inspected in accordance with CAN/CSA W59 clause 11; and
 - (v) alignment deviations will be less than 3 mm.
- (h) Mill certificates and non-destructive testing records, confirming seam weld quality, will be submitted to the Province's Representative. Manufacturer's identification marks on the pile will be readily identifiable on the Project Site and will match the heat numbers on the mill certificates provided. Sections of pile shorter than 3 m will not be used except to finish a pile to final cut off elevation.
- (i) Where mill test reports originate from a mill outside Canada or the United States of America, the Design-Builder will have mill test reports verified by a certified laboratory in Canada by testing the material to the specified material standards, including boron content, prior to incorporation into the Project Infrastructure. The testing laboratory will be certified to ISO/IEC 17025 by an organization accredited by the Standards Council of Canada for the tests required. Samples for testing will be collected by personnel employed by the certified laboratory. A verification letter will be provided by the certified laboratory that includes but not limited to, the applicable mill test reports, testing standards, date of verification testing, and declaration of material compliance with the Design and Construction Requirements of this Article. The verification letter will be signed by an authorized officer of the certified laboratory.

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- (j) Unless more stringently specified by the Design-Builder, the maximum horizontal tolerance from locations shown on the Design drawings for piles will be 75 mm at the pile cut-off elevation. The maximum deviation from plumb or specified batter below pile cut-off will be 20 mm per metre.
- (k) The Design-Builder will maintain pile installation records as directed by the Province's Representative and in accordance with the Inspection and Testing Plan.
- (l) Material and construction specifications for deep Foundation elements, including testing requirements and acceptable criteria, will be developed and included in the geotechnical Design submissions.
- (m) Design and construction of drilled shafts, piles, rock sockets, and other deep Foundation elements not covered by CSA-S6-19 and BC Supplement to CHBDC S6-19, will be in accordance with AASHTO LRFD Bridge Design Specifications.

3.3.9 Piers, Abutments, Wing Walls and Return Walls

Water ingress into or onto the Substructures or abutment wall backfill from the Superstructure above will be prevented. Joints between the Superstructure (including end diaphragm) and the Substructure will be waterproofed.

3.3.10 Structural Steel

- (a) The grade for steel Superstructure members will be AT for plates and A for rolled sections.
- (b) All structural steel components above the Bridge Deck will be considered as exposed to de-icing chemicals and will be coated in accordance with the BC Supplement to CHBDC S6-19.
- (c) Steel will have a boron content not exceeding 0.0008%.
- (d) Where mill test reports originate from a mill outside Canada or the United States of America, the Design-Builder will have mill test reports verified by a certified laboratory in Canada by testing the material to the specified material standards, including boron content, prior to incorporation into the Project Infrastructure. The testing laboratory will be certified to ISO/IEC 17025 by an organization accredited by the Standards Council of Canada for the tests required. Samples for testing will be collected by personnel employed by the certified laboratory. A verification letter will be provided by the certified laboratory that includes at a minimum, the applicable mill test reports, testing standards, date of verification testing, and declaration of material compliance with the Design and Construction Requirements of this Article. The verification letter will be signed by an authorized officer of the certified laboratory.
- (e) All components fabricated outside of Canada or the United States of America will be re-inspected and re-tested in accordance with Schedule 7 [Quality Management].

3.3.11 Corrosion Protection for Steel Below Ground

- (a) For each steel surface either (i) exposed to soil, or (ii) at the interface or below the water table, the Design-Builder will determine the corrosion mitigation approach using a specific

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analysis prescribed by a corrosion specialist. If the mechanism to address corrosion is to add sacrificial thickness for each exposed surface of the steel components, then losses will be computed using a 100-year Design Life, based on the following rates:

Galvanization Loss	> 15 micrometers/year for first two years > 4 micrometers/year for subsequent years
Carbon Steel Loss	> 12 micrometers/year after zinc depletion

- (b) Steel piles will be sized for a corrosion allowance of at least 3 mm over the life of the Structure for each exposed face. Coated piles will not be allowed.
- (c) The prescribed loss rates and corrosion allowance may be refined if a detailed corrosion analysis is undertaken. Detailed corrosion analysis will include soil corrosivity testing and analysis will be undertaken by, or under the supervision of, a NACE-certified corrosion professional.

3.3.12 Reinforcing Steel

- (a) All reinforcing steel, anchorages and mechanical connections will be stainless where required for corrosion protection as per Sections 8.11.2.5.2 and 8.11.2.5.3 of the BC Supplement to CHBDC S6-19. In addition, all reinforcing steel will be stainless within the upper 50% of concrete moment slabs constructed on top of MSE walls and soil nail/rock anchor walls, and for cast-in-place concrete Structural Barriers integral with concrete moment slabs as well as all exposed surfaces of median walls.
- (b) Connectors for reinforcing bars will be mechanical couplers without bar offset, and will be the same material as bars to be spliced, and will be in accordance with the DBSS 412.34.03.
- (c) Only W type of black bar will be used for the Project.
- (d) Welded splices or joints in reinforcing steel will not be permitted.

3.3.13 Prestressing Steel

- (a) Prestressing strands will be seven wire, uncoated, low relaxation, Grade 1860 MPa ultimate.
- (b) Prestressing strands will be nominal 12.7 mm, 15.2 mm or 15.7 mm diameter.
- (c) Unbonded strands will not be used.

3.3.14 Concrete

- (a) All concrete Project Work will be in accordance with DBSS 211 and 413, unless otherwise modified by this Article. All precast concrete including footings, pile caps, ballast walls, wall panels, girders, and Bridge Deck panels will be in accordance with DBSS 415.
- (b) Site specific testing for sulphate exposure will be conducted by the Design-Builder. Further to DBSS 211.04.02.01, Type GUL (General Use Limestone) Cement may be used for

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concrete components, subject to the determination of an acceptable site exposure category and material compliance testing. GUL cement is not permitted for elements with a very severe sulphate exposure, or in any concrete girders (prestressed, post-tensioned, or cast-in-place). The Design-Builder will determine the sulphate exposure class of all concrete elements as defined in Table 3 [Additional Requirements for Concrete Subjected to Sulphate Attack] of CAN/CSA A23.1 based on the tests required in Table 3.3.14a [Required Material Testing] of this Section. General Use (GU) and GUL cement must have a C₃A content of greater than 4.0% (by standard Bogue calculation) or 5% by mill certificate, and GUL cement will have a Blaine Fineness of less than 480 m²/kg.

- (c) The Design-Builder will complete all testing related to the site exposure and material compliance. Testing will be completed as follows, in accordance with the methods defined in Table 3.3.14a [Required Material Testing]:

Table 3.3.14a: Required Material Testing

Material	Test Description	Applicable Test Methods
Native Soil	Sulphate content, chloride content	CAN/CSA A23.2-B ASTM C1218*
Surface Water	pH, sulphate content	CAN/CSA A23.2-2B
Groundwater	pH, sulphate content	CAN/CSA A23.2-2B
Rock	pH, sulphate content	CAN/CSA A23.2-2B Technical Circular T-04/13
Concrete Aggregate	Sulphate content	CAN/CSA A23.2-3B CAN/CSA A23.1 Appendix P
Recycled Concrete Aggregate	Sulphate content	CAN/CSA A23.2-8B
Aggregate as defined in SS 202	Sulphate content, chloride content	CAN/CSA A23.2-B ASTM C1218*

* Typically used for mortar or concrete but can be adapted for soil.

(i) Soils Testing

- (A) Soils will be sampled within close proximity to all concrete elements (less than 100 m) to a depth representative of the concrete Foundation elements.
- (B) Soil sampling may be completed by borehole or test pits.
- (C) As a minimum, sampling will be at a depth between 0.3 m and 1.2 m and at the groundwater table, or within 1.5 m below the lowest groundwater elevation.
- (D) Below 1.2 m depth, sampling will include each significant change in subsurface material or at representative intervals to the end of the borehole/test pit unless groundwater is encountered.
- (E) If the same soil layer is continuous across the site, it is not necessary to obtain samples of the same soil unit from all boreholes/test pits.

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- (F) Combining samples from different layers to create composite or bulk samples is not permitted.
- (G) Sampling for linear Structures (such as retaining walls) will consider length as well as depth. As a minimum, one sample will be obtained for each 100 m of wall length.
- (H) Sampling of soils through permanent free-standing bodies of water is not required.
- (I) Collected samples will be representative of the site conditions within the project limits.
- (ii) Water Testing
 - (A) Water samples will be collected and tested from all surface water bodies within 350 m of the concrete element.
 - (B) If available, groundwater samples from wells or piezometers within 350 m of the concrete element will be collected and tested. Purging of the well will be completed as per the requirements for water quality testing.
- (iii) Aggregate Testing
 - (A) The Design-Builder will be responsible for and will provide the Province's Representative with current certified results for all of the applicable aggregate tests as outlined in Table 211-D [Required Aggregate Testing for Normal Density Coarse and Fine Aggregate (Per Individual Product and Aggregate Source)] of Section 211 of the DBSS.
 - (B) Samples of imported material placed adjacent to or in the vicinity of concrete elements will be tested. Imported material could be random fill, borrow, aggregates, concrete mix aggregates, recycled aggregates, and aggregates defined in Section 202 of the DBSS.
 - (C) In addition to the requirements of Section 211 of the DBSS, all aggregate will be tested for sulphate content in accordance with CAN/CSA A23.2-3B. The aggregates will have a sulphate content less than the identified exposure category unless approved by the Province's Representative.
- (d) Concrete mix design parameters for mixes utilizing GU or GUL cement will conform to Table 8.4 of the BC Supplement to CHBDC S6-19 unless otherwise consented to by the Province's Representative in accordance with the Consent Procedure. For structural concrete not covered by Table 8.4, the maximum water to cementitious materials ratio will be 0.45 unless otherwise consented to by the Province's Representative in accordance with the Consent Procedure. Entrained air content for all concrete mixes will be in accordance with CSA A23.1, Table 4, Air Content Category 1, except that the air content will be measured at the point of placement. Mix design parameters for concrete subject to Very Severe degree of exposure to sulfate attack (CSA A23.1 Class of Exposure S-1) will be consented to by the Province's Representative in accordance with the Consent Procedure.

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- (e) Semi-lightweight concrete will not be used in any Bridge component.

3.3.15 Bridge Decks

- (a) The wearing surface of new highway Bridge Decks will be exposed concrete with no waterproofing membrane or asphalt overlay.
- (b) The minimum specified top cover will be 60 mm, as per Table 8.11.2.5.2 [Corrosion Protection for Top Mat Reinforcing Steel for Bridge Decks, Parapets, Curbs and Approach Slabs] of the BC Supplement to CHBDC S6-19.
- (c) All Bridge Deck concrete will be in accordance with Section of 211 and 413 of the DBSS unless otherwise modified in this Article .
- (d) Public traffic will not be allowed on the Bridge Deck until the Bridge Deck concrete is a minimum of 28 days old. No de-icing salts will be used on the Bridge Decks and approach slabs until the concrete is 28 days old.
- (e) The chloride penetrability of Bridge Decks, approach slabs, concrete moment slabs and Structural Barriers will meet the requirements of Table 211-K of the DBSS. Primary testing will be carried out on trial mixes prior to any concrete being placed in the Bridge Decks, approach slabs, concrete moment slabs or Structural Barriers. Results of chloride penetrability tests will be documented and included in the mix Design submittal and quality control records.
- (f) The tops and both faces of Structural Barriers and the exposed outside edges of the Bridge Deck will be treated with a silane solution. Silane surface treatment will conform to DBSS 418.

3.3.16 Bridge Deck Joints

- (a) Bridge Decks will be designed to minimize the occurrence of joints.
- (b) Bridge Deck joints will be dimensioned and detailed to allow enough space for joints to be inspected, maintained, and replaced without permanent modifications to the Structure.
- (c) Integral and semi-integral abutments will be designed to allow for movement at the interface between the approach slab and the approach roadway pavement structure.
- (d) All Bridge Deck joints, except for finger plate joints, will be sealed. Only joint seals made of natural rubber or virgin neoprene will be used. Each joint seal will be supplied in a single length, without splices. Before the joint seal is installed, the joint seal and armouring will be thoroughly cleaned and all moisture removed. The seal will be installed in accordance with the manufacturer's recommendations.
- (e) All Bridge Deck joints will have armour. Joint armour, armour connections and anchors will be designed to avoid damage from snowplows. Steel cover plates will be used over the shoulder areas for the use of cyclists. Protection against snowplow action will be considered for the design and installation of cover plates.

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- (f) Unless otherwise Consented to by the Province's Representative, expansion joints will be designed as finger plate deck joints when the total movement at ultimate limit states exceeds 100 mm. When the total movement becomes too large for finger plate joints to meet the functional requirements of the joint, then modular deck joints will be used when it is consented to by the Province's Representative in accordance with the Consent Procedure.
- (g) All Bridge Deck joints will be designed to meet additional functional requirements of Section 11.5.1.1 of the BC Supplement to CHBDC S6-19.
- (h) All Bridge Deck joints, except for finger plate joints, will be tested to demonstrate watertightness. Finger plate joints will be designed to meet the open joint drainage requirements of Section 11.5.8 of the BC Supplement to CHBDC S6-19.

3.3.17 Half Bridges

- (a) All Half Bridges will be provided with the required Structural Barriers on both sides of the Bridge Deck in accordance with CSA S6-19 and the BC Supplement to CHBDC S6-19.
- (b) A rigid Structural Barrier will be provided at the top of median walls adjacent to Half Bridges.
- (c) A gap of 50 mm will be provided between two adjacent Structural Barriers at the top of median walls and at Bridge Deck of Half Bridges. The gap will be centered at the centerline of the Highway median. A 3.0 m cast-in-place transitional median barrier will be provided at each end of Half Bridges to provide a smooth transition to the standard roadside median barrier.
- (d) A longitudinal joint with compression seals between the top of median walls and Bridge Deck of Half Bridges without Structural Barriers on median walls and Bridge Deck of Half Bridges is not permitted.

3.3.18 Deck Drainage

- (a) Drainage devices will be provided on approach roadways to intercept runoff water prior to reaching Bridge Decks, abutments, and joints.
- (b) Bridge Deck drainage will be provided to ensure adequate drainage of runoff water from the surface of Bridges and/or approach roads in accordance with the BC Supplement to CHBDC S6-19.
- (c) Runoff water from all Bridges will be discharged in accordance with the drainage and environmental requirements of this Agreement. Direct discharge over water channels, within 5.5 m of Railways, multi-use paths, or roadways is not permitted.
- (d) The diameter of drain pipes installed in Bridge Decks will not be less than 200 mm.
- (e) Box girders and other Structure members with internal voids will be detailed to ensure no standing water accumulates.

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- (f) Bridge Deck drain pipes will not run through the voids of hollow structural members and will be completely encased in a reinforced concrete diaphragm with a minimum cover of 150 mm.
- (g) Use of large drainage opening in Structural Barriers on top of median walls or MSE walls and on Bridge Decks will be avoided where possible. Use of scuppers requires the consent of the Province's Representative in accordance with the Consent Procedure.
- (h) Drainage water from a Structure will not be discharged behind a Substructure or Foundation.
- (i) The drainage system will be sufficiently robust to resist damage during cleaning, and will be capable of resisting typical chemicals from highway spillages.
- (j) Erosion protection will be provided at discharge areas from deck drain downpipes and downspouts using similar splash pad detail shown SP504-03 of DBSS and constructed of 10 kg class rip-rap.

3.3.19 Approach Slabs

- (a) Approach slabs will be designed to ensure a smooth transition between the abutment and the approach roadway. Approach slabs will be supported entirely on approach fills. Where required by the BC Supplement to CHBDC S6-19, approach slabs will be provided at all abutments. Approach slabs will be 6.0 m long measured perpendicularly to the abutment backwall and located at least 100 mm below finished grade, anchored to the abutments and will match the full width of the Bridge Deck.
- (b) Approach slabs will have a 100 mm minimum asphalt overlay but do not require a waterproofing membrane.
- (c) Approach slabs will have the same requirements for concrete mix design, rebar type, and cover to reinforcing steel as Bridge Decks.
- (d) A "jump slab" or "jump span" (such as a short end span of 8.0 m or less between the abutment and adjacent pier) is not permitted.

3.3.20 Slope Protection

The Design-Builder will ensure that bridge abutment slopes and foundations will be adequately protected from erosion.

3.3.21 Structural Barriers and Railings

- (a) Rigid Structural Barriers will be provided on both edges and over the full length of all Bridges. Traffic Barriers (which are not Structural Barriers) will be in accordance with Article 1 [Laning and Geometrics Design Criteria] of this Part.
- (b) The test level required for Structural Barriers will be determined in accordance with CSA-S6-19 and the BC Supplement to CHBDC S6-19. Structural Barriers will be "F" Shape as described in the BC Supplement to CHBDC S6-19. In no case will the test level for Structural Barriers be less than TL-4.

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- (c) All Structural Barriers will include three 50 mm diameter RPVC conduits embedded at the base of the Structural Barrier in accordance with the BC Supplement to CHBDC S6-19 and as per Section 7.3 [Communication Conduits] of Part 1 of this Schedule.
- (d) Bicycle height protection of not less than 1.37 m will be provided on all Structural Barriers on Highway 1 where a vertical drop of more than 0.5 m is present behind the barrier. Railings will comply with the requirements of CSA-S6-19 and the BC Supplement to CHBDC S6-19. Railings will be adjusted to produce uniform height and smooth alignment.
- (e) Railings for pedestrian safety will be provided in all locations where a pedestrian may be exposed to a vertical drop of more than 0.5 m.

3.3.22 Bearings

- (a) All Bridge bearings will be designed, manufactured, installed and tested to meet the requirements of CSA S6-19 and the BC Supplement to CHBDC S6-19 unless otherwise specified in this Article.
- (b) Enough space and strength will be provided for bearings to be inspected, maintained and replaced without modification to the Structure. Design of bearings will allow for future replacement without interruption to traffic flow.
- (c) Bearings will be placed on leveled surfaces and will be restrained from “walking” under design service loading.
- (d) Bearing seats will be designed to be free from water ponding.
- (e) Bearings comprised of stainless steel sliding surfaces, PTFE, or mechanical components will be protected by means that can be easily removed for inspection.
- (f) Stainless steel will conform to ASTM A240-00. The face of the stainless steel in contact with PTFE (polytetrafluorethylene polymer) will have a bright annealed mirror finish. The roughness of the contact surface will be less than 0.2 µm arithmetic average for plane surfaces and 0.4 µm arithmetic average for curved surfaces measured in accordance with CSA B95.
- (g) Bearing replacement will be considered in the design. Jacking points and jacking loads will be identified on the Design and Record drawings.
- (h) For steel reinforced elastomeric bearings, each bearing will be tested to assure the quality of the bearings in accordance with Section 8.8.1 of AASHTO M251 for the load deflection test and Section 8.8.2 of AASHTO M251 for the short-term proof load test. The testing will be done by an independent accredited testing facility or by the manufacture. If the testing is performed by the manufacture, the testing will be performed under supervision of an independent accredit company and the test results will include the name and signature of the witness.

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3.4 New Retaining Walls

3.4.1 General

In addition to the requirements for new Structures, the following will apply to all new retaining walls:

- (a) Structural design will be performed in accordance with this Schedule 4, the BC Supplement to CHBDC S6-19, and CSA-S6-19. Design issues that are not addressed by CSA S6-19 or this Schedule will meet the requirements of AASHTO LRFD Bridge Design Specifications.
- (b) Reinforced soil slopes steeper than 45 degrees will be considered as Retaining Structures.
- (c) Walls required to retain Bridge embankments adjacent to the Bridge Foundations will be considered abutment walls.
- (d) Extensible Reinforcement is not permitted for use in abutment walls and wingwalls.
- (e) Geotextiles are not permitted for use as soil reinforcement.
- (f) Steel used in soil reinforcing components of all MSE walls will be galvanized and will have a minimum thickness determined based on a 100-year Design Life and corrosion-resistance durability requirements.
- (g) Additional anchors, tie-backs, soil reinforcing straps will be installed for new walls or modifications of existing walls or their Foundations to allow for future inspection and testing. The number of additional elements provided for future testing for each Retaining Structure will be equal to 2% of the number required by design but not less than 2 additional elements will be provided.
- (h) Permanent ground anchors and nails that are part of load paths of Structures or are used to stabilize or strengthen existing ground or slopes that directly or indirectly support Structures or foundations will be PTI – Class I Double Corrosion Protected (DCP) as defined in PTI DC35.1-14.
- (i) All MSE walls that are visible from Highway 1 will have segmental precast concrete facing panels and a cast-in-place concrete coping along the top of the walls. The minimum soil reinforcement length for walls supporting or influenced by the abutment footings will be the greater of 70% of the distance from the top of the levelling pad to the road surface or 2.4 m in accordance with the AASHTO LRFD Bridge Design Specifications. Any soil reinforcing within a 1:1 slope of an abutment footing or pile cap will be considered as influenced by the footing.
- (j) MSE walls with non-Extensible Reinforcement and segmental precast concrete facing panels are permitted to a maximum height of 12 m measured from the top of the levelling pad to the top of concrete coping. Only accepted products in the category “Bridge Abutments are Supported by Retaining MSE Walls (True Abutments)” of the Recognized Products List are permitted to the 12 m height limit. Otherwise, the requirements of the BC Supplement to CHBDC S6-19 and Recognized Products List will apply.

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- (k) For soil nail walls which do not directly support the highway, the Design will be in accordance with FHWA Circular No. 7 and all shotcrete work will be in accordance with Sections 209 and 211 of the DBSS. Shotcrete mixes will meet the requirements given in Table 3.4.1a below:

Table 3.4.1a: Shotcrete Mix Design Parameters

Classification	Minimum compressive strength at 7 days (MPa)	Minimum Compressive Strength at 28 days (MPa)	Air Content at discharge into pump (%)	Air content as shot (%)	Slump at discharge into shotcrete pump (mm)	Maximum W/C _M ⁽¹⁾ Ratio by mass
All Shotcrete ⁽²⁾	25	40	7-10	4 ± 1.5	80 ± 30	0.5

Table Notes

(1) C_M denotes the total mass of all cementitious materials.

(2) Aggregates will meet ACI 506R Gradation Number 2.

- (l) For retaining walls and reinforced soil slopes that are used to retain the existing upslope overburden on top of rock cuts, the overall height of the walls or reinforced soil slopes will not exceed 6.0 m, measured vertically from the top of bedrock at the base of the wall or reinforced soil slope, without the consent of the Province and a continuous minimum 4.0 m wide horizontal bench will be provided along the toe line of the walls or reinforced soil slopes which extends to the highway grade, at both ends where wall length is greater than 200 m, to allow for future inspection and maintenance access. The maximum longitudinal grade of the bench shall not be greater than 20%. The bench width shall be measured as the clear width for the operation of maintenance equipment, excluding any physical obstacles such as posts and anchors, and taking into account any rock blasting overbreak or anticipated long-term retrogression of the rock slope. The design of upslope retaining walls, reinforced soil slopes, and benches shall consider the following:
- (i) operations and maintenance of the proposed surface drainage and groundwater drainage measures;
 - (ii) seasonal freezing of wall or slope drainage measures which could result in adverse loading conditions;
 - (iii) seasonal freeze/thaw, ice buildup, and ice jacking pressures on wall or slope durability and operations and maintenance;
 - (iv) mitigations for slope stability risks associated with large excavations including sequencing of excavation and wall or slope monitoring;
 - (v) operations and maintenance of the bench, drainage measures, and surfacing of the bench;
 - (vi) mitigations to prevent damage to the retaining walls or reinforced soil slopes at the toe of wall or slope during rock excavation for the bench; and

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- (vii) mitigations to prevent erosion of the slopes above and adjacent to the wall that could affect the operations and maintenance of the wall over its Design Life.
- (m) For anchored shotcrete walls that are used as a median wall or other wall which directly supports the highway, the Design will be in accordance with FHWA Circular No. 4 and shotcrete will be in accordance with Sections 209 and 211 of the DBSS. Shotcrete mixes will meet the requirements given in Table 3.4.1a.
- (n) The use of General Use Limestone (GUL) cement will meet the requirements of Notes (1) and (4) of Table 3.3.14b for low to moderate sulphate exposure and of Notes (1) and (6) of Table 3.3.14b for severe sulphate exposure.
- (o) The Design-Builder will provide at least one test panel of 600 mm x 600 mm x 125 mm for every 40 m³ of shotcrete produced or one test panel per day of shooting, whichever is more frequent, gunned in the same position as the work represented and will retain a CSA certified testing agency for coring and compressive strength testing of the core specimens. Four cores will be taken for each panel and tested at 24 hours, three days and 28 days (two cores). Test results will be submitted to the Province's Representative. Upon completion of shotcrete application of each panel, the Design-Builder will cure the test panels in the field, close to the location where shot, for two days before being transported in the form to the testing laboratory. The test panels will be cured under wet burlap covered with plastic sheet under field temperatures and protected from disturbance or damage. Test panels and cores extracted from the test panels will be moist cured in the laboratory at 23 ± 2 °C until the time of compressive strength testing.
- (p) All permanent anchors of anchored walls including soil nail walls will be PTI – Class I Double Corrosion Protected (DCP) as defined in PTI DC35.1-14 and must be fully anchored into competent rock by adequate bond length. The anchored median walls constructed with shotcrete panels will be finished with a cast-in-place concrete wall facing. The total thickness of shotcrete panels and cast-in-place concrete wall facing will not be less than 250 mm. The mesh reinforcement for shotcrete panels will be hot dip galvanized wire mesh and steel reinforcement for cast-in-place concrete wall facing will be stainless reinforcement.
- (q) Interlocking Block walls are acceptable for use as an MSE wall subject to the accepted products and height restrictions listed in the category "Retaining Walls (Supporting Loads)" of the Recognized Products List. All connections between the MSE wall soil reinforcement elements and the Interlocking Blocks will be in accordance with the BC Supplement to CHBDC S6-19, and the Design will be prepared by a Professional Engineer. Modifications to the Interlocking Blocks for the soil reinforcement connections will comply with the engineered connection design details.
 - (i) Details of Interlocking Blocks

Interlocking Blocks will have the following nominal dimensions:

 - (A) Full-sized blocks: 750 mm height x 750 mm depth x 1500 mm long.
 - (B) Half sized blocks: 750 mm height x 750 mm depth x 750 mm long.

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- (C) Compatible corner blocks and other partial sized or special purpose blocks for use with the full-sized blocks.

All block edges, except the shear key and corresponding socket, will have a 40 ± 20 mm chamfer. Dimension tolerances will be ± 15 mm. All Interlocking Blocks require the following identification information to be cast into the end of each block, in a manner, size and depth to be permanently legible:

- (A) manufacturer's name or trademark,
- (B) date of manufacture, and
- (C) form number.

(ii) Shear Keys

Interlocking Blocks will have engineered interlocking shear keys with no more than 12 mm of design clearance around the shear key. The shear keys will be cast integrally with the block and will provide shear strength across the interface between courses of the Interlocking Blocks. The shear key will be designed to allow interlocking:

- (A) in a linear installation in running bond and stack bond layouts, and
- (B) at ninety degrees (90°) corners

The interface shear strength between the courses of Interlocking Blocks and the shear key strength will be adequate to resist earth pressure forces of ten metres (10 m) in height. Engineered documentation and test results that demonstrate the interface shear strength and shear key strength will be submitted to the Province for review upon request. Bench style and wall top course Interlocking Blocks will have a flat top surface (i.e. without shear keys) with recessed galvanized lifting loops.

(iii) Lifting Loops

Lifting loops will be anchored and embedded sufficiently into the block to safely enable lifting and handling of the blocks. Lift points will be designed and installed directly above the centre of mass of the block and in a manner that will allow them to remain in place and not interfere with full concrete-on-concrete bearing when blocks are stacked on top of each other. Installation will not require the lift points to be removed.

(iv) Concrete Quality

All concrete material and work will be in accordance with DBSS 211 except as modified by this Article. Material will be new or virgin and contain no Recycled Concrete Aggregate Material (RCAM). Concrete will meet the requirements of Table 3.4.1b.

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Table 3.4.1b: Concrete Mix Requirements

Property	Requirement
Min. 28-day compressive strength	32 MPa
Air Content	5% to 7%
Nominal maximum size of coarse aggregate	28 mm
Plasticized slump	80 ± 20 mm
Maximum water/cementitious materials ratio by weight	0.40
Minimum cement content	320 kg/m ³

(v) Finished Surface of Concrete

Concrete for Interlocking Blocks will be poured monolithically, with no cold joints (continuously poured until the concrete is level with the top edge of the form). All surfaces will have a smooth finish conforming to CSA A23.4 Section 26.2.3 “Standard Grade” with a uniform finish. There will be no pronounced texture and fins will be removed. There will be no open pockets or distortions in excess of 12 mm. Consistency of the concrete finish for the Interlocking Blocks will be maintained by using the same concrete mix and the same type of form oil. Interlocking Blocks will be sound and free of cracks or other defects that interfere with the proper placement of the block. Interlocking Blocks having cracks or spalling that are continuous through any solid element of the block will be rejected regardless of the width or length. All sharp or protruding surfaces of the Interlocking Blocks by careful rubbing or grinding.

(vi) Defects

Structurally defective or damaged Interlocking Blocks, as well as those with defects outside the limits specified in (A) below will be cause for rejection.

(A) Repair of Limited Defects – Subject to the approval of the Province, non-structural defects, within the limits identified below, may be repaired:

- (1) surface defects where their total area is not in excess of 2% of the exposed surface area of the unit; and
- (2) open pockets not greater than 6 mm in diameter and not more in number than 20 in any 300 mm x 300 mm area.

(B) Repair Products – Approved repairs will be done using approved patching materials from the Recognized Products List for patching of isolated small holes, cavities and similar self-confining defects of the Interlocking Blocks in order to restore the durability of the block. The patching material will provide a reasonable colour match to the cured dry Interlocking Block, be well tooled in, be finished flush and smooth, and cured adequately, using water or a curing compound.

(vii) Quality Control Requirements

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In addition to meeting the quality control requirements of DBSS 211, the Design-Builder will extract a set of two 100 mm diameter by 200 mm long cores from one block prior to delivery to the Project Site. The cores will be taken in the middle of the block along the back face so that the block may still be used if specifications are met. The cored holes will be patched and cured using approved materials from the Recognized Products List. When more than 50 blocks are used, a minimum of one set of cores will be extracted for every full or partial lot of 50 blocks supplied. The Design-Builder will ensure that the core test results are traceable to every other block cast from the same concrete batch and every other block in the 50-block lot. Only blocks with traceable testing documentation will be accepted for use. One of these cores will be tested for the compressive strength in accordance with CSA A23.2-14C and CSA A23.2-9C. The second core will be tested for air void analysis in accordance with ASTM C457. The evaluation of the results from the testing of the cores will be in accordance with CSA A23.1. The Province may reject the whole lot of blocks represented by the initial or subsequent core testing if the core tests fail to meet the specifications.

(viii) Safety Fences

Safety fences will be installed at the center of top interlocking blocks of all interlocking block walls when they are constructed at the downslope of Highway 1.

3.4.2 Drainage for Walls

- (a) Adequate drainage will be provided for all walls in accordance with Section 2.8 of the BC Supplement to CHBDC S6-19. Drainage water will be discharged onto a scour resistant surface or splash pad at a location acceptable to the Province's Representative. The end of drainage pipes will be capped with a screen to prevent wildlife access.
- (b) For anchored shotcrete walls including soil nail walls, the drainage Design will be in accordance with FHWA Circular No. 7 and special considerations are required to mitigate any adverse effects of surface and sub-surface drainage paths and underground water flows/seepages on the performance and durability of the anchored shotcrete walls.
- (c) For retaining walls and reinforced soil slopes (including soil nail walls) constructed on top of (above) the rock cuts, the following additional requirements will apply:
 - (i) Swales above the walls and reinforced soil slopes will be included in the Design and will be sized to convey runoff from half of a 2-year event. The swales will be constructed of impermeable and unerodable materials, will be designed to prevent undermining of the upstream edge of the swales and will convey flow with continuous erosion protection to the receiving ditch.
 - (ii) Groundwater behind the walls will be drained with weepholes or horizontal drains to relieve hydrostatic pressures as required for the Design. A drainage pipe will be included at the base of the walls to collect water from weep holes or drain pipes from behind the wall, and to convey it to a location that will prevent erosion of the adjacent bench.

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- (iii) The maintenance bench adjacent to the toe of the walls will be sloped at 3% away from the wall, will be designed against erosion from direct rainfall, and against erosion from water that may overtop the walls. The drainage system and erosion protection measures will not hinder maintenance access along the bench.
- (iv) Drainage for walls will comply with the additional drainage criteria set out in Section 7.2 [General Design Basis] of this Part.
- (d) Detailed Design will address and provide for maintenance where mineral precipitation from groundwater (including carbonate mineral precipitate or tufa) could foul subdrains and result in performance failure of the Structure or portions of the Structure within the Design Life.

3.5 Wildlife Ramp

- (a) The Design-Builder will design and construct a wildlife ramp (the “**Wildlife Ramp**”) in accordance with the requirements of this Section.
- (b) The Wildlife Ramp will be:
 - (i) supplied and installed on the south side of Highway 1 at the west end of the MacDonald Snowshed as shown in the Wildlife Ramp Drawing; and
 - (ii) designed in accordance with the Wildlife Ramp Drawing and reviewed and accepted by the Design-Builder’s avalanche and geotechnical engineers.
- (c) Field Inspections
 - (i) The Design-Builder’s avalanche, geotechnical engineering and wildlife passage experts will approve and sign-off on the location, design and final work of the Wildlife Ramp, subject to review and acceptance by the Province’s Representative.
- (d) Specific Requirements
 - (i) The Wildlife Ramp will be designed with consideration of avalanche and debris flow mitigation to minimize potential damage and maintenance due to avalanches and debris flows.
 - (ii) In order to reduce the chance of damage to the Wildlife Ramp from Avalanche, the downslope (south) edge of the top of the Wildlife Ramp will not exceed the height of sloping roof of the existing MacDonald Snowshed.
 - (iii) Foundation excavation for the Wildlife Ramp will be performed in accordance with DBSS 407. The foundation pad (levelling pad) will be constructed from 25 mm WGB to a minimum thickness of 300 mm compacted to at least 98% standard proctor maximum dry density. Concrete Interlocking Blocks will meet the requirements of Section 3.4.1(p) of this Part and will be backfilled with SGSB in accordance with DBSS 202.25, overlaid with organic stripping and seeded in accordance with Article 9 [Landscape and Site Restoration Design Criteria] of this Part.

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3.6 Sign Structures

The Design-Builder will design, fabricate, and install Structures for Signs in accordance with the BC Supplement to CHBDC S6-19, CSA-S6-19, and the Electrical and Signing Materials Standards. Levelling nuts below the base plates will not be permitted.

ARTICLE 4 GEOTECHNICAL

4.1 Order of Precedence

Geotechnical investigation and design will be in accordance with the criteria contained in this Article and the Reference Documents, and if there is any conflict between the criteria contained in this Article and any Reference Document, the following will apply in descending order of precedence:

- (a) the criteria contained in this Article;
- (b) Technical Circular T-04/17;
- (c) Bridge Standards and Procedures Manual, including the BC Supplement to CHBDC S6-19;
- (d) DBSS; and
- (e) CSA-S6-19.

4.2 General Requirements

The Design-Builder will be responsible for all geotechnical investigations and interpretations of all data required for the design and construction of the Project Work. This will also include geotechnical investigations and design for all temporary and permanent material stockpiles, surplus material/waste landfills and disposal sites.

4.3 Reference Documents

As per Appendix 1C [Reference Documents] and Appendix 1A [Factual Geotechnical Data] of Schedule 1.

4.4 Geohazards

- (a) The Project corridor is located within a narrowly constrained steep valley subject to various natural hazards exist that include snow avalanche, rockfalls, debris flow/flood and landslides, many of which originate well above the existing highway. There are also significant steep fill and colluvial slopes downslope of the existing highway which are prone to sliding, raveling and erosion. This Article describes requirements for assessment, design and mitigation of geohazards (including rockfalls, debris flows/floods and landslides). Requirements related to snow avalanches are described in Article 10 [Snow and Avalanche Design Criteria] of this Part.
- (b) The Design-Builder will carry out investigations and studies to identify and analyze geohazards that pose a risk to the Project Infrastructure. The Design-Builder will incorporate measures to mitigate the risks from geohazards to the Project Infrastructure as

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described in this Article. The Design-Builder will also incorporate mitigation measures so there is no increase in risk to the travelling public from geohazards during Construction. The Design-Builder will also identify geohazards that may pose new or increased risks to the CPKC infrastructure and the Railway Operations because of the Project Work, and will incorporate, in accordance with Part 4 [CPKC Interface] of Schedule 3, mitigation measures into the completed Project Work to ensure there is no net increase in any such risk.

- (c) Geohazard analyses will include an assessment of the magnitude-frequency of hazard events, probability of occurrence, assessment of the risk, and estimation of design forces (static and dynamic) and dimensions for proposed Structures as required for design of mitigation works. Design and construction measures will be incorporated into the Project Work to ensure debris flow/flood and landslide events do not damage Structures nor encroach onto the Travelled Lanes such that they present a danger to users. Design of mitigation measures for geohazards will also consider the potential interrelation between various natural hazards at the same location, including the potential effect of avalanche on rockfall mitigation works, or the potential for a combination of debris flow/floods and avalanches in the same path/channel. The Design and Construction will include measures to prevent a minimum 75-year return period debris flow/flood from extending past the westbound fog line of the new highway. Structures that support the new highway will be designed to withstand a minimum 300-year return period debris flow/flood event in accordance with CAN/CSA-S6-19. Debris flow/flood mitigation structures not directly supporting the new highway will be designed for a minimum 100-year event. The crossing at Helens Path (LKI 44.679) will be designed for the criteria provided in Sections 7.2(h) and 7.2(i) of this Part and will be accepted as the required mitigation of a minimum 75-year return period debris flow/flood from extending past the westbound fog line of the new highway.
- (d) Design for debris flows/floods will be carried out using the Debris Flow Control Structures for Forest Engineering.
- (e) Requirements for assessment and design of measures to mitigate rockfall hazard from areas above the constructed Project Work are described in Section 4.11 [Rockfall Mitigation Design] of this Part and will be considered in conjunction with rock cut design and construction. Where natural rockfall from otherwise unaffected slopes above the work area may impact the new highway or its Structures, then mitigation design will be implemented as described in this Article.
- (f) For existing slopes above the new highway that will not be affected by Construction of the highway or its Structures, a stability condition equal to or greater than that which currently exists (the ambient condition) will be required. Slopes above the highway that are modified by Construction will be analyzed and designed according to Section 4.8 [Slope Stability – Slopes and Embankments] of this Part. Cut slope stabilization (retaining structures and strengthened earthworks) will be designed with consideration for the stability condition of the existing slope above. ‘Affected by’ includes disturbance of the existing slope or net loading of the slope that is detrimental to slope stability.
- (g) The Design-Builder will also assess existing slopes and landslides below the highway and mitigate the potential risk to affect the constructed Project Work. This assessment and mitigation will include the potential risk for new or temporary construction works to cause ground movement of (or rockfall from) existing fill, colluvial and rock slopes. ‘Affect’

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includes disturbance of the existing slope or net loading of the slope that is detrimental to slope stability.

- (i) For existing slopes below the new highway, that will not be affected by Construction of the highway or its Structures, a stability condition equal to or greater than that which currently exists (the ambient condition) will be required. However, consideration must be given to where such slopes may naturally retrogress and cause movement of the highway or its Structures.
 - (ii) For existing slopes below the new highway that will be affected by Construction of the highway or its Structures, the highway and its Structures will be designed and constructed using the minimum factors of safety described in Section 4.8 [Slope Stability - Slopes and Embankments] and Section 4.6 [Foundations] of this Part and movement tolerances described in Section 4.7 [Settlement and Deformation] of this Part, and without reliance on support from the ambient portions of the slope where the factor of safety is determined to be less than 1.2.
- (h) The Design-Builder will consider the potential for landslides having deep-seated failure surfaces (in this context, failure surfaces greater than 15 m deep or affecting all four lanes) and landslides extending from above or below the highway construction disturbance area. Where such potential landslide surfaces involving affected slopes as provided for in Sections 4.4(f) and 4.4(g) of this Part cannot be practically addressed according to the minimum factors of safety described in Section 4.8 [Slope Stability – Slopes and Embankments] of this Part and movement tolerances described in Section 4.7 [Settlement and Deformation] of this Part, the Design-Builder's geotechnical analysis and design will demonstrate that construction of the new highway will be net neutral to or better than the ambient global stability condition and in no case will the minimum factor of safety be less than 1.2.
- (i) The Design-Builder will consider the potential for retrogression of the landslide below the existing highway between approximately LKI 44.25 and LKI 44.3. The potential for lateral expansion of the landslide or similar landslides in this area, including sliding in bedrock will also be considered.
- (j) The Design-Builder will mitigate the stability and ongoing retrogression of the rock cut and steep Type D cut slopes above the highway associated with the rock excavation works completed in 2021 between approximately LKI 43.8 and LKI 44.1, according to the minimum factors of safety described in Section 4.8 [Slope Stability – Slopes and Embankments] of this Part.

4.5 Geotechnical Seismic Design

Geotechnical seismic design will be carried out in accordance with CSA-S6-19 and the BC Supplement to CHBDC S6-19.

4.6 Foundations

- (a) Design of shallow and deep Foundations will be completed using Limit States Design procedures outlined in CSA-S6-19 and the BC Supplement to CHBDC S6-19. In the case of any conflicting design criteria, Article 3 [Structural Design Criteria] of this Part will govern.

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- (b) Structures will be founded such that bearing, stability, and settlement criteria are achieved for the Design Life of the Structures. In the case of an MSE wall Structure incorporating piles and/or ground anchors, this will be demonstrated through soil-structure interaction analyses considering strain compatibility, and other means as required.
- (c) Pile foundations will be extended to bedrock. Design and construction of drilled shafts, piles, rock sockets and other deep Foundation elements not covered by CSA-S6-19 and the BC Supplement to CHBDC S6-19, will be according to the AASHTO LRFD Bridge Design Specifications.
- (d) Ground anchors permanently included in Structures directly supporting the highway or underpinning their Foundations will be bonded in bedrock and PTI – Class I Double Corrosion Protected (DCP) as defined in PTI DC35.1-14. Installation and testing of anchor systems will also be according to PTI DC35.1-14.
- (e) Ground anchors, and all related hardware, permanently included in a permanent shotcrete facing installed above the highway (including soil nail walls) will be bonded in bedrock and PTI – Class I Double Corrosion Protected (DCP) will be provided as defined in PTI DC35.1-14, unless other corrosion protection measures are accepted by the Province's Representative in accordance with the Consent Procedure, provided that sacrificial steel thickness will not be accepted.
- (f) Design of ground anchors will consider grouting risks associated with anticipated ground conditions and the construction risks associated with highway rockfill embankments, colluvium and fractured rock.
- (g) Foundations for retaining walls, including MSE walls, will also include the following minimum criteria:
 - (i) a minimum 1.2 m wide horizontal bench in front of all walls on sloping ground (4H:1V or steeper) for inspection;
 - (ii) a minimum burial depth of 0.6 m below finished grade in front of all walls; and
 - (iii) sufficient depth of cover as required for external stability, erosion, and frost protection, provided that, for walls on sloping ground (4H:1V or steeper), the allowance for erosion considered in the Design will not be less than 2 m vertical temporary loss of ground at the crest of the slope in front of the wall.
- (h) The influence of groundwater on Foundations will be considered in the Design. Sensitivity analysis considering all reasonable scenarios will be performed and documented in Design reports where groundwater effects are seasonal or resulting from climate change.

4.7 Settlement and Deformation

- (a) Settlement and deformation analysis of Structures and embankments will be performed. Settlement analysis (including that for new fills) will consider the influence of underlying geological conditions, including that from pre-existing fills and colluvial soils. Foundations for Structures will be designed such that their lateral deformations, total and differential

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settlements are compatible with the function and performance requirements of the Structures over their Design Life.

- (i) Bridges and Half Bridges: The maximum permissible long-term Foundation settlement of any Bridge and Half Bridge abutment and adjacent wing wall and/or retaining wall will be 50 mm. The maximum permissible long-term longitudinal grade break (change in longitudinal grade) at any support point over the length of a Structure will be 0.5%. Long-term differential settlement between adjacent Substructure elements, between the ends of any individual Substructure element or between abutments and adjacent wing walls and/or retaining walls will not be more than half of the maximum permissible long-term Foundation settlement. For this Article, “long-term” is defined as a period of time measured from the Substantial Completion Date to the end of Design Life.
- (ii) All Other Areas: Embankments and Structures that are not Bridges or Half Bridges will be designed such that their total settlements post the Substantial Completion Date will be less than 200 mm over the Design Life, as measured on the finished highway pavement surface. The maximum lateral deflection of the top of retaining walls at any one location will be 25 mm at the end of the General Project Work Defect Warranty Period and 50 mm at the end of the Design Life.

For Structures that are not Bridges or Half Bridges, differential settlements measured at the top of retaining walls or ground surface behind retaining walls, or (in the case of MSE walls) at the perimeter of reinforced backfill zones, will be limited to 1:200 (0.5%) over 5 m transverse to centreline and 1:400 (0.25%) over 5 m parallel to centreline, as measured on the finished highway pavement surface at the end of the General Project Work Defect Warranty Period.

Differential settlements induced by and/or occurring within embankments will be limited to 1:200 (0.5%) over 5 m transverse to centreline and 1:400 (0.25%) over 5 m parallel to centreline, as measured on the finished highway pavement surface at the end of the General Project Work Defect Warranty Period.

- (b) As part of the Final Design submission, the Design-Builder will provide an estimate of the absolute and differential settlements expected at (i) Substantial Completion Date; (ii) end of General Project Work Defect Warranty Period; and (iii) end of Design Life. This estimate will be provided at:
 - (i) all Bridge and Half Bridge abutment, pier and end of approach slab locations; and
 - (ii) along the length of each embankment and Major Retaining Wall, at 5.0 m intervals parallel Highway 1.
- (c) The Design-Builder will institute a monitoring program to measure the absolute and differential settlements and lateral deformations at locations corresponding to the above-noted estimates. As a minimum, survey will be completed within 30 days of Substantial Completion and 30 days prior to the General Project Work Defect Warranty Period expiring and in accordance with all provisions of Article 6 [Project Work Defects] of Part 1 of this Schedule. In addition, survey will be completed upon reaching finished grade to establish

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baseline measurements. The Design-Builder will provide the Province's Representative with accurate survey measurements established from permanent survey control points with elevations and horizontal coordinates taken to 1.0 millimetre accuracy. The survey information will include a sketch plan showing survey control locations and descriptions as well as the location of survey information taken on the Structures.

- (d) Should surveyed settlements or deformations exceed estimated values, the Design-Builder will submit a plan to the Province's Representative in accordance with the Consent Procedure to mitigate excess future settlements and deformations to ensure the estimated settlements and deformation at end of Design Life can be achieved. Once accepted by the Province's Representative, the Designer-Builder will complete all mitigation measures listed in the plan prior to the end of the General Project Work Defect Warranty Period.

4.8 Slope Stability – Slopes and Embankments

- (a) Slope and embankment global stability design will meet the values in Table 6.2b [Resistance Factors, Consequence Factors and Factors of Safety for Global Stability of Embankments, Geotechnical systems, and Natural Slopes that affect the performance of the highway or bridge] contained in the BC Supplement to CHBDC S6-19, except for existing slopes in their ambient condition as provided for in Section 4.4 [Geohazards] of this Part.
 - (i) The global stability assessment, analysis and design of all slopes and Structures supporting the new highway will use a "Typical" consequence factor.
 - (ii) Slopes and structures located upslope of the highway, will be analyzed and designed using a "Typical" consequence factor.
 - (iii) At culvert locations, segments of Structures within 5 m on all sides of a culvert crossing will be analyzed and designed using a "High" consequence factor.
 - (iv) For Low, Typical and High Degrees of Understanding, slope stability will be evaluated using the Morgenstern Price method of slices such that both force and moment equilibrium are satisfied.
- (b) The BC Supplement to CHBDC S6-19 provides benchmarks for Degrees of Understanding for Deep Foundations in Table 6.2a. The benchmark for High Degree of Understanding for Static Analysis of Deep Foundations is replaced with the following:
 - (i) Axial design of rock sockets based on UCS test data from rock core.
 - (ii) Lateral deflection design of piles based on pressure meter testing (PMT) data representative of soil and rock conditions.
 - (iii) Data representative of conditions at each pier and abutment of Bridges and Half Bridges and at maximum 20m horizontal spacing for pile supported retaining walls.
- (c) The BC Supplement to CHBDC S6-19 provides benchmarks for Degrees of Understanding for Embankments in Table 6.2c. These are considered applicable to fill embankments, cut

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slopes, and natural slopes. The benchmark for High Degree of Understanding for Global Stability is replaced with the following:

- (i) Applicable only to the spatial extent of the embankment and/or slope for which the investigated geotechnical conditions are representative. Site specific geotechnical assessment required. Application greater than 20 m from location of subsurface data only with the Province's consent in accordance with the Consent Procedure.
 - (ii) Site specific geotechnical conditions established based on a minimum of 2 boreholes along the slope profile with representative soil and rock sampling as applicable to the considered slope (excluding boreholes with rock horizon information only).
 - (iii) Shear strength parameters determined utilizing laboratory testing and/or pressure meter testing.
 - (iv) Groundwater profile established based on in-situ measurements at locations consistent with borehole spacing.
 - (v) Low spatial variability of the subsurface soil and rock conditions.
 - (vi) Stability of embankment and/or slope evaluated using accepted computer software that incorporates the method of slices and limit equilibrium method of analysis. Both force and moment equilibrium of slices will be satisfied.
 - (vii) Sensitivity of the computed factor of safety evaluated for differing groundwater profiles and anticipated variations in shear strength parameters.
 - (viii) Embankment fill density and strength based on Ministry standard specifications and in-situ density testing and laboratory strength testing (direct shear or triaxial compression). Laboratory strength testing frequency minimum one per 20,000m³. Fills placed with engineering supervision.
- (d) The influence of groundwater on the stability of slopes and embankments will be considered in the Design. Sensitivity analysis considering all reasonable scenarios will be performed and documented in Design reports where groundwater effects are seasonal or resulting from climate change.
- (e) Slopes excavated in material other than intact bedrock will not be constructed steeper than 34 degrees unless designed as Strengthened Earthworks, and in accordance with FHWA Circular No. 7, or other published procedure that has been approved by the Province's Representative.
- (f) Where the slope face is greater than 45 degrees, the design will be in accordance with Article 3 [Structural Design Criteria] of this Part. Strengthened Earthworks that use proprietary systems will only use those listed on the current Recognized Product List. Use of an anchored or nailed mesh system (TECCO or equivalent) for Strengthened Earthworks and/or overburden slope face retention are not permitted.

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- (g) Finished excavated and embankment slopes, whether in whole or in part, will be free of deformation including shallow slope movement, piping, slumping, erosion or other forms of distress. If necessary, remedial work will be carried out within the General Project Work Defect Warranty Period to achieve these conditions.

4.9 Geotechnical Instrumentation

- (a) The geotechnical Design will identify and include the installation of geotechnical instrumentation systems (including piezometers, slope inclinometers, settlement gauges, movement hubs and load cells) and monitoring programs required before, during and after the completion of Construction, for Design and performance monitoring purposes.
- (b) In addition to instrumentation required for Design and Construction of the Project Work, the Design-Builder will also be responsible for maintaining and monitoring pre-existing geotechnical instrumentation including standpipe piezometers and dataloggers identified in the 2021 Geotechnical Investigation Data Report.
- (c) The Design-Builder will monitor pre-existing instrument locations prior to the commencement of Construction and no less than quarterly thereafter during Construction and the General Project Work Defect Warranty Period, unless otherwise agreed to by the Province's Representative. Within 3 days after each monitoring event, the Design-Builder will provide a report (including trend plots of changes over time) depicting the results of each monitoring event to the Province's Representative.
- (d) The Design-Builder will replace any of the above listed pre-existing installations should they be disrupted or damaged by the Design-Builder's activities, unless otherwise agreed to by the Province's Representative. The Design-Builder will, pursuant to a decommissioning plan submitted to the Province's Representative in accordance with the Consent Procedure, decommission any wells (such as piezometers) and slope inclinometers in conflict with the Project Work in accordance with the requirements of the *Groundwater Protection Regulation* (British Columbia). Dataloggers from the pre-existing installations will be returned to the Province if located in decommissioned wells and not in use in other instrumentation at the Project Site.
- (e) The Design-Builder will install Pile Dynamics Thermal Wires® in accordance with the thermal wire manufacturer's specifications and perform Thermal Integrity Profiling (TIP) testing in uncased rock sockets and other concrete infilled deep foundations that do not include a permanent steel casing over their full length. The testing frequency will be identified by the Designer and will not be less than 10% of piles. TIP testing, equipment and reporting will be in accordance with ASTM D7949 Method B. Crosshole sonic logging (CSL) tubes will be provided to supplement the TIP wires to provide for the investigation of anomalous TIP results. CSL testing, equipment and reporting will be in accordance with ASTM D6760.

4.10 Rock Slope Design

- (a) Rock excavation and slope design will include stability analyses, cut slope angles, ditch configuration for rockfall containment and provision of recommendations for slope support/stabilization and protection measures necessary to optimize the stability and rockfall control for the Project.

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- (b) For rock masses where potential failure mechanisms are structurally controlled, kinematic stability analysis will be performed. Design cut slopes, where possible, will be oriented to remove systematic discontinuity sets that are detrimental to global stability. Where slope orientation measures alone are insufficient to remove systematic discontinuity sets or where it is not practical to remove systematic discontinuity sets, then mitigating slope support measures will be included. Limit equilibrium stability analysis will be performed on kinematically possible failure mechanisms to determine support requirements to achieve the minimum factors of safety in Table 6.2b [Resistance Factors, Consequence Factors and Factors of Safety for Global Stability of Embankments] of the BC Supplement to CHBDC S6-19.
- (c) For rock masses that are not structurally controlled, limit equilibrium stability analysis using circular search methods will be performed to ensure new rock cuts achieve the factors of Safety in Table 6.2b [Resistance Factors, Consequence Factors and Factors of Safety for Global Stability of Embankments] of the BC Supplement to CHBDC S6-19.
- (d) Where rock mass stability may be governed by either rock mass strength or structural control, the Design-Builder will perform both analyses.
- (e) The influence of groundwater on rock slope stability will be considered in the Design. Sensitivity analysis considering all reasonable scenarios will be performed and documented in Design reports where groundwater effects are seasonal or resulting from climate change.
- (f) The nature and thickness of the overburden, in particular, those containing cobbles and boulders, as well as the upper weathered zone of the rock mass, will also be considered in the cut stability design and for the necessity of rockfall hazard mitigation. Where slopes steeper than 34 degrees are required in soil, colluvium, or weathered rock at the top of rock cuts, those slopes will be designed and constructed as Strengthened Earthworks, as described in Section 4.8 [Slope Stability – Slopes and Embankments] of this Part and where steeper than 45 degrees will be treated as Structures.
- (g) Rock cut designs will include ditch design based on geometric criteria proposed for the Project. Ditches below all rock cuts (new and existing) will be designed in consideration of the geometric criteria proposed for the Project and achieve a minimum 95% retention rate for potential rockfall sourced from all rock cuts. Slope irregularities in the finished cuts, whether intentionally constructed or not, will be considered in design of the ditch sections. Except where unnecessary to achieve the performance objective (including due to drape mesh or oversized ditch), the design will include removal of slope irregularities including narrow benches in rock slopes resulting from the offset between blasted lifts in accordance with DBSS 204.41.10.
- (h) The following references will be consulted when developing rockfall containment ditch design:
 - (i) Technical Bulletin GM02001, Figure 440.H;
 - (ii) ODOT Rockfall Catchment Area Design Guide; and
 - (iii) Ritchie (1963) Ritchie, A.M., 1963. The evaluation of rockfall and its control. Highway Record. Vol 17.

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- (i) The catchment dimensions given in the references above are considered to be minimum preliminary design values. Final detailed design of rock cuts will be based on a site-specific geotechnical investigation and will take priority over the requirements outlined in Technical Bulletin GM02001.
- (j) If 95% retention of rockfalls sourced from the finished rock cuts cannot be achieved by slope and standard ditch geometry alone, then additional mitigation will be incorporated, such as but not limited to: modified ditch width cross sections, roadside barriers, rock face support, slope drapery, rockfall attenuators and machine accessible road level rockfall stopping fences. However, the minimum ditch catchment widths will be those given in Table 1 of Technical Bulletin GM02001, and for rock cut heights greater than 24 m, the minimum ditch catchment width will be 8 m, unless the slope is also designed with a rockfall attenuator in which case the minimum ditch width for rockfall purposes will be 6 m.
- (k) All rock excavations, rock slope construction, rock slope support and rockfall mitigation systems will be constructed in accordance with DBSS 204, 206, 207, 208 and 209, except as modified herein. Components of rock catch fences and drape mesh systems used in conjunction with rock cut construction will be sourced from the Recognized Products List.
- (l) Rock slopes and excavation material will be assessed for potential acid rock drainage or metal leaching as described in Section 2.8.9 [Environmental Design] of Part 2 of this Schedule and in accordance with Section 5.2 [ML/ARD Material Management] of this Part.

4.11 Rockfall Mitigation Design

- (a) Mitigation measures for natural rockfall originating from slopes above the design cuts, or surficial deposits potentially destabilized because of Construction access and design cuts, will be designed and incorporated into the Project Work.
- (b) The Design-Builder will carry out investigations and studies to determine the potential volume, block sizes, mass, velocity, and frequency of rockfall originating from above design cut slopes which if unmitigated would impact Structures or the Travelled Lanes of the new highway. The Design-Builder will perform rockfall trajectory analyses.
- (c) If the Design creates or encounters rockfall hazards from above the design rock cut slopes, mitigation will consist of suspended hybrid rockfall attenuator systems at or near the crest of constructed cuts such that a minimum of 95% of individual rockfall boulders or blocks originating from above that reach the plane of the attenuator are intercepted and are redirected into machine accessible catchment and cleanout ditch areas below. A maximum of 5% of rocks reaching the plane of the attenuator may go over the attenuator. The Service Energy Level (SEL) of the systems will be defined and will meet the satisfaction of the Province's Representative. The Design of rockfall mitigation systems will also consider and include features to mitigate potential loading effects and damage from Avalanche hazards and ice buildup.
- (d) Rockfall attenuator systems will consist of a linear series of anchored and tied-back steel posts founded at or near the crest of a rock cut or on a supporting Structure. The posts will support one or more horizontal top steel bearing ropes or cables from which steel rockfall net or mesh panels will be suspended from a height and location required to intercept and redirect rockfalls from above. These panels will have the required strength, inertia, lateral

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resistance and length to intercept and redirect individual rockfall boulders or blocks (up to the SEL) down the face of the rock cut into ditch catchment/cleanout areas. Typically, these systems have a primary net component consisting of a relatively wide aperture, high capacity steel cable or ring mesh panels suspended from the bearing rope within the initial rockfall impact zone. The primary net may be backed by an outer secondary net consisting of a relatively small-aperture, lighter duty mesh designed to intercept smaller rock fragments that may pass through the apertures of the primary net.

- (e) Attenuator systems will be designed and constructed to intercept and redirect individual rock boulders or blocks (up to the SEL) without significant damage that impairs the effectiveness of the system. Acceptable attenuator systems will consist of components provided by manufacturers regularly engaged in the production and supply of rockfall protection mesh and fence systems, as listed in the Recognized Products List. The attenuator components (nets and posts) will be sourced from rockfall catch fence systems that have been tested and certified under ETAG 027, or an equivalent standard accepted by the Province's Representative in accordance with the Consent Procedure, to a Maximum Energy level (MEL) of at least two times the SEL. Nets used for attenuators will have been tested with the following parameters:
 - (i) Service Energy Level (SEL) for at least a 5 m fence height tested in accordance with ETAG 027 (or equivalent).
 - (ii) Maximum Energy Level (MEL) for at least a 5 m fence height tested in accordance with ETAG 027 (or equivalent) will be at least twice the SEL.
 - (iii) A maximum of two base anchors per post will have been used in the ETAG 027 certification testing.
 - (iv) There will have been no deformation of the posts during tests of the catch fence to the Maximum Energy Level (MEL) and no gaps between net and post after rock impact during tests.
 - (v) There will have been no sacrificial elements in the test configuration that allowed the primary netting to disengage from the bearing ropes.
 - (vi) There will have been no separation of the net from the perimeter cables after the MEL rock impact.
 - (vii) Maximum net deflection or elongation as detailed by ETAG 027 will not have exceeded 8 m.
 - (viii) Residual fence height after impact as detailed by ETAG 027 will have been a minimum of 50% of original height.
- (f) In order to facilitate future maintenance and repair after snow avalanches, and/or rockfalls of magnitudes in excess of the SEL, the components of the attenuator systems will be durable and modular to allow easy removal and reinstallation of components on a seasonal basis if required. The following features are required:

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- (i) Base plates for posts will be designed to be mounted on the vertical or near-vertical rock face (or other Structure) at or near the crest of the rock face, utilizing a grout or concrete pad for Foundation stabilization as necessary. In areas where avalanche hazard is not a consideration, base plates for posts may be mounted above the crests of rock faces.
- (ii) Solid threadbars (rigid anchors) will be used for base plate anchors. The solid threadbar anchors will be a minimum of 6 m in length and have a minimum diameter of 44 mm.
- (iii) Post base plate areas will be fitted with steel anchor protection plates welded on the upslope side of the base plates.
- (iv) Posts will be steel H-beams, with a minimum size of HEA 300, HEB 240 or from a fence system rated/tested at an MEL of at least two times SEL, (whichever is greater), fitted with climbing rungs spaced 0.3 to 0.5 m apart on posts.
- (v) Posts will be hinged at base.
- (vi) Individual posts will be easily removable from the system without the need to remove the bearing rope beforehand. Bearing rope may be attached to the top of the post using, for example, a removable shackle.
- (vii) Upon removal of upslope retaining ropes, post tops to be able to rotate down unimpeded to face of the slope (or Structure) below the attenuator, (requires base plate angle to match the slope face or Structure angle below).
- (viii) Hollow core anchors will not be used.
- (ix) Cable anchors or solid threadbar anchors with flexible heads (flexible anchors) will be used for all support cables/ropes to mitigate damage from bending moments and shear associated with eccentric loading of a rigid anchor. Solid threadbar anchors will be a minimum of 6 m in length and have a minimum diameter of 44 mm. Cable anchors will have the same pullout capacity as 6 m long 44 mm dia. solid threadbars.
- (x) If friction, braking or other deformable sacrificial elements are included in the system, they will be designed such that they are not activated, require service or replacement for impacts of individual rockfall boulders or blocks not exceeding the SEL.
- (xi) Primary attenuator nets will be fastened to bearing rope using shackles only. Primary nets will be supported only by the bearing rope. The lower half of the primary nets will be easily removed for replacement as needed.
- (xii) Secondary net material will be single twist steel mesh with a maximum opening clearance of 65 mm formed with minimum 3 mm diameter wire with a minimum wire tensile strength of 1770 N/mm². Secondary net material will be installed on the highway side of the primary nets.

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- (xiii) Secondary attenuator nets will be fastened near the top of primary nets using shackles. There will be no intermediate fasteners. The lower half of secondary nets will be easily removed for replacement as needed.
 - (xiv) Bottoms of nets will be a minimum of 2 m above highway final pavement surface (or equivalent access grade).
 - (xv) Vertical net panel seams will be easily disconnected for replacement as needed.
 - (xvi) All steel components will be hot dipped galvanized to ASTM A123 or ASTM A153 where applicable, compatible with a minimum 50-year Design Life.
- (g) Further, the acceptance for rockfall attenuator systems will be based upon:
- (i) either:
 - (A) a full-scale field-testing program of the provided system involving at least one dozen impacts of at least 50% of the SEL; or
 - (B) performance of at least three comparable rockfall mitigation systems installed within the last decade; and
 - (ii) the engineering basis for the design and dimensioning of the attenuator systems to be provided for this Project.
- (h) Additional details of the above rockfall attenuator acceptance criteria are provided in Section 2.8.5 [Geotechnical Design] of Part 2 of this Schedule.
- (i) Rockfall mitigation for upslope source areas may also serve downslope cuts and be considered in downslope rock cut design and rockfall catchment.
- (j) In all cases, and in addition to the requirements of Article 5 [Operation and Maintenance] of Part 1 of this Schedule, rockfall catchment, retention, and attenuator system design and configuration will include provisions for maintenance including machine access for cleanout of accumulated rockfall material required to maintain mitigation system effectiveness.

4.12 Aggregate Sources

- (a) The Ministry's aggregate sources at Jumping Creek South Pit and Albert Canyon Pit may be used for sourcing construction aggregates and granular borrow. The Clachnacudainn Pit may be used for asphalt pavement (asphalt mix) only. All activities within the stockpile sites will comply with the conditions described in the most recent Pit Development Plan for each of these areas. If the Design-Builder intends to make use of any of these areas, the Design-Builder will submit a pit use plan to the Province's Representative in accordance with the Review Procedure at least three weeks prior to proposed use, which will include, as a minimum the following:
- (i) site plan showing proposed locations and magnitudes of excavations, stockpiles, unsuitable materials and other products;

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- (ii) location and types of plant;
 - (iii) proposed schedule for operations in the pit; and
 - (iv) stormwater and environmental management, reclamation and other relevant information concerning pit operations.
- (b) At the end of Construction, the Design-Builder will produce a site survey and updated version of the Pit Development Plan for each area used in accordance with Section 4.13(c)(viii) of this Part.
- (c) The Design-Builder acknowledges that other contractors may have been granted access to and extraction and usage rights to the stockpile sites.
- (d) It is the Design-Builder's responsibility to coordinate its activities with the Ministry and others who maintain rights within the pits.
- (e) Further to DBSS 202.06, use of the stockpile sites is optional and the sites are not "designated pits".
- (f) Access to Jumping Creek South Pit is via the Jumping Creek Road which descends from its intersection with Highway 1, crosses below the CPKC railway bridge and crosses the Illecillewaet River. At the Illecillewaet River crossing the road is changed to the Jumping Creek Forest Service Road. If the Design-Builder elects to use Jumping Creek South Pit, then the following conditions apply:
 - (i) the Design-Builder will comply with all terms and conditions of the right-of-way, easement agreements and permits related to the establishment of the pit access road;
 - (ii) the Design-Builder will operate and maintain the pit access road in a condition comparable to or better than exists at the time of initial use for Project Work;
 - (iii) the pit access road is used by TAMS, CPKC and forestry operations, and the Design-Builder will be responsible for the safety of the road and will allow access to, and not damage, drainage, water supply, electrical, and communications infrastructure within the right-of-way;
 - (iv) the existing bridge over Jumping Creek may require upgrading depending on the Design-Builder's use of the Jumping Creek South Pit, and the Design-Builder will implement and pay for any necessary improvements to the existing bridge in cooperation and coordination with the Manager of BC Timber Sales - Okanagan-Columbia Ministry of Forests; and
 - (v) upon completion of Project Work, the Design-Builder will return the access road and its right-of-way in a condition comparable to or better than existed prior to the start of Project Work.
- (g) Access to the Albert Canyon Pit from Highway 1 runs through Canyon Hot Springs Resort's private land as well as through the CPKC railway right of way and across a CPKC owned

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bridge (G.V.W 60,000lbs / 27,000kg). If the Design-Builder choses to use the Albert Canyon Pit, then the Design-Builder will acquire any required access rights directly from the Canyon Hot Springs Resort and CPKC.

- (h) Where the Design-Builder elects to obtain any materials from a quarry, the Design-Builder will carry out an assessment for potential acid rock drainage or metal leaching as described in Section 2.8.9 [Environmental Design] of Part 2 of this Schedule.

4.13 Geotechnical Design and Construction Reporting

- (a) The Design Management Plan submitted in accordance with Section 1.1 [Submission of Design Management Plan] of Part 2 of this Schedule will contain a work plan (the “**Geotechnical Investigation Plan**”) outlining the issues, risks, proposed analysis approach and assumptions to be clarified and addressed in subsequent geotechnical assessment, analysis and design, with description of the relevant Design criteria, targeted Degree of Understanding and proposed site assessment (field studies, mapping, subsurface investigations and instrumentation) and methodology to obtain additional site-specific information for the geotechnical Design of excavations, embankments, Structures, final rock cuts, rockfall protection, debris flow/flood mitigation, surplus material disposal sites/landfills and other elements of the Project Work, and including, as a minimum:
 - (i) a topographic plan showing the locations of proposed boreholes, test pits or other exploration procedures;
 - (ii) a description of the design element and purpose of the exploration associated with each exploration location;
 - (iii) details of the proposed explorations including depth, sampling, in-situ testing and any installed instrumentation; and
 - (iv) details of proposed laboratory testing.
- (b) For every submission pertaining to Structures, earthworks, rock slopes, disposal sites and any element having a geotechnical design requirement, a geotechnical Design report will be submitted to the Province’s Representative in accordance with Section 2.8.5 [Geotechnical Design] of Part 2 of this Schedule.
- (c) In addition to the other requirements of this Schedule and the DBSS, the Design-Builder will submit the following documentation for Construction activities:
 - (i) Geotechnical Safe Work Plans – Geotechnical assessments and required measures to protect workers, the public and adjacent infrastructure (including CPKC infrastructure) from natural hazards and construction induced instability during construction.
 - (ii) Soil and Rock Anchors – Installation and testing records for all permanent soil and rock anchors incorporated into the Project Work. The locations and configurations of all such anchors will be indicated on the Record drawings for the associated Structures.

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- (iii) Foundations – Installation and testing records for all permanent pile and drilled shaft or rock socket type Foundations incorporated into the Project Work, including the results of any load testing, thermal integrity profiling and down-hole installation inspection;
 - (iv) Rockfall Events - Records of rockfall events during construction including geotechnical assessment of performance and recommended modifications to temporary and permanent rockfall protection systems as a result of those events;
 - (v) Geotechnical Instrumentation - Pre-existing geotechnical instrumentation monitoring (as described in Section 4.9 [Geotechnical Instrumentation] of this Part) will be carried out and results reported to the Province's Representative. The Design-Builder will also report monitoring events for all new geotechnical instrumentation within seven calendar days. Upon Substantial Completion, the Design-Builder will provide a final instrumentation report summarizing the results of all instrumentation monitoring, an inventory, and a location plan for all installations, along with provision of electronic data files suitable for subsequent monitoring by the Province.
 - (vi) Settlement and Deformation – Results of surveys as described in Section 4.7 [Settlement and Deformation] of this Part.
 - (vii) Rockfall Protection Systems – For permanent rockfall protection systems (attenuators, stopping fences), the following is required for each installation:
 - (A) copies of ETAG 027 certification and/or testing records for rockfall fence system components, as described in Section 4.11 [Rockfall Mitigation Design] of this Part;
 - (B) Record drawings for each installation; and
 - (C) an operations and maintenance manual for each installation.
 - (viii) Pit Development Plans - Upon completion of Construction the Design-Builder will carry out a topographic survey and prepare an updated Pit Development Plan for each Ministry source used for Construction. As a minimum, the Pit Development Plan will illustrate areas and volumes used by the Design-Builder for extraction, remaining stockpile materials and volumes, waste/overburden stripping areas, and any reclamation activities carried out since initial use of the source by the Design-Builder.
 - (ix) Waste Disposal and Landfill Sites - Documentation of field inspections, testing, monitoring and other assessments during Construction and an operation, monitoring and maintenance manual for all permanent waste disposal and landfill sites.
- (d) In addition to the other requirements of this Schedule and the DBSS, interim submissions will be provided on a monthly basis including but not limited to documentation of field inspections, testing, monitoring and other assessments during construction to validate the

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geotechnical Design as recommended in each geotechnical Design report in accordance with Section 2.8.5 [Geotechnical Design] of Part 2 of this Schedule.

- (e) All geotechnical drawings and reports will be sealed by the applicable Professional Engineer.

ARTICLE 5 CRITERIA FOR ML/ARD AND MACDONALD DISPOSAL SITE

This Article 5 will apply if the Design-Builder is utilizing the MacDonald Disposal Site for disposal of surplus material.

5.1 Order of Precedence

MacDonald Disposal Site Design and Construction will be in accordance with the criteria contained in this Article and the following codes and standards and, if there is any conflict between the criteria contained in this Article and any of the Reference Documents, the following will apply in descending order of precedence:

- (a) the criteria contained in this Article and in Schedule 6 [Environmental Obligations];
- (b) the applicable Ministry Technical Bulletins and Circulars;
- (c) DBSS;
- (d) Prediction Manual for Drainage Chemistry from Sulphidic Geologic Materials;
- (e) Guidelines for Metal Leaching and Acid Rock Drainage at Minesites in British Columbia;
- (f) Environmental Constraints Drawings; and
- (g) MacDonald Disposal Site Drawing.

5.2 ML/ARD Material Management

- (a) The AQP will review the ML/ARD Assessment to determine whether additional assessment and/or mitigative measures are required in respect of potentially metal leaching and/or acid generating (“**ML/ARD**”) Type A (rock) material in connection with the Design, and prepare and submit to the Province’s Representative in accordance with the Review Procedure, within 90 days after the Effective Date, a memorandum (the “**ML/ARD Technical Memo**”) setting out:
 - (i) any further ML/ARD assessment and testing measures recommended to be carried out in addition to those referenced in the ML/ARD Assessment, including, if applicable, additional Type A laboratory testing, and/or outlining specific analytes to be tested in surface water before, during and post Construction; and
 - (ii) any measures to be utilized in the Construction for the handling, storage, utilization and/or disposal of excavated Type A material including, if applicable,

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preventing the erosion and mobilization of sediments to surface water during Construction.

- (b) If during Construction, the Design-Builder encounters Type A units not previously assessed for ML/ARD potential in accordance with the ML/ARD Technical Memo, the AQP will evaluate the ML/ARD potential for such Type A units and apply applicable requirements in accordance with Technical Circular T-04-13 and including, where applicable, preparing and submitting to the Province's Representative in accordance with the Review Procedure a report setting out management and Design considerations for wildlife occupying the MacDonald Disposal Site post-Construction; and Design and Record Drawings and recommendations for pre-Construction (baseline), operational (short-term) and post-General Project Work Defect Warranty Period (long-term) water and soil quality monitoring to confirm the efficacy of the MacDonald Disposal Site stockpile(s) design and objectives.

5.3 Decommissioning and Disposal Plan

The Design-Builder will prepare, submit to the Province's Representative in accordance with the Consent Procedure prior to implementation, and thereafter implement, a decommissioning and disposal plan for the MacDonald Disposal Site that is in keeping with disposal plans for locations to be used for surplus disposal, takes into consideration all geotechnical, environmental and other requirements, including those identified in this Article 5 and on the MacDonald Disposal Site Drawing, and is signed by an Appropriately Qualified Professional.

5.4 General Design Basis

- (a) The AQP responsible for the design of any MacDonald Disposal Site facility composed of potential ML/ARD material will:
 - (i) be a Geotechnical Engineer; and
 - (ii) use the Type A ML/ARD characterization as a basis for the design of MacDonald Disposal Site stockpile(s) to prevent runoff or seepage from the MacDonald Disposal Site adversely affecting the receiving environment.
- (b) The Design-Builder's plans and designs for the MacDonald Disposal Site will take into consideration all geotechnical, environmental and other requirements, including those identified on the MacDonald Disposal Site Drawing, and will be signed and sealed by a Geotechnical Engineer.
- (c) MacDonald Disposal Site mitigation for potentially acid generating rock will be in accordance with Section 5.1 [Order of Precedence] of this Part.
- (d) The AQP will be responsible for implementing the design and overall management of any facilities detailed within the ML/ARD Technical Memo and/or any reports as described in Section 5.2 [ML/ARD Material Management] of this Part.

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5.5 Reporting Requirements for ML/ARD

The Design-Builder will provide the reports listed below for management of ML/ARD material to meet the BC Approved Water Quality Guidelines for the protection of freshwater aquatic life and the *Contaminated Sites Regulation* (British Columbia) aquatic fresh water standards:

- (a) for material characterization, an ML/ARD Prediction Assessment report;
- (b) for MacDonald Disposal Site characterization, a Geotechnical Site Investigation report;
- (c) quarterly field reviews of ML/ARD material management; and
- (d) for MacDonald Disposal Site Design, the ML/ARD Technical Memo and any additional reports required in accordance with Section 5.2 [ML/ARD Material Management] of this Part.

5.6 Rock Cuts

5.6.1 Rock Cut Sampling and Monitoring

The Design-Builder will monitor runoff and drainage quality from fresh rock cuts with sampling as follows:

- (a) collected in highway drains at suitable locations or directly from the rock cut / drainage holes in accordance with Part E [Water and Wastewater Sampling] of the BC Field Sampling Manual;
- (b) analyzed for pH, conductivity (in situ and lab analysis), temperature, dissolved oxygen, oxidation reduction potential (ORP) in situ, total and dissolved metals sulphate (filtered), total dissolved solids, total suspended solids, acidity, alkalinity and hardness (lab analysis) including duplicates, provided that these analytes may need to be tailored to the potential contaminants of concern as determined by the AQP;
- (c) collected monthly during construction and quarterly during the General Project Work Defect Warranty Period;
- (d) recorded sample location co-ordinates and estimate the flow at the time of sampling; and
- (e) presented in quarterly field reviews of potential ML/ARD material management, provided that, should lab and field-measured pH values for the rock-cut runoff /drainage be less than pH 6.5 in three consecutive monitoring events, and/or total and dissolved metal concentrations exceed the BC Approved Water Quality Guidelines for the protection of freshwater aquatic life and/or the *Contaminated Sites Regulation* (British Columbia) aquatic fresh water standards, the Design-Builder will notify the Province's Representative and propose and implement effective mitigation measures and work with the AQP to determine if further mitigation steps are required, all subject to consent of the Province in accordance with the Consent Procedure.

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5.6.2 ML/ARD Material Mitigation Measures

The measures to mitigate ML/ARD material from the fresh rock cuts will:

- (a) be developed by the AQP;
- (b) make provision for identifying blasted materials that are ML/ARD so they are not used for fill or other construction materials;
- (c) include water treatment; covering the rock cuts (including shotcrete/gunite) or a risk assessment will be conducted by the Design-Builder to demonstrate acceptable risk to the receiving environment and documented in a report submitted to the Province's Representative in accordance with the Consent Procedure;
- (d) include testing in accordance with the Reference Documents including Technical Circular T-04/13; and
- (e) be summarised in an evaluation (including water quality monitoring before and after the remediation) that is certified by the AQP and submitted to the Province's Representative in report form in accordance with the Consent Procedure.

5.6.3 Rock Excavation Process Progressive Test Procedure Plan

- (a) Together with Traffic Management Plan, the Design-Builder will prepare and submit a plan (the "**Rock Excavation Process Progressive Test Procedure Plan**") in accordance with the requirements of Section 2.5 [Rock Blasting Requirements for Stoppages and Closures] of Part 3 of this Schedule, including a generic, progressive testing procedure for rock blasting that can be modified to suit each specific application, prior to implementing production rock blasting and excavation requiring any Stoppage or Closure. The plan will take into account the number of steps required for each progressive blast and the number of tests needed at each step.
- (b) The Province reserves the right to reject any blasting process set out in the Rock Excavation Process Progressive Test Procedure Plan if, in the Province's discretion, the process has not been satisfactorily demonstrated in the field.

5.7 ML/ARD Potential in Private Quarries

- (a) For any materials sourced for the Project from a private quarry, the AQP will:
 - (i) be responsible for collecting representative rock samples from the specific areas of the quarry being developed; and
 - (ii) carry out laboratory analysis to test the potential for ML/ARD conditions, in accordance with Technical Circular T-04/13.
- (b) A report summarizing the results of the ML/ARD evaluation is to be certified by the AQP and presented to the Province's Representative. The AQP will ensure that the evaluation reasonably represents the conditions within the proposed quarry development areas. Where the assessment indicates that ML/ARD materials are not present, no further work is required.

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Where the assessment indicates that ML/ARD material is present, they will not be used in Construction.

ARTICLE 6 ELECTRICAL AND LIGHTING DESIGN CRITERIA

6.1 Order of Precedence

The Design for all electrical, lighting, signals and Intelligent Transportation Systems (ITS) will be in accordance with the criteria contained in this Article and the following codes and standards, and if there is any conflict between criteria contained in this Article and any of the Reference Documents, the following will apply in descending order of precedence:

- (a) The criteria contained in this Article;
- (b) Electrical and Traffic Engineering Manual;
- (c) the applicable Ministry Technical Bulletins and Circulars;
- (d) Electrical and Signing Materials Standards;
- (e) Standard Electrical Equipment Maintenance Manual;
- (f) Pedestrian Crossing Control Manual; and
- (g) Traffic Management Manual.

6.2 Materials – General Requirements

- (a) All electrical products used in the Project are to be selected from the Recognized Products List. The use of electrical products not on the Recognized Products List requires written acceptance from the Province's Representative in accordance with the Consent Procedure.
- (b) All equipment to be re-used will be power washed clean prior to re-use. Luminaire poles to be re-used will meet current Ministry Standards and be inspected and certified for re-use by a structural Professional Engineer.
- (c) The Design-Builder will provide the Province with a list of equipment proposed for disposal prior to removing any ITS or electrical equipment. The Province may direct the Design-Builder to return some of the to be removed equipment such as luminaire poles, signal poles, sign poles, service equipment and traffic controllers to the Ministry Electrical Maintenance Contractor Yard. All other removed equipment will be properly disposed of off-site by the Design-Builder.

6.3 Power Distribution

- (a) All electrical services will be metered in accordance with BC Hydro standards.
- (b) 347/600V power distribution is permitted to support lighting systems. A separate 120/240V conduit system will be required on all roadways to support future ITS and non-lighting needs.

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- (c) The Design-Builder will undertake all coordination with power Utility Suppliers for all required servicing and will provide a list of all electrical loads to the power Utility Suppliers, as required. The Design-Builder will coordinate preparation and submittal of service applications with the Province's Representative. The Design-Builder will provide copies of all service applications to the Province's Representative at the time of submission to the power Utility Suppliers.

6.4 Lighting

- (a) All lighting will be dark sky compliant. Light trespass and disability glare for drivers will be minimized.
- (b) All lighting will be LED technology.
- (c) Highmast lighting is not permitted.
- (d) Luminaires on Structures will have safety cables designed to meet ANSI C136.31 requirements for vibration.
- (e) Lighting levels will meet or exceed the design criteria outlined in the Electrical and Traffic Engineering Manual.

6.5 Electrical Cabinet and Kiosks

Power cabinets and kiosks will meet the following requirements:

- (a) Provide enclosures that meet the requirements of Section 402 of the Electrical and Signing Materials Standards.
- (b) Supply enclosures in accordance with the Recognized Products List.
- (c) In addition to the requirements outlined in Section 402 of the Electrical and Signing Materials Standards, provide extruded polystyrene insulated walls, door and ceiling for each cabinet. The insulation will have a minimum "R" rating of 4.5.
- (d) Provide a fold down shelf permanently fastened to each door for holding testing equipment or documentation.
- (e) Provide adequate power supplies to accommodate equipment.
- (f) Supply all cabinets with a complete set of their respective as-built design drawings in the plan pouches.

6.6 Roadway and Tunnel Lighting

- (a) The Design-Builder will maintain all existing electrical equipment affected by the Project to the satisfaction of the Province's Representative in order that there is no interruption of existing roadway lighting. This may involve temporary modifications to the existing electrical equipment to maintain its operation through Construction.

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- (b) Temporary illumination will be provided for the roadways to accommodate traffic detours in accordance with the Reference Documents specified in this Article.
- (c) The Design-Builder will provide a manufacturer's representative and, together with the manufacturer's representative, perform the following for the tunnel controller with luminance photometers if the existing photometer is moved or modified:
 - (i) presentation of the functionally tested system to the Province's Representative prior to shipment on the Project Site;
 - (ii) design and validation of a site acceptance test plan; and
 - (iii) execution of the site acceptance test plan.

6.7 Intelligent Transportation Systems (ITS)

6.7.1 ITS Equipment

- (a) The Design-Builder will provide the equipment specified in this Article (the "**ITS Equipment**") for the ITS Communications Conduit System described in Section 6.7.2 [ITS Communications Conduit System] of this Part.
- (b) The Design-Builder will be responsible for providing all equipment and materials necessary to make the ITS Equipment fully operational.
- (c) Support Structures for the ITS Equipment will meet the requirements of Article 3 [Structural Design Criteria] of this Part and will meet the minimum clearance requirements over the roadway in accordance with this Schedule.

6.7.2 ITS Communications Conduit System

- (a) The Design-Builder will supply and install, only for four lane Bridge Structures:
 - (i) two - 50 mm diameter RPVC communication conduits; and
 - (ii) one - 50 mm diameter RPVC ITS power conduit,as per Section 602.5.2 of the Electrical and Traffic Engineering Manual, and in addition to any other power conduit system provided for roadway lighting and traffic signals. Conduits are not required for Half Bridges.
- (b) All conduits will be extended 5m beyond approach slab and the ends of conduits will be terminated in a vault.
- (c) Conduits will be installed in a manner to restrict physical access for the purposes of preventing vandalism and theft while still allowing access for maintenance and future installation of wire and cabling.
- (d) The Design-Builder will provide:

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- (i) 1.5m telecommunications communication vaults to permit access for pulling fibre optic cabling and for splicing of cables with a maximum of 600m spacing between vaults;
- (ii) junction boxes for the power conduits to permit the pulling of future ITS power wiring; and
- (iii) vaults and junction boxes at both ends of all road crossings.

6.7.3 Highway 1 ITS System

- (a) The Design-Builder will make necessary modifications to the fibre optic cabling systems currently in operation on Highway 1 to maintain the same functionality as currently provided by these systems but with consideration to the geometric changes proposed to the Project Infrastructure as part of the Project Work, including relocations, reconfiguration, replacement of power and fibre wiring/cabling, installation of new support poles, and new conduit systems. The location of all ITS devices will require written acceptance from the Province's Representative in accordance with the Consent Procedure.
- (b) The Design-Builder will coordinate the Project Work to prevent all interruptions to the operation of the Province's existing ITS Infrastructure.
- (c) The Design-Builder will provide a manufacturer's representative and, together with the manufacturer's representative, perform the following for any modifications to the snowshed lighting and lighting control system, including luminance photometers:
 - (i) design, implementation and validation of modifications;
 - (ii) design and validation of a site acceptance test plan; and
 - (iii) execution of the site acceptance test plan.

6.7.4 Fibre Optic Cabling

- (a) All installation by the Design-Builder related to fibre optic cabling will, as minimum, comply with the following Reference Documents:
 - (i) CAN/CSA C22.2 No. 232-09;
 - (ii) TIA/EIA 568.2-D;
 - (iii) TIA/EIA 569-C; and
 - (iv) TIA FOTP, 8, 59, 60, 61 and 78.
- (b) The Design-Builder will have a minimum of two years' experience installing and testing single-mode fibre cables of all types.
- (c) All optical fibre cables will be non-armoured, single-mode, underground-rated, FTI-rated 12 optical fibre strands, with no factory splices, all dielectric construction, 8.3/125 micron

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(core/clad), suitable for outdoor use in conduit or indoor use (where required), non-gel filled, single loose buffer tube design and will be CSA approved. Maximum attenuation of the cable will be 0.4 dB/km, measured at room temperature at 1310nm.

- (d) Fibre optic cable will be installed in a continuous run in conduit between the splice closures (with no splices allowed except within the splice closures). 30m of fibre optic cable coils will be provided inside each concrete vault and service loops will be provided in each junction box.
- (e) When installing cable in conduits, concrete vaults, and junction boxes, the Design-Builder will ensure the cable does not exceed the minimum bend radius or pulling tension. Each cable will be labelled within 10cm of the terminated ends with a tag and text stating the fibre optic cable identifier and destination name. Cables will be tagged in the concrete vaults, junction boxes and all other access points with the fibre optic cable identifier and with "CAUTION, FIBRE OPTIC CABLE" tags.
- (f) Excess cable inside concrete vaults and junction boxes will be coiled and mechanically secured in place with hook and pile fastener (such as Velcro™) ties such that the minimum bend radius is not exceeded and the cable is suspended above the concrete vault or junction box bottom. The hook and pile fastener straps are to provide 'breakaway' protection in the event of an accidental dig up between pull boxes.
- (g) Before and after installation, each segment of each fibre will be tested using an Optical Time Domain Reflectometer (OTDR) and power meter equipment. Testing will be done in each direction on each fibre and at 1310nm and 1550nm wavelengths. Launch cable will be used as per the OTDR manufacturer's specifications. The Design-Builder will provide a typewritten report and digital test files detailing the results of each test, including OTDR test results in graphical format, cable length, any fibre breaks or anomalies, attenuation of the fibre's connectors, and fibre uniformity, complete with a concise summary of the results.
- (h) The Design-Builder will provide splice testing during fibre splicing. Loose tube, maximum loss of splice will be less than 0.3 dB. If this cannot be met after three splice attempts then the Province's Representative will be informed and the splice marked: "Out of Specification". OTDR wavelength will be 1310nm, and 1550nm. Pulse width and acquisition time will be adjusted so that the splice can be seen even though the splice is within specification. All anomalies will be noted and reported to the Province's Representative.
- (i) The standard of acceptance for the installation of fibre optic cable will be Corning ALTOS Loose Tube, Gel-Free, All-Dielectric, 12F, Single-mode, unless otherwise specified by the Province's Representative.

6.7.5 Fibre Optic Testing

- (a) The Design-Builder will provide final acceptance testing for all fibre optic cabling installed by the Design-Builder, consisting of light source/power meter testing, and OTDR bi-directional testing, provided in either MS EXCEL or MS WORD format and including:
 - (i) dates of tests;

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- (ii) contractor;
 - (iii) names of technicians;
 - (iv) addresses of test locations;
 - (v) cable manufacturer;
 - (vi) loose tube or ribbon;
 - (vii) number of fibres;
 - (viii) test instrument manufacturer and model numbers with last calibration date;
 - (ix) length of launch reel (1500m) or pigtails if used; and
 - (x) wavelengths.
- (b) Light source/power meter testing will be completed first to ensure that no fibres have been crossed. Wavelengths will be 1310nm, and 1550nm.
- (c) OTDR bi-directional testing will be provided. The fibre will be tested from each end with the same OTDR parameters. OTDR wavelength will be 1310nm, and 1550 nm. Pulse width and acquisition time will be adjusted so that the end of the fibre is clearly seen. 1.5km fibre launch box will be used at the test point of the fibre. The performance of the fibre optic cable will follow TIA/EIA 568.2-D standards: A fusion splice loss between two fibre optic strands will not exceed 0.3dB and the mating loss between fibre optic cable and connectors will not exceed 0.75dB. Any anomalies will be noted and reported to the Province's Representative.
- (d) All OTDR test results will be either in "EXFO" trace format or other format acceptable to the Province's Representative. All test results will be recorded and submitted and soft copies of the OTDR results are acceptable.
- (e) The Design-Builder will document the following in the "Comments" section of the OTDR software:
 - (i) number of fibres in the cable;
 - (ii) loose tube or ribbon;
 - (iii) length of launch reel if one is being used;
 - (iv) test location (street address); and
 - (v) last calibration dates.
- (f) All attenuation measurements will be carried out using approved industry standard test equipment and materials. All measuring equipment will be in good working condition and accompanied by current calibration certificates.

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- (g) Any section of cable found to be defective or below the specified thresholds in Sections 6.7.4(h) and 6.7.5(c) of this Part will be replaced and retested.
- (h) Fibre Optic Testing will be completed on each fibre strand.

ARTICLE 7 DRAINAGE DESIGN CRITERIA

7.1 Order of Precedence

Drainage Design and Construction will be in accordance with the criteria contained in this Article and the following codes and standards and, if there is any conflict between the criteria contained in this Article and any of the Reference Documents, the following will apply in descending order of precedence:

- (a) the criteria contained in this Article;
- (b) the applicable Ministry Technical Bulletins and Circulars;
- (c) BC Supplement to TAC;
- (d) BC Supplement to CHBDC S6-19;
- (e) RTAC Drainage Manual, Volume 1; and
- (f) DBSS.

7.2 General Design Basis

The Design description and performance criteria of the proposed drainage system will be provided in a drainage Design report to be submitted to the Province's Representative pursuant to the Consent Procedure. The Design of the drainage system will be based on the following requirements:

- (a) The Design-Builder will be responsible for developing design flows using the Rational Method, compliant with BC Supplement to TAC and the RTAC Drainage Manual. The following specifics will apply:
 - (i) Time of concentration will be calculated using the SCS Curve Number method using antecedent moisture condition (AMC) III.
 - (ii) Runoff coefficient will be established using RTAC Drainage Manual Table 2.4.1. The increase for a 200-year event will be 30%.
 - (iii) The IDF data used will consider the location and elevation of the Project drainage basins.
 - (iv) Snowmelt will be included in Design flows.
 - (v) Design flows will consider climate change as per Technical Circular T-04/19 and the criteria specified in Article 13 [Climate Change Adaptation] of this Part.

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- (b) Culverts will be replaced such that drainage paths downstream of the highway do not change from the existing condition. New drainage locations down embankment slopes at cross culvert locations are not permitted. The BC Supplement to TAC requirement for maximum culvert spacing does not apply.
- (c) No existing highway drainage appliances/infrastructure are to be retained. Existing culverts will be removed or filled such that the remaining installation will not impact highway infrastructure for a 75-year Design Life. Methods will be developed and implemented to ensure the culvert is free of debris prior to filling, and that no voids remain in the culvert or adjacent embankment after filling. Video inspection of each existing culvert capturing the entire length and periphery of the barrel will be completed to determine the use of an appropriate fill material and installation methodology. The filling of any existing culverts will not begin until the materials and methods to be utilized are consented to by the Province's Representative in accordance with the Consent Procedure.
- (d) All culverts crossing the highway (cross culverts) will be designed for the following criteria:
 - (i) convey projected 200 year peak flows;
 - (ii) conform to the requirements of Part 4 [CPKC Interface] of Schedule 3;
 - (iii) design flows contributing to each cross culvert will not be less than the flows as indicated in Table 7.2a:

Table 7.2a: Required Minimum Culvert Design Flows and Bulking Factors

LKI (Segment 1814)	Minimum 200-year Design Flow* (m³/s)	Bulking Factor
43.703	3.65	1
43.740	0.45	1
43.756	0.47	1
44.087	0.76	1
44.379	0.91	2
44.467	1.25	2
44.679	7.68	3
45.026	1.63	2

* Minimum design flows include climate change increases, and do not include the bulking factor.

- (iv) allowing the design flow to bypass culverts is only permitted to satisfy the requirements of Part 4 [CPKC Interface] of Schedule 3;
- (v) a bulking factor as shown in Table 7.2a will be applied to Design flows for the design and sizing of cross culverts;
- (vi) all culverts will be designed for abrasion resistance. Steel culverts will be designed for abrasion level 3 (moderate) for velocities below 4.5 m/s, and abrasion level 4 (high) for velocities above 4.5 m/s;

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- (vii) maintenance diversion pipes, as required in the BC Supplement to TAC, are not required for culverts if 10 year peak flows for the culvert can be diverted into the adjacent ditch and conveyed to the next culvert crossing the highway, and maintenance diversion pipe flow capacity will not be included when sizing the primary culvert; and
 - (viii) concrete headwalls and wingwalls will be used at the inlet of all cross culverts and maintenance diversion pipes.
- (e) All culverts will be designed for a minimum structural Service Life of 75 years. The Design-Builder will undertake the necessary analysis to demonstrate that the minimum criteria is met.
 - (i) Water quality data including pH, hardness, and resistivity will be collected by the Design-Builder to justify the selection of appropriate culvert material to ensure the minimum structural Design Life is met.
 - (ii) The Design-Builder will incorporate standard highway maintenance access for all highway cross culverts which permits removal of obstacles and debris from within the culvert and at the culvert ends.
- (f) Any culvert that extends through a wall at its outlet will extend a minimum of 0.5 m from the wall face.
- (g) The crossing at Helens Path (LKI 44.679) will be designed for the following additional criteria:
 - (i) Ditches within 60 m of the crossing will be widened to the extent possible without adding significant rock cut.
 - (ii) Include an inlet channel, minimum 10 m wide, extending a minimum of 10 m upstream of the culvert inlet. The channel bottom will have a 2% slope towards the culvert inlet and will tie into natural channel upstream at a slope of 1H:1V or flatter.
 - (iii) A debris rack at the culvert inlet will be included in the design that allows for the passage of typical small and medium debris and will prevent the passage of larger debris that could block the culvert. The Design of the rack will include the following requirements.
 - (A) the rack will consist of vertical posts with the horizontal space between posts being less than the minimum dimension of the primary culvert;
 - (a) the design will prevent the possibility of debris bypassing the rack on each side;
 - (C) minimum height of 2.0 m above the inlet channel bottom;
 - (D) the rack will be centered on the channel upstream of the new primary culvert, and vertical faces will be skewed horizontally to the flow a

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minimum of 15 degrees to direct debris away from the maintenance diversion culvert;

- (E) the posts will be structurally adequate to resist forces from the full Design flow including debris, if it becomes blocked;
 - (F) the Design will allow conveyance of the full Design flow including the bulking factor into the primary culvert if the rack surface area it is completely blocked, while also maintaining a minimum 300 mm freeboard to the paved surface at the adjacent shoulder; and
 - (G) a secondary culvert will be installed adjacent to the primary culvert to be used as for maintenance diversion and to accommodate overflow. The secondary culvert inlet will be separated from the primary culvert inlet by a minimum of 15 m, and the outlet will be near the outlet of the primary culvert. The secondary culvert will be designed to accommodate a flow of 5 m³/s.
- (h) Embankments adjacent to locations with a risk of highway overtopping during a debris flow event will be protected against erosion. These embankments will be protected from the edge of pavement, down a minimum of 2.0 m vertical meters or to the bottom of the ditch at, but not limited to the following locations.
- (i) near LKI 44.379 within 50 m each direction of the of the highway sag point; and
 - (ii) near LKI 44.679 (Helens Path) within 60 m each direction of the primary culvert crossing.
- (i) The Design-Builder will provide appropriate energy dissipation and long-term scour protection at all discharge locations (including culvert outlets, storm sewer outfalls, drain pipes, and spillways) and all locations of concentrated flow (including ditches, swales, seepage paths, and natural flow paths) in accordance with BC Supplement to TAC. The following additional criteria apply:
- (i) Riprap erosion protection on slopes steeper than 10% will be designed based on methodology appropriate for steep slopes and embankment overtopping.
 - (ii) Erosion protection downstream of culvert outlets on unimproved steep slopes will extend down the top of the embankment a minimum slope length of 7 m. Where this minimum length does not reach the existing flow path, the unprotected slope will be monitored during runoff events to ensure that water is flowing as intended to the existing channel downstream. Shaping of the channel may be required to contain flows within the intended flow path. Additional clearing and ground disturbance downstream of the erosion protection will only be completed if necessary to contain flows and reduce erosion risk.
 - (iii) Erosion protection on improved slopes will extend a minimum of the improved slope length.

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- (iv) Erosion potential of embankments from flows at the end of new erosion protection will not increase significantly from existing conditions.
- (v) Culvert outlet erosion protection will be designed using flows without a bulking factor applied.
- (vi) Free fall of flow at culvert outlets will be limited to a vertical distance of 2 m measured from the culvert invert to the top of the erosion protection. Free fall conditions will be considered in the design of the underlying erosion protection system to ensure that the full design flow is accommodated, splashing is contained, and energy is dissipated for downstream flow.
- (vii) If riprap is used as erosion protection for slopes steeper than 2:1 at culvert outlets, the size of riprap will not be less than indicated in Table 7.2b.

Table 7.2b: Required Minimum BC Standard Riprap Class

LKI (Segment 1814)	Minimum Riprap Class (kg)
43.703	1000
43.740	250
43.756	500
44.087	250
44.379	500
44.467	500
44.679	2000
45.026	500

- (j) The Design-Builder will design drainage ditches in accordance with Section 1000 of the BC Supplement to TAC, the TAC Geometric Design Guide and the following additional criteria:
 - (i) convey peak 100-year return stormwater flows while maintaining water levels a minimum of 350 mm below the adjacent edge of pavement;
 - (ii) convey peak 25-year return stormwater flows while maintaining water levels below the bottom of the adjacent highway SGSB layer;
 - (iii) include consideration for continuous base flow originating from slopes above the highway, including that the Design-Builder will inspect the slopes above the highway during rain events and non-rain periods to document flow path locations and relative flow volumes, and incorporate the results of the observation into the drainage Design;
 - (iv) results of the observation will be incorporated into the drainage design;
 - (v) ditches will be designed in conjunction with requirements for avalanche control and rockfall requirements as indicated in Article 4 [Geotechnical] and Article 10 [Snow Avalanche Design Criteria] of this Part, while maintaining minimum hydraulic capacity for conveying peak design flows; and

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- (vi) ditches will not convey overflow from culverts at the 200-year design flow except where required to accommodate flows at culverts that convey water to CPKC infrastructure.
- (k) The Design-Builder will incorporate drainage infrastructure along retaining walls to ensure no water is directly discharged over the walls. Groundwater seepage and overland flow from slopes above the highway is noted to be significant and will be included in the design of drainage above walls.
- (l) Runoff adjacent to retaining walls will be intercepted and conveyed to the receiving location with erosion protection that protects the wall and adjacent slopes.
- (m) Highway surface drainage will be design for the following criteria:
 - (i) Where the proposed highway pavement is super elevated, the Design-Builder will not allow the pavement runoff from one side of the four-lane highway median to be discharged across the surface of the opposing traffic lanes.
 - (ii) Minimum longitudinal and cross fall grades will be in accordance with the TAC Geometric Design Guide to prevent Ponding of water on the highway.
 - (iii) Catch-basin inlets will not be in the travelled portion of the highway.
 - (iv) Catch-basins, inlets, and spillways will have a maximum spacing of 100 m.
 - (v) Catch-basins will only be used where spillways are deemed not feasible (such as along median barriers and adjacent to retaining walls).
 - (vi) Bridge deck drainage will be designed in accordance with Section 3.3.18 [Deck Drainage] of this Part and the BC Supplement to CHBDC S6-19.
 - (vii) Storm sewers will be designed to convey the 25-year return period event.

7.3 Stormwater Quality Criteria

- (a) The Design-Builder will meet applicable stormwater quality criteria as outlined in the Construction Environmental Management Plan, including the Erosion and Sediment Control Plan, required under Schedule 6 [Environmental Obligations] of this Agreement.
- (b) The Design-Builder will carry out the Project Work in a manner that protects and maintains surface and groundwater resources, both within and outside the Project Site, including drinking water sources and infrastructure (private groundwater wells).
- (c) The Design-Builder will be responsible for planning, scheduling and performing the Project Work in such a manner that the quality and quantity of water flowing from the Project Site, is, at all times, acceptable to all relevant Environmental Authorities, and will take immediate action to correct any deficiency in water quality.

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7.4 Approved and Non-Approved Products

- (a) Products incorporated into the permanent drainage system will be limited to those identified in the Recognized Products List.
- (b) Products excluded from use in the permanent drainage system include:
 - (i) gabions;
 - (ii) flumes; and
 - (iii) pumps.

7.5 Others' Drainage Infrastructure

- (a) Drainage infrastructure upgrades associated with the Project will potentially have impacts on:
 - (i) the CPKC infrastructure and the Railway Operations;
 - (ii) Jumping Creek Road; and
 - (iii) TAMS sources and infrastructure.
- (b) The Design-Builder will meet the following requirements to mitigate potential impacts to others:
 - (i) If the drainage discharge point is changed from the existing locations at any time during the Project Work, the Design-Builder will be responsible for the upgrade or construction of any infrastructure required, including infrastructure outside the Project Site, to prevent flooding and not increase erosion potential in receiving systems.
 - (ii) The Design-Builder will meet all requirements of this Agreement, including Part 4 [CPKC Interface] of Schedule 3, in respect of the Design and Construction of the drainage infrastructure upgrades associated with the Project.

ARTICLE 8 SIGNING AND PAVEMENT MARKING DESIGN CRITERIA

8.1 Order of Precedence

Signing and Pavement Marking will be designed and installed in accordance with the criteria contained in this Article, the requirements of DBSS and the following codes and standards, and if there is any conflict between the criteria contained in this Article and any of the Reference Documents, the following will apply in descending order of precedence:

- (a) the criteria contained in this Article;
- (b) the applicable Ministry Technical Bulletins and Circulars;

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- (c) Catalogue of Standard Traffic Signs;
- (d) Manual of Standard Traffic Signs and Pavement Markings;
- (e) Specifications for Standard Highway Sign Materials, Fabrication and Supply,
- (f) Traffic Management Manual;
- (g) DBSS; and
- (h) Manual of Uniform Traffic Control Devices for Canada.

8.2 Materials

- (a) All signs will be new except for service and attraction signs as set out in Section 8.4(b) of this Part, with the prior written consent of the Province.
- (b) Standard signs will be from the Catalogue of Standard Traffic Signs.
- (c) Signs will be sourced from the suppliers listed in the Recognized Sign Suppliers.
- (d) Paint will be supplied in accordance with the DBSS, and the traffic paint products will be from the Recognized Products List.

8.3 Guide Signing

- (a) There are no existing guide signs within the Project Site and no new guide signs are anticipated. The existing G-128-1 "Illecillewaet Brake Check" sign at the west end of the Project Site will be retained and repositioned if required.
- (b) G-104 km reference markers will be installed at 1 km intervals continuing from the down-kilometer ends.

8.4 Regulatory and Other Signing

- (a) Standard regulatory signage, warning and information signs will be in accordance with the Manual of Standard Traffic Signs and Pavement Markings. Redundant or conflicting regulatory, warning and information signs in the immediate adjacent sections of the Project Site will be removed or replaced with new appropriate signage.
- (b) Existing service and attraction signs will be relocated to suit the New Project Infrastructure.
- (c) The Design-Builder will install regulatory and advisory signage on Highway 1 using cantilever sign structures in accordance with the Cantilever Sign Structures Drawings. Alternative cantilever sign structures will be considered subject to approval by the Province's Representative.
- (d) The Design-Builder will maintain positive signage to services and attractions that are presently named on existing service and attraction signs on Highway 1 throughout the

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duration of Construction; and until such time that the new service and attraction signs are installed. The existing signage will be removed following the installation of the new signs.

- (e) Draft sign records will be produced by the Design-Builder for acceptance prior to final sign record preparation.

8.5 Median Signing

The Design-Builder will install W-054-L Hazard Marker – left signs on the front face of each impact attenuator.

8.6 Avalanche Signing

- (a) The Design-Builder will install, prior to Total Completion, I-198-3 Avalanche Path marker signs at each Avalanche Path identified by the Province. The sign will identify the Avalanche Path number and be installed on the upslope side of the road attached to a rock face or other suitable surface so that the sign is visible from the roadway.
- (b) The Design-Builder will install up to four P-066-1 No Stopping symbol Avalanche Area signs at locations to be determined by the Ministry after the road Design has been finalized. The signs will be installed on the roadside shoulder of the highway in both directions.
- (c) The Design-Builder will install up to four W-106 End Avalanche Area signs at locations to be determined by the Ministry after the road Design has been finalized. The signs will be installed on the roadside shoulder of the highway in both directions.

8.7 Pavement Markings

- (a) Pavement markings will meet the requirements of the Manual of Standard Traffic Signs and Pavement Markings and the relevant Ministry Technical Bulletins and Circulars.
- (b) Pavement marking materials will be listed on the Recognized Products List and be installed when the condition of the road surface is appropriate to the material being applied in accordance with the manufacturer's specifications.
- (c) Temporary Pavement Markings will be supplied and installed in accordance with Section 4 of the Traffic Management Manual. Painted temporary lines are not permitted on the final pavement surface.
- (d) Final permanent pavement line painting on Highway 1 will be done by a Pavement Marking contractor retained by the Province and at the Province's cost. The Design-Builder will complete all layout for the final permanent pavement line painting in accordance with DBSS 321. The Design-Builder will coordinate with the Province's Representative to identify the earliest possible opportunity for such markings to be placed and to accommodate the line painting service.

8.8 Post Mounted Delineators

The Design-Builder will supply and install post mounted delineators on open Shoulder sections in accordance with the Manual of Standard Traffic Signs and Pavement Markings. The post mounted

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delineators will be equipped with reflectors made from ASTM Type 9 sheeting. Flexible post mounted delineators are an acceptable alternative to rigid post mounted delineators.

8.9 Reflectors on Barriers

Reflectors will be of a type listed on the Recognized Product List and installed at the spacing in accordance with the Manual of Standard Traffic Signs and Pavement Markings. Reflectors will be side mounted on roadside and median barriers. Reflectors designed only for side mounting will be used.

8.10 Raised Pavement Markings

Raised Pavement Markings will not be allowed on the Project.

8.11 Rumble Strips

The Design-Builder will construct milled shoulder rumble strips as described and shown in Section 650 of the BC Supplement to TAC and as follows:

- (a) no milling will be carried out until after the permanent traffic lines have been painted on the roadway.
- (b) shoulder rumble strips will not be constructed within 200 mm of transverse joints or where traffic counter detection wires cross the shoulder;
- (c) any variation from the requirements for shoulder rumble strips will be repaired by the Design-Builder prior to payment for the area involved;
- (d) the construction equipment used to mill in the shoulder rumble strips will have a rotary type cutting head capable of producing a smooth surface to the lines and dimensions indicated in Section 650 of the BC Supplement to TAC; and
- (e) after milling, the shoulder rumble strips will be broomed and the debris disposed of in accordance with this Schedule.

ARTICLE 9 LANDSCAPE AND SITE RESTORATION DESIGN CRITERIA

9.1 Order of Precedence

The Design-Builder will design and implement landscaping and site restoration works in accordance with Permits, the criteria contained in this Article, the requirements of DBSS and the following codes and standards, and if there is any conflict between the criteria contained in this Article and any of the Reference Documents, the following will apply, in descending order of precedence:

- (a) the criteria contained in this Article;
- (b) DBSS;
- (c) Manual of Aesthetic Design Practice;
- (d) Landscape Policy and Design Standards;

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- (e) AASHTO R 52-6; and
- (f) Canadian Nursery Stock Standards.

9.2 Landscaping Classification and Objectives

The overall highway aesthetic classification for this Project will be “Baseline Highway”, as defined in the Manual of Aesthetic Design Practice, with the general landscape design level standard designated as “Rural”, as described under “Landscape Design Standards” in the Landscape Policy and Design Standards. The landscape treatments outlined for these categories will be applied as appropriate to all areas of the Project, with the focus of the landscape Design and Construction directed, but not limited to:

- (a) the revegetation of the Type D cut back slope of ditch areas and fill embankment slopes, and ramp face of the Wildlife Ramp;
- (b) plantings between the ditch and the highway right of way line, including the establishment of general ground cover in accordance with Section 754 of the DBSS;
- (c) the preservation of existing native vegetation;
- (d) revegetation with low maintenance, primarily indigenous tree, grass and shrub species;
- (e) grading to match adjacent ground levels; and
- (f) drainage to promote long-term survival of plantings.

9.3 Landscaping Requirements

The Design and Construction of the landscaping and site restoration works will comply with the criteria set out in this Schedule and Schedule 6 [Environmental Obligations].

9.3.1 Conservation of Existing Vegetation

The Design-Builder will preserve, to the extent possible, native trees and understory plants in areas outside the actual roadwork footprint that do not present traffic safety concerns or affect Infrastructure integrity. Where trees must be removed in areas adjacent to the roadway footprint the Design-Builder will implement “close cut clearing/no grubbing” practices to retain the existing vegetation roots, to minimize soil disturbance, and to encourage re-growth of the plants. Trees with a diameter breast height of 30 cm or greater that are removed as a part of the Project Work will be replaced within the Project Site at a minimum ratio of 1:1.

9.3.2 Integration of “Hard” and “Soft” Landscape Elements

The Design-Builder will design and construct the landscape and site restoration such that the earthworks, plantings and Infrastructure blend with the conditions of the adjacent terrain, and complement the main roadwork features. The Design-Builder will address transition points, and provide practical solutions for both good appearance and low maintenance.

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9.3.3 Landscape and Restoration Planting

- (a) All areas of the Project Site, including the MacDonald Disposal Site, disturbed during the Project Work and for which landscaping and site restoration is required in accordance with the criteria set out in this Schedule and Schedule 6 [Environmental Obligations] will be covered with organic stripping material and topsoil, the soil graded out to a minimum depth of 100 mm and seeded in accordance with Section 9.3.5 [Revegetation Seeding] of this Part. Organic stripping will be material removed from the Project Site during clearing and grubbing operations, and/or imported from other sources, as necessary to achieve the required depth.
- (b) For landscaping purposes, primarily mass planted indigenous trees and shrubs will be used. Shrub-only planting will be utilised where the AQP determines that tree planting is not suitable. Shrub species and composition will be determined by the AQP and must be of appropriate species, size and provenance for the Site. Shrubs used for roadside restoration sites will be selected to avoid palatable species that may attract wildlife.
- (c) Plantings of trees and shrubs will be provided along all disturbed roadside areas within the Highway, between the Type D cut back slope of the ditch and the highway right of way property line.
- (d) Where existing vegetation in “environmentally sensitive areas” as shown on the Environmental Constraints Drawings is impacted or removed, it will be replaced with similar plant material to mitigate the loss.
- (e) Where planting is proposed for environmental reasons such as riparian vegetation restoration/enhancement or other such requirement, this work will take precedence over opportunities for general landscape planting, and will be carried out in accordance with Schedule 6 [Environmental Obligations] of this Agreement. Where general landscape plantings are in close proximity to environmental revegetation, the Design-Builder will design and construct the landscaping to be complementary to and coordinated with the environmental works.

9.3.4 General Planting Requirements

- (a) All areas scheduled for planting will receive plant stock that is appropriately selected and sized for the particular application. Planting areas should take into consideration the limitations to its successful establishment, such as the ability to provide water and existing ground conditions, as well as any specific functional requirements.
- (b) Where there is sporadic existing desirable vegetation growing in the vicinity of the areas to be planted, it is to be retained and new plant stock will be installed around it.
- (c) Invasive plants growing in areas where Project Work is being undertaken will be removed and disposed of according to best practices for disposal of the particular species of invasive plants.
- (d) Plant material will be installed per the DBSS requirements, except as specified herein. Some locations may require trenching and removal of existing poor material and replacement with

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topsoil rather than preparation of individual planting holes. Existing grass and undesirable competitive vegetation will be removed prior to planting.

- (e) Basic Site Restoration treatments will be used along the new Highway corridor to provide aesthetically pleasing grading and finishing of disturbed land, and to revegetate existing soils in these areas with grass, ground covers and other vegetation, for the purpose of minimizing surface erosion, minimizing spread of invasive and noxious weeds, minimizing maintenance requirements and providing self-sustaining vegetative ground cover with appropriate provenance as determined by the AQP.
- (f) Trees will be installed at a minimum planting density of one tree per 1 m², shrubs will be installed at a minimum planting density of one shrub per 10 m² and the quantities and sizes of trees and shrubs determined from the criteria provided in Table 9.3.4 [Basic Site Restoration – Planting Criteria] of this Part.

Table 9.3.4: Basic Site Restoration - Planting Criteria

Plant Material	Plant Quantities	Size
Very Dry to Moderately Dry Sites		
Pinus contorta var. latifolia (lodgepole pine)	20 % of total	seedling/plug
Pseudotsuga menziesii (interior Douglas fir)	35 % of total	seedling/plug
Pinus monticola (western white pine)	20 % of total	seedling/plug
Tsuga heterophylla (western hemlock)	15 % of total	seedling/plug
Acer glabrum (Douglas maple)	10 % of total	# 3 pot
Slightly Dry to Moist Sites		
Abies lasiocarpa (subalpine fir)	35 % of total	seedling/plug
Picea engelmannii (Engelmann spruce)	25 % of total	seedling/plug
Tsuga heterophylla (western hemlock)	20 % of total	seedling/plug
Pseudotsuga menziesii (interior Douglas fir)	10 % of total	seedling/plug
Menziesia ferruginea (false azalea)	10 % of total	# 3 pot
Very Moist to Wet Sites		
Abies lasiocarpa (subalpine fir)	35 % of total	seedling/plug
Tsuga heterophylla (western hemlock)	30 % of total	seedling/plug
Thuja plicata (western redcedar)	15 % of total	seedling/plug
Populus balsamifera (balsam poplar)	10 % of total	seedling/plug
Taxus brevifolia (western yew)	10 % of total	# 3 pot

- (g) Tree and shrub stock will be provided as part of Basic Site Restoration for all areas of the Project Site where their installation does not conflict with traffic safety considerations, including sight distance, and where slopes are less than 1V:1H (100% slope).
- (h) Planting will be in accordance with the applicable sections of DBSS 751 and 754.
- (i) Seedlings will be planted into existing soil and potted material will be planted with topsoil supplied for each planting hole. All planting holes will receive one – 10 gr. Size Leapstart

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Bio Pak Forest Pro fertilizer packet, 16-6-8 polyurethane coated formulation, with minor nutrients, or equal pre-approved by the Province's Representative.

- (j) Prior to planting, all plant stock foliage will be treated with a preparation of blood-based animal repellent formulation "Plantskydd" (www.treeworld.com) or equivalent pre-approved by the Province's Representative per manufacturer's recommendations. Groupings of trees and shrubs will be inter-plantings of the species listed in Table 9.3.4 [Basic Site Restoration – Planting Criteria] of this Part.

9.3.5 Revegetation Seeding

- (a) The default treatment for mitigating surface soil erosion will be the establishment of grass by hydraulic application of seed with wood fibre mulch, fertilizer, and tackifier onto existing soils.
- (b) All disturbed ground that is to be revegetated and that will not otherwise be receiving only tree planting or shrub planting, bark mulch or hard surfacing, will be promptly re-graded and seeded with grass. Where existing soils are excessively compacted, or otherwise not conducive to supporting a healthy cover of grass, these areas will be suitably scarified prior to seeding.
- (c) Areas that are highly susceptible to wind or water erosion will employ erosion control measures adequate to protect the site until grass or other vegetation is established.
- (d) Areas impacted by placement of pre-load or stockpiled materials will be graded and seeded promptly after removal of the materials.
- (e) Basic Site Restoration seeding will be in accordance with Table 9.3.5 [Grass Seed Specification for Basic Site Restoration] of this Part:

Table 9.3.5: Grass Seed Specification for Basic Site Restoration

Grass Seed Mix:	Quantity by Weight
Fringed brome grass (<i>Bromus ciliatus</i>) coated	26%
Canada wildrye (<i>Elymus canadensis</i>)	20%
Slender wheatgrass (<i>Elymus trachycaulus</i>)	18%
Rocky Mountain fescue (<i>Festuca saximonata</i>)	14%
Annual ryegrass (<i>Lolium multiflorum</i>)	10%
Tufted hairgrass (<i>Deschampsia cespitosa</i>)	8%
Fowl bluegrass (<i>Poa palustris</i>)	4%

- (f) Pursuant to DBSS 757.35, the following will be the rates of application for Basic Site Restoration seeding:
- (i) grass seed mix – 60 kg per ha;
- (ii) fertilizer – 300 kg per ha;

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- (iii) wood fibre mulch and tackifier – applied at manufacturer’s recommended rate; and
- (iv) Nurse Crop Grass (*Axcella Annual Ryegrass*) – 25 kg per ha.
- (g) A biotic soil media product (such as “ProGanics™ Biotic Soil Media™ or equivalent recognized product) will also be hydraulically applied to all areas receiving hydraulically applied seeding, ensuring that the seed is mixed with the biotic soil media product immediately prior to application, and that the seed and biotic soil media product slurry is applied prior to the mulch/tackifier slurry in a two-step process in accordance with DBSS 757.02.

9.3.6 Salvage of Unmerchantable Wood

- (a) Unmerchantable wood is wood which is accessible and otherwise available for harvesting but assumed to be unmerchantable because of stand characteristics (such as small piece size, incidence of decay, species composition, and low stocking).
- (b) As directed by the Province’s Representative and when it is safe to do so, the Identified Indigenous Groups will be allowed access to salvage unmerchantable wood and wood debris for firewood and cultural purposes.
- (c) Subject to Section 9.3.6(b) of this Part, the Design-Builder will salvage unmerchantable wood and wood debris and other organic materials derived from clearing and grubbing operations and either recycle such material on-site by processing it into a compost blanket grade of compost or use for wildlife features in site restoration.
- (d) Salvaging of unmerchantable wood will be done using a thermophilic composting process, in accordance with AASHTO R 52-6.
- (e) The composting process for the purpose of generating erosion control materials is governed by the *Organic Matter Recycling Regulation* (British Columbia), which stipulates requirements for on-site composting facilities, notifications, inspections and services of an AQP.
- (f) The finished product will be utilized in Basic Site Restoration as an erosion control blanket and topdressing material to assist in re-vegetation. Compost may also be utilized for ‘grouting’ and creation of planting pockets on slopes comprised of coarse rock.
- (g) Compost material will be spread over areas designated by the AQP, in consultation with the Province’s Representative.

9.3.7 Landscape Design Submissions

- (a) The Design-Builder will submit the landscape Design drawings to the Province’s Representative as part of the Interim Design and Final Design submissions.
- (b) The landscape Design drawings will show where the described landscape treatments are proposed to be carried out. The drawings will also have sufficient detail to convey an understanding of the various landscaping requirements.

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- (c) The Construction Records will include post Construction drawings including, as a minimum, the number, species, and locations of planted trees and shrubs and confirmation of the composition of the final grass seed mix applied.

9.3.8 No Visual Obstructions

Landscaping will be designed to prevent visual obstructions along the highway shoulder.

ARTICLE 10 SNOW AVALANCHE DESIGN CRITERIA

10.1 General

There is potential for the creation of new Avalanche Paths along the Project corridor depending on cut slope design. The Design-Builder will be responsible for all investigations required to achieve the Design criteria specified in this Article. Existing Avalanche Path locations that intersect the highway are shown on the Avalanche Strip Map provided in the Data Room.

10.2 Avalanche Mitigation Measures

- (a) All Avalanche mitigation measures will be achieved at highway level.
- (b) Remote Avalanche control systems (including gas or explosives-based Avalanche triggering systems installed in Avalanche starting zones that can be activated remotely), and snowpack supporting structures in Avalanche starting zones (such as flexible snow nets, or rigid snow fences) are not approved for this project.
- (c) All analysis and Design relating to Avalanches and Avalanche mitigation will be completed under the seal of a Professional Engineer with expertise in snow Avalanche risk mitigation.

10.3 Avalanche Paths Created During the Course of Construction

Any Avalanche Paths encountered or created as a result of the Project Work will incorporate a catchment ditch design according to the following Avalanche catchment ditch criteria.

10.3.1 New Avalanche Paths from 10 m to 50 m in Length

- (a) Avalanche catchment ditch design criteria for all cuts and slopes above the highway that are between 10 m and 50 m in slope length, and have average slope inclines (ψ) between 25° and 80° , a minimum catchment volume per unit length of affected road will be provided. The minimum catchment volume will be calculated according to the following formula:

$\text{Minimum Catchment Volume (m}^3\text{/m)} = \text{Avalanche Deposit Volume (m}^3\text{/m)} + \text{Volume of Settled Snow in ditch (m}^3\text{/m)}$

- (b) Avalanche deposit volume in the above formula will be calculated as follows:

$$\text{Avalanche Deposit Volume} = 0.3 \times \text{Slope Length(m)}$$

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- (c) Volume of settled snow in ditch will be:
 - (i) $15 \text{ m}^3/\text{m}$ for a ditch width of $\leq 5 \text{ m}$; or
 - (ii) $20 \text{ m}^3/\text{m}$ for a ditch width $> 5 \text{ m}$.
- (d) Catchment volume per unit length will be based on the geometry illustrated in Figure 10.3.1.

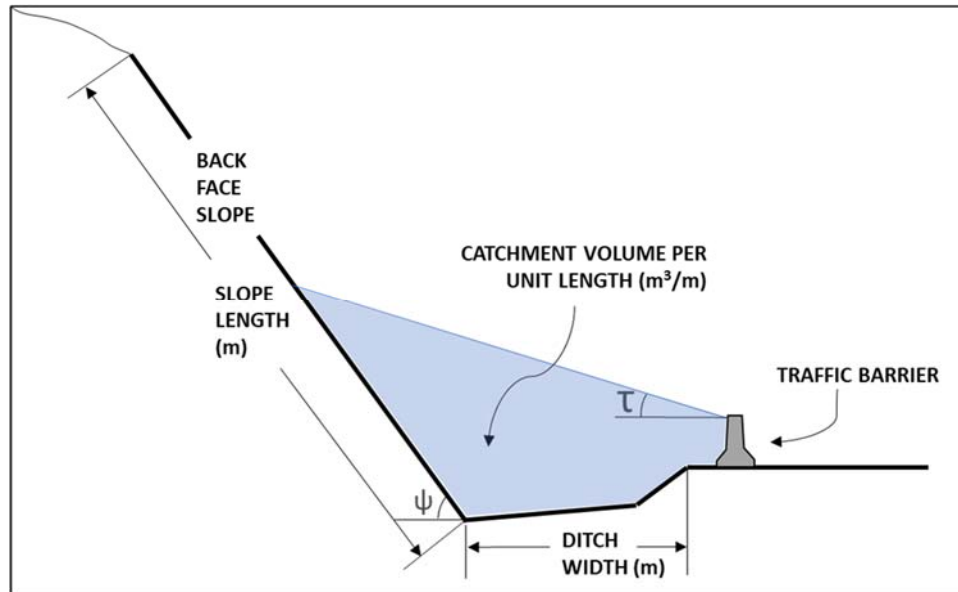


Figure 10.3.1: Catchment Ditch geometry for Volume

- (e) The snow surface incline (τ) for calculation of the catchment volume per unit length illustrated in Figure 10.3.1 will be as follows:
 - (i) for $\psi > 55^\circ$, $\tau = 25^\circ$; or
 - (ii) for $35^\circ \leq \psi \leq 55^\circ$:
 - (A) $\tau = 15^\circ$ for slope lengths of $\leq 40 \text{ m}$; or
 - (B) $\tau = 10^\circ$ for slope lengths $> 40 \text{ m}$; or
 - (iii) for $25^\circ \leq \psi < 35^\circ$, $\tau = 20^\circ$.
- (f) Slope length in the calculation above will be based on, and include all modified terrain that is required for the cut. For cut slopes that vary in slope angle over the length of the cut (e.g. a lower angle soil cut above a steep rock cut), the slope lengths will be combined for the calculation of minimum catchment volume.
- (g) If the cut slope varies in slope angle, the slope angle (ψ) is calculated as the average slope angle from the bottom of the slope (at the ditch) to the top of the cut slope.
- (h) The minimum ditch width must meet or exceed the greater of widths required by drainage, avalanche and rockfall catchment criteria.

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10.3.2 New Avalanche Paths greater than 50 m in Length

Avalanche design criteria for slopes that are more than 50 m in slope length will include reduction of the Avalanche hazard to a 30-year return period for Avalanches reaching the Travelled Lanes. The 30-year design standard for avalanches will be based on:

- (a) the volume of snow produced by an Avalanche with a 30-year return period;
- (b) modelled Avalanche flow parameters (speed, impact, flow depth) of an Avalanche with a 30-year return period;
- (c) the deposits from an Avalanche with a 30-year return period not extending onto the travel lanes (not past the fog line); and
- (d) the volume of existing settled snow in the ditch at the time of the design Avalanche will be:
 - (i) 15 m³/m for a ditch width of ≤ 5 m; or
 - (ii) 20 m³/m for a ditch width of > 5 m.

10.4 Analysis and Design for Avalanches Forces and Clearances for Structures

- (a) Design criteria for Avalanches impacting the design of Structures will be in accordance with this Article and Article 3 [Structural Design Criteria] of this Part.
- (b) Analyses will be conducted where the new Project Work is potentially impacted by Avalanches. The analyses will include an estimation of Avalanche design forces acting on Structures or Substructures, and minimum clearance to avoid Avalanches directly impacting proposed Superstructures. Methods used will be based on those described in the Avalanche Design Reference and will incorporate (but not be limited to):
 - (i) field investigations as appropriate;
 - (ii) historical accounts (such as occurrence records and interviews with relevant local Avalanche technicians); and
 - (iii) Avalanche modeling, both topographical/statistical as well as dynamic.
- (c) A probabilistic analysis (such as Monte Carlo) with a 300-year return period will be used for the analysis of minimum clearance under all Structures (freeboard) where Avalanches are expected to pass underneath. The analysis will include:
 - (i) settled snow;
 - (ii) plowed snow;
 - (iii) Avalanche flow depth; and
 - (iv) previous Avalanche deposits.

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10.5 CPKC Avalanche Requirements

The Design-Builder will identify Avalanche hazards, including hazards that may be created or exacerbated by snow clearing operations on Highway 1, that may pose new or increased risk to the CPKC right-of-way as a result of the Project Work and will incorporate measures to ensure there is no increase in any such risks.

10.6 Avalanche Safety Measures

The Design-Builder is responsible for developing, implementing and maintaining an Avalanche safety program that will protect its workers within the Project Site, and for operating under and in conjunction with the Ministry's Avalanche safety program and WorkSafeBC regulation and other applicable Health and Safety Laws. Avalanche safety measure requirements are detailed in Appendix 4C [Snow Avalanche Safety Measures] to this Schedule.

ARTICLE 11 DEMOLITION, REMOVALS AND DISPOSAL

11.1 Order of Precedence

The Design-Builder will conduct demolition, removals and disposal in accordance with the criteria set out in this Article and the following codes and standards, and if there is any conflict with the criteria contained in this Article and any of the Reference Documents, the following will apply in descending order of precedence:

- (a) the criteria contained in this Article;
- (b) the applicable Ministry Technical Bulletins and Circulars;
- (c) DBSS;
- (d) Guidelines for Metal Leaching and Acid Rock Drainage at Minesites in British Columbia;
- (e) Prediction Manual for Drainage Chemistry from Sulphidic Geologic Materials; and
- (f) Water and Air Baseline Monitoring Guidance Document.

11.2 Demolition

- (a) The demolition, disassembly and removal of Project Infrastructure, improvements and amenities from the Project Site will satisfy all Environmental Laws and requirements of Governmental Authorities and Utility Suppliers.
- (b) The Design-Builder will prepare and submit demolition plans to the Province's Representative in accordance with the Consent Procedure for any demolition, disassembly or removal of Project Infrastructure, improvements or amenities from the Project Site, a minimum of 90 days prior to the commencement of the implementation of such plan.
- (c) Following the acceptance of any such demolition plan by the Province in accordance with the Consent Procedure, the Design-Builder will submit all subsequent changes to such demolition plan to the Province's Representative pursuant to the Review Procedure.

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- (d) The Design-Builder will complete all demolition in accordance with this Article before the Design-Builder submits a request for a Certificate of Total Completion pursuant to Part 3 of this Schedule.
- (e) Demolition will include backfilling abutment excavations, grading and landscaping of demolition sites upon completion of the demolition work.
- (f) The Design-Builder will demolish existing Structures in accordance with Article 3 [Structural Design Criteria] of this Part. Portions of roadway that are not retained as part of the New Project Infrastructure will be removed and the site will be properly restored in accordance with this Section and Article 9 [Landscape and Site Restoration Design Criteria] of this Part, and in accordance with Article 3 [Structural Design Criteria] and Article 10 [Snow Avalanche Design Criteria] of this Part.
- (g) The Design-Builder will decommission existing and any new geotechnical instrumentation (piezometers, slope inclinometer casings) deemed not required following construction in accordance with Section 4.9 [Geotechnical Instrumentation] of this Part.

11.3 Waste Removal and Disposal

- (a) All waste/debris arising from the Works and all material brought to site but not incorporated into the Works will be removed from the Project Site by the Design-Builder prior to Substantial Completion.
- (b) The Design-Builder will dispose of all contaminated, hazardous or dangerous material, including oil tanks and propane tanks, in accordance with the regulations of relevant Governmental Authorities.
- (c) The Design-Builder will decommission and dispose any abandoned electrical and telecommunication ducts.

11.4 MacDonald Disposal Site

- (a) The area of MacDonald Pit in the vicinity of the Project Site near LKI 44.7 of Highway 1 (the “**MacDonald Disposal Site**”) is available for disposal of surplus excavated earthwork material, or excavated earthwork material deemed not suitable for embankment construction as shown on the MacDonald Disposal Site Drawing.
- (b) The Design-Builder will prepare and submit to the Province’s Representative in accordance with the Consent Procedure a decommissioning and disposal plan signed by a Geotechnical Engineer for the MacDonald Disposal Site prior to the use of the MacDonald Disposal Site by the Design-Builder, to be in keeping with disposal plans for locations to be used for surplus disposal and take into consideration all geotechnical, environmental and other requirements, including those identified on the MacDonald Disposal Site Drawing.
- (c) Disposal and handling of material that could result in acid rock drainage and/or metal leaching will be carried out by the Design-Builder in accordance with Article 2 [Design Submissions, Review and Reports] of Part 3 of this Schedule, Section 5.2 [ML/ARD Material Management] of this Part and the MacDonald Disposal Site Drawing.

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- (d) The Design-Builder is responsible for disposal of asphalt and concrete products such as old roadside barrier or acceptable demolition material, in accordance with DBSS 145.27.
- (e) Except as noted in this Section, the MacDonald Disposal Site will not be used for disposal of waste material including culverts, bin walls, construction demolition waste such as building wood and metal waste, glass, insulation, metal, flooring materials, treated wood, including rail ties, or materials that are potentially hazardous waste. These materials will be removed and disposed of off-site at facilities licensed to take such waste. Disposal of oil tanks, propane tanks, underground lines to tanks or other potentially contaminated or hazardous materials is not permitted in the MacDonald Disposal Site.
- (f) The MacDonald Disposal Site will be designed in accordance with Article 4 [Geotechnical] of this Part and as per the disposal plan requirements of this Section.
- (g) Material deposited in the MacDonald Disposal Site will meet the requirements of Section 4.8 [Slope Stability – Soil Slopes and Embankments] of this Part and the global stability assessment, analysis and design of all slopes will use a “Low” consequence factor. Maximum side slopes will not exceed 2H:1V.
- (h) Material deposited in the MacDonald Disposal Site will be placed in accordance with the requirements for embankments in DBSS 201 except that the maximum layer thickness in DBSS 201.37 may be increased from 200 mm to 500 mm, subject to the design requirements.
- (i) Only the used portion(s) of the MacDonald Disposal Site will be cleared. Salvage of unmerchantable wood will be in accordance with Section 9.3.6 [Salvage of Unmerchantable Wood] of this Part.
- (j) The final grading will maintain the Ministry’s access to MacDonald Pit from Highway 1 and will not block access to unused portions of MacDonald Pit.
- (k) The crest of the disposal pile(s) will be graded (not hummocky) to maintain the potential for future equipment access.
- (l) A system of drainage controls must be developed so that water quality is maintained and reclaimed areas are not affected by water erosion or flooding.
- (m) The surface of the disposal pile(s) will be restored in accordance with Section 9.3.4 [General Planting Requirements] of this Part.

11.5 Removal of Existing Electrical Equipment

- (a) The Design-Builder will remove from the Project Site and dispose of all existing electrical equipment, including underground boxes, Foundations, and wiring, in accordance with Section 11.3 [Waste Removal and Disposal] of this Part. Proposed location of abandoned lines will be selected to avoid risks to future maintenance activities undertaken by the Ministry.
- (b) The Design-Builder will install warning tape above the utility.

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11.6 Removal of Existing Utilities

- (a) The Design-Builder will remove from the Project Site or decommission any abandoned pipes exceeding 600 mm in diameter situated beneath permanent Travelled Lanes. Decommissioning will be achieved by completely filling the void in the pipe with a controlled density fill and sealing both ends. Controlled density fill will be designed to have a minimum unconfined compressive strength of 1 MPa at 28 days and be designed to minimize shrinkage. All mix Designs will be signed and sealed by the responsible engineer, who will be a duly experienced Professional Engineer of an appropriate discipline.
- (b) The Design-Builder will remove and dispose of all abandoned exposed Utilities in accordance with Section 11.3 [Waste Removal and Disposal] of this Part.

ARTICLE 12 CLIMATE CHANGE ADAPTATION

12.1 Order of Precedence

The Design-Builder will conduct climate change adaptation in accordance with the criteria set out in this Article and the following codes and standards, and if there is any conflict with the criteria contained in this Article and any of the Reference Documents, the following will apply in descending order of precedence:

- (a) the criteria contained in this Article;
- (b) Technical Circular T-04/19;
- (c) Section 1000 [Hydraulics] of the BC Supplement to TAC; and
- (d) EGBC Climate Change – Resilient Design.

12.2 General Requirements

- (a) The Design-Builder will determine the appropriate climate data to be used in the Design to account for anticipated climate change. The climate data used will:
 - (i) be data from the southern interior British Columbia area or derived for the Southern Interior Mountains area of British Columbia;
 - (ii) consider at a minimum, temperature, rain, snow, ice, fog, hail, frost, humidity, ice accretion, wind, floods, extreme temperatures and precipitation and storms of various intensities;
 - (iii) rely on climatological modelling analysis that is consistent with current climate science and relevant to the Southern Interior Mountains area of British Columbia; and
 - (iv) for the design of Structures including geotechnical and avalanche design be taken directly from Appendix 1.2 of Climate-Resilient Buildings and Core Public Infrastructure using RCP 6.0 values for Revelstoke.

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- (b) The Design-Builder will produce a climate change risk assessment report which assesses climate change vulnerability. The vulnerability risk assessment will:
 - (i) comply with minimum levels of effort as per Section 3.0 of EGBC Climate Change-Resilient Designs;
 - (ii) for geotechnical design, as part of the minimum levels of effort, include sensitivity analyses for groundwater profile scenarios developed with climate data in conjunction with available site monitoring data;
 - (iii) consider at minimum, climate/design parameters related to extreme weather events involving such things as temperature, rain, snow, ice, fog, hail, frost, humidity, ice accretion, wind, floods, extreme temperatures and precipitation, groundwater profile, storms of various intensities, and combinations of these factors;
 - (iv) produce a climate change risk assessment matrix including key infrastructure, as well as any at-risk infrastructure;
 - (v) assess potential impacts to Project Infrastructure components from climate change, identify a proposed action where an impact is determined to be present and provide a new associated risk rating; and
 - (vi) assess how these vulnerability risks are anticipated to change over the Design Life of each component of the Project Infrastructure.

12.3 Climate Change Adaptation Report

The Design-Builder will prepare and submit to the Province's Representative together with the Final Design submission, and in accordance with the Review Procedure, a climate change adaptation report and Design Criteria Sheets for Climate Change Resilience, demonstrating the assessment completed and how the requirements of BC Supplement to TAC, Technical Circular T-04/19 and this Article will be met in the Final Design.

ARTICLE 13 ROAD SAFETY AUDIT

13.1 Order of Precedence

The Design-Builder will conduct Road Safety Audits in accordance with the criteria set out in this Article and the following codes and standards, and if there is any conflict with the criteria contained in this Article and any of the Reference Documents, the following will apply in descending order of precedence:

- (a) the criteria contained in this Article;
- (b) Technical Circular T-02/04;
- (c) Road Safety Audit Guidelines; and
- (d) TAC Road Safety Audit Guide.

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13.2 Design-Builder's Responsibility

- (a) The Design-Builder will be responsible for:
 - (i) scheduling, initiating, and managing the Road Safety Audit process at the appropriate times during the Term;
 - (ii) providing all necessary design drawings and supporting documentation for the Road Safety Audit Team to conduct the audits;
 - (iii) ensuring that the Road Safety Audit is conducted to a high quality standard;
 - (iv) receiving and reviewing the audit report;
 - (v) responding to the audit report and documenting the response;
 - (vi) conducting any re-design as a result of the Road Safety Audit suggestions;
 - (vii) highlighting any significant changes to the required Design drawings resulting from the Road Safety Audit; and
 - (viii) providing all documentation related to the Road Safety Audit to the Province.
- (b) All costs associated with the Road Safety Audit, including any re-design costs or increased Construction costs that result from the Road Safety Audit, are the responsibility of the Design-Builder.
- (c) After each Road Safety Audit, except as otherwise expressly agreed in writing by the Province, the Design-Builder will address all recommendations made by the Road Safety Audit Team.

13.3 Road Safety Audit Team

The Road Safety Audit Team will consist of a minimum of two auditors. Each team member will meet the following minimum criteria:

- (a) five years relevant experience in road safety, traffic engineering and geometric design;
- (b) participated in at least five road safety audits; and
- (c) completed at least one road safety audit per year in the last two years.

13.4 Road Safety Audit Process

13.4.1 General Requirements

- (a) The Road Safety Audit process will be carried out in accordance with the TAC Road Safety Audit Guide, the Road Safety Audit Guidelines and in accordance with Part 2 [Design and Certification Procedure] of this Schedule.

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- (b) The Road Safety Audit Team will prepare an audit report to document the audit findings. Road Safety Audit reports will be submitted to the Design Team for the stages identified below.
- (c) The Road Safety Audit reports will clearly identify safety hazards that need to be addressed by the Design-Builder along with recommendations for remediation. The Design-Builder will respond to the identified hazards and recommendations with remediation countermeasures.
- (d) Road Safety Audits reports will be provided to the Province for review, in accordance with the Review Procedure, at four stages, as identified below.

13.4.2 Stage 1: Interim Design Road Safety Audit

A Stage 1 Road Safety Audit will be conducted immediately before submission of the Interim Design in accordance with Part 2 [Design and Certification Procedure] of this Schedule. This Road Safety Audit will undertake a detailed review of the Interim Design drawings to identify any potential safety-related enhancements that might have an impact on the New Project Infrastructure. Issues considered will include:

- (a) Design consistency;
- (b) horizontal and vertical alignment;
- (c) cross section Design;
- (d) intersection/access configuration;
- (e) access locations;
- (f) stopping sight distance and turning sight distance;
- (g) operation of public transport;
- (h) maintenance safety;
- (i) clearances to roadside objects;
- (j) safety barriers; and
- (k) provision for vulnerable road users.

13.4.3 Stage 2: Final Design Road Safety Audit

A Stage 2 Road Safety Audit will be conducted at Final Design in accordance with Part 2 [Design and Certification Procedure] of this Schedule. The audit will undertake a detailed review of the Final Design drawings to identify any potential safety-related enhancements that might have an impact on the operational safety of the New Project Infrastructure. Issues considered will include:

- (a) signing and Pavement Markings;

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- (b) intersection details;
- (c) drainage;
- (d) fencing;
- (e) clearances to roadside objects;
- (f) safety barriers;
- (g) surface standards;
- (h) landscaping;
- (i) provision for vulnerable road users;
- (j) accommodation of design vehicles; and
- (k) any Stage 1 items affected by the Final Design.

13.4.4 Stage 3: IFC Road Safety Audit

For any changes to the Final Design or IFC Drawings completed subsequent to the review of the Final Design, the Design-Builder will submit a Stage 3 Road Safety Audit, which must address those design changes and confirm that all recommendations in the Road Safety Audit of the Final Design have been addressed.

13.4.5 Stage 4: Post Construction Road Safety Audit

- (a) Prior to opening for traffic operation, a Stage 4 Road Safety Audit will be carried out to identify potential safety enhancements that may reduce the frequency of collisions.
- (b) Stage 4 Road Safety Audits will take place prior to and as a condition of the issuance of the Certificate of Substantial Completion.
- (c) In the event any Construction activities are taking place with “live” traffic, a series of staged Road Safety Audits will be carried out as each stage of the relevant Construction activities is completed and before a Construction Certificate is issued in accordance with Part 2 [Design and Certification Procedure] and Part 3 [Traffic Management] of this Schedule.
- (d) For the purposes of completing a Stage 4 Road Safety Audit required pursuant to paragraphs (a) and (b) above, the Road Safety Audit Team will fully examine the New Project Infrastructure, including:
 - (i) meeting with the Project team to review any Construction activity related issues, in particular Design changes that may affect the safety of the New Project Infrastructure;
 - (ii) checking to ensure that safety issues identified in the Design audits are addressed and the resulting Design changes do not create a further safety problem;

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- (iii) reviewing any Design changes that occurred during the relevant Construction activity to ensure they do not create a safety problem; and
- (iv) conducting a field review of the New Project Infrastructure, under both daytime and nighttime conditions, to observe the operation of the New Project Infrastructure from the perspective of the road user.

13.5 Temporary Traffic Control (Design) Road Safety Audit

- (a) For each phase of Construction activity, Road Safety Audits will be conducted during Design for temporary traffic control set-ups that meet any of the following criteria:
 - (i) the duration of a temporary traffic control set-up or lane shift that is two weeks or longer. The set-up does not necessarily have to be in place for the entire time but can be one of a number of repeating set-ups that are active at different times; or
 - (ii) a temporary traffic control set up whose complexity exceeds that of the standard templates used in the Traffic Management Manual.
- (b) Each such Road Safety Audit will be completed prior to the implementation of the temporary traffic control set-up unless otherwise agreed to by the Province's Representative.

13.6 Temporary Traffic Control (On-site) Road Safety Audit

- (a) For each phase of Construction activity, Road Safety Audits will be conducted on the Project Site, following implementation, for temporary traffic control set-ups that meet any of the following criteria:
 - (i) two or more individual temporary traffic control set-ups in close proximity to each other such that one would influence the traffic operation of the other. The spacing between the termination area of one work zone and the advance warning area of the next work zone for which one temporary traffic control set-up influences the traffic operations of the next temporary traffic control set-up is 2 km or less;
 - (ii) the duration of a temporary traffic control set-up or lane shift that is two weeks or longer. The set-up does not necessarily have to be in place for the entire time but can be one of a number of repeating set-ups that are active at different times; or
 - (iii) a temporary traffic control set-up whose complexity exceeds that of the standard templates used in the Traffic Management Manual.
- (b) Each such Road Safety Audit will be completed within two days after implementation unless otherwise agreed to by the Province.
- (c) The Road Safety Audit Team will follow a check list based on the Road Safety Audit Guidelines and in accordance with Section 4.8 [Traffic Management Auditing] of Schedule 7. The Road Safety Audit will include a review of both daytime and nighttime temporary traffic control set-up and where applicable the accommodation of vulnerable road users.

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13.7 Certificates

After each of the four stages of the Road Safety Audit process, and where required for temporary traffic control in accordance with Section 13.5 [Temporary Traffic Control (Design) Road Safety Audit] and Section 13.6 [Temporary Traffic Control (On-site) Road Safety Audit] of this Part, the Design-Builder will submit to the Province's Representative a Road Safety Audit Certificate.

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**PART 2
DESIGN AND CERTIFICATION PROCEDURE**

ARTICLE 1 DESIGN MANAGEMENT PLAN AND TECHNICAL APPRAISAL FORMS

1.1 Submission of Design Management Plan

Within 60 days following the Effective Date, and prior to the submission of any Interim Design, the Design-Builder will submit a Design Management Plan to the Province's Representative in accordance with the Consent Procedure. The Design Management Plan will include:

- (a) an organization chart showing the interface and reporting structure for all Design activities including those with other engineering groups, environmental management, and Construction disciplines;
- (b) the procedures to be used for designing and checking each of the designs and the form of review to be undertaken by the Design-Builder;
- (c) the identification of the Design Team and Checking Team for Structures;
- (d) the contents and format of Interim Design and Final Design submissions;
- (e) processes and schedule for design checking, internal reviews and audits;
- (f) a Design submission and review schedule, indicating dates that the Design-Builder plans to:
 - (i) submit Interim Designs;
 - (ii) undertake review meetings in accordance with Section 1.3 [Review Meetings] of this Part; and
 - (iii) submit Final Designs;
- (g) the process and schedule for Road Safety Audits;
- (h) the process and organizational structure for performing and reporting Designer reviews during Construction as well as the process for addressing any non-conformance issue or Design changes during Construction;
- (i) the process and schedule of submitting construction staging plans and courses of action;
- (j) the process for liaising with CPKC and schedule of submissions required in accordance with Part 4 [CPKC Interface] of Schedule 3;
- (k) the process for liaising with third parties and incorporation of the utility relocation Designs;
- (l) the process for Design and Construction Certification;
- (m) the process for Designer and Province review during Construction, including inspections, testing, monitoring, Hold Points and Witness Points required by the Inspection and Testing Plan, relevant Quality Documentation and other Project Requirements;

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- (n) a description of the approach and proposed geotechnical activities that will be required to assess and confirm site safety in terms of protecting the workers, public and adjacent facilities from natural hazards and slope failures during Construction;
- (o) the Geotechnical Investigation Plan as required in accordance with Section 4.13(a) of Part 1 [Design and Construction Requirements] of this Schedule;
- (p) an overview of document management and controls;
- (q) the drawings standards used by the Design-Builder;
- (r) a drawing tree indicating the organization and hierarchy of the Design-Builder's drawings;
- (s) appropriate metrics to measure the progress of the Design for each discipline; and
- (t) a description of the issues, risks and assumptions to be clarified and addressed during Design and Construction.

Any subsequent amendments or updates to the Design Management Plan will be submitted by the Design-Builder to the Province's Representative in accordance with the Review Procedure.

1.2 Compliance with Design Management Plan

The Design-Builder will implement and comply with the Design Management Plan which has been accepted by the Province's Representative in accordance with the Consent Procedure, and any subsequent amendments or updates to the Design Management Plan to which there is no objection by the Province in accordance with the Review Procedure, in connection with all Design Data prepared or adopted in connection with the Design and the Construction.

1.3 Review Meetings

- (a) The Design-Builder will organize review meetings with the Province for the purpose of reviewing the Design information in accordance with the Design Management Plan.
- (b) Discussion between the Province and Design-Builder at the review meetings will be informal and will not be considered for the purposes of this Agreement as either Province Changes or Value Engineering Proposals.

1.4 TAF Submission Requirements

- (a) Each Final Design and Construction activity submission package submitted by the Design-Builder in accordance with this Part will be accompanied by a completed TAF.
- (b) In any case where submitted Design Data involves any mechanical or electrical and/or intelligent transportation system functions, or similar specialization, the Design-Builder will submit to the Province's Representative in accordance with the Review Procedure a TAF in respect of such data and functions.
- (c) In any case where the Project Work involves the complete or partial demolition of an existing Structure, the Design-Builder will submit to the Province's Representative in

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accordance with the Review Procedure a TAF in respect of such complete or partial demolition.

1.5 TAF Form and Content

Each TAF submitted by the Design-Builder pursuant to Section 1.4 [TAF Submission Requirements] of this Part will be in the format shown in Appendix 4B [Sample Contents for a Structural TAF] to this Schedule and will:

- (a) for Interim Design submissions, include the general design methodology, overall design concept, relevant design criteria, environmental and geotechnical considerations, and interface requirements, together with the relevant interim design drawings and reports;
- (b) for Final Design submissions, include the relevant design criteria, environmental and geotechnical considerations, and interface requirements, together with a listing of the design documentation included in the design package accompanying the Design Certificate;
- (c) for Construction submissions, provide the relevant Construction Certificate for such Construction; and
- (d) be signed by:
 - (i) the Design-Builder's Representative; and
 - (ii) the Designer(s), or its principal(s), as necessary.

1.6 TAF Variation

Any variation to a TAF, which has been subject to the Review Procedure during Design, assessment or Construction, will be submitted in accordance with the Review Procedure as an addendum to the TAF.

ARTICLE 2 DESIGN SUBMISSIONS, REVIEW AND REPORTS

2.1 Design and Certification Procedure

- (a) The Design-Builder will implement and enforce the procedure set out in this Part (the "**Design and Certification Procedure**"), together with the accepted Design Management Plan, throughout the Term.
- (b) The Design-Builder will provide three Design submissions in the following order:
 - (i) Interim Design submission;
 - (ii) Final Design submission; and
 - (iii) IFC Drawing submission,

each in accordance with the requirements of this Article.

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- (c) The Design and Certification Procedure will apply to all Design Data prepared or adopted in connection with the Construction, including any further design development or changes to a design once a TAF has been subjected to the Review Procedure.
- (d) The Design-Builder will ensure that all certification procedures referred to in the Design Management Plan and the Design and Certification Procedure are complied with by the Professional Engineers or Appropriately Qualified Professionals referred to therein, including the Design Team, the Designer and any independent team or checking engineer within the Designer, as the case may be, and that all Professional Engineers and Appropriately Qualified Professionals are at all relevant times duly authorized and qualified to carry out such procedures and to sign the relevant certificates. Any failure by any Professional Engineer or Appropriately Qualified Professional to fulfil the certification procedure obligations required of them under the Design Management Plan or the Design and Certification Procedure will be a breach of the Design-Builder's obligations under this Agreement.
- (e) The Design-Builder will not submit any Interim Design submissions or any Interim Design Review packages for any aspect of the Project Work until after the Design Quality Management Plan has been accepted pursuant to the Consent Procedure.

2.2 Design and Certification Procedure in Emergency

In the case of an emergency, the Design-Builder may proceed with such measures as are immediately necessary for the protection of persons and/or property prior to complying with the applicable provisions of this Design and Certification Procedure, provided that the Design-Builder will comply with the provisions of this Design and Certification Procedure otherwise applicable to those measures as soon as reasonably possible under the circumstances.

2.3 No Limitation

A requirement for certification or for any check or review pursuant to, and for purposes of, this Part is in addition to, and does not in any way limit, qualify, replace or relieve the Design-Builder from, the obligation to comply with any other certification, check or review requirement provided elsewhere in this Agreement or any of the Project Requirements, or pursuant to any applicable professional standards or practices.

2.4 Format of Design Submissions

- (a) The Design-Builder will provide one combined PDF file for the package, individual PDF files and AutoCAD data file for each Interim Design and Final Design submission drawing.
- (b) Drawings will be in a format in accordance with the requirements of the Ministry Standards. The Design-Builder will confirm drawing conventions and standards, including AutoCAD standards, title block and stationing convention, with the Province's Representative prior to commencing design drawing production.

2.5 Preparation of Design Data

All Design Data will be prepared under the supervision of the Designer. Prior to the submission of any Design Data to the Province's Representative, the Designer and the Checking Team where applicable,

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will satisfy themselves that the Design Data meets all Project Requirements and otherwise complies with the requirements of this Agreement.

2.6 Interim Design Review

- (a) The Design-Builder will submit to the Province's Representative Interim Designs, including interim TAFs and supporting information, for, at a minimum, the Project Infrastructure and geotechnical Design.
- (b) Interim Design submissions will be informal and will not be reviewed according to the Review Procedure. Rather, such informal Interim Design submissions will be used to inform the Province on the development of the Design and provide an opportunity for a dialog on compliance with the Project Requirements before the Design is complete.
- (c) The content of such Interim Design submissions will be appropriate to the subject and discipline and include any specific requirements for such submissions set out in this Agreement. The information provided will be adequate to show that the Design is proceeding in compliance with the Project Requirements and is taking into consideration the relevant Project Work.
- (d) In accordance with the Design and Certification Procedure, the Design-Builder and the Province will agree on the design information to be submitted for review in the Interim Design submissions, the schedule of such Interim Design submissions, and the scope of each review.
- (e) Interim Design submissions will include a Road Safety Audit in accordance with Article 13 [Road Safety Audit] of Part 1 of this Schedule.

2.7 Final Design Review

- (a) Final Designs from all design disciplines will be submitted to the Province's Representative in accordance with the Review Procedure, including the relevant TAF(s) together with all Final Design drawings, Design Certificates, supporting Design Data and calculations required in accordance with this Schedule.
- (b) Each Structure will have a separate Final Design submission. For Structures that require Design and Construction in stages, Final Design for each Structure component will be submitted to the Province's Representative in accordance with the Review Procedure. A Final Design submission of a Structure component will only be received after an Interim Design has been submitted for all components of the same Structure. The Final Design submission for each component will include documentation of design assumptions and constraints relating to all related Structure components. A Final Design submission of a Structure or its components will be received only when Final Design submission of the Avalanche Hazard Assessment and Design report relating to that specific Structure, and Final Design submission of the highway alignment for the corridor are both reviewed and endorsed as either "received" or "received with comments" by the Province's Representative in accordance with Part 1 [Review Procedure] of Schedule 2.

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2.8 Final Design Submissions

2.8.1 General

- (a) Design folders will be prepared for the Final Design submissions and will have indexes and sectional dividers. The design folders will contain pertinent correspondence, will be arranged by subject matter in chronological order, and will include design calculations and backup information. Design folders will include, without limitation, copies of all approvals, Design reports, correspondence, internal design reviews, quality control records and calculations.
- (b) The Final Design submissions will address any comments by the Province from the Interim Design Review.
- (c) Final Design drawings and reports will be signed and sealed by the responsible engineer or qualified professional, who will be a duly experienced Professional Engineer or qualified professional of an appropriate discipline.

2.8.2 Roadway and Drainage Design

- (a) The Final Design submission will, without limitation:
 - (i) contain all design drawings, including complete and collated plan, laning and geometrics, profiles, typical sections and template cross-sections, right of way acquisitions and drainage;
 - (ii) include the drainage Design report with supporting calculations;
 - (iii) include revisions to address stakeholder issues, plans for Utility relocations, critical constructability and traffic handling considerations, environmental issues and mitigation plans; and
 - (iv) include a Road Safety Audit in accordance with Article 13 [Road Safety Audit] of Part 1 of this Schedule.
- (b) For each Final Design submission pertaining to pavement, structures, earthworks, disposal sites and any element having a drainage design requirement, a drainage Design report will have been submitted to the Province's Representative pursuant to Section 7.2 [General Design Basis] of Part 1 of this Schedule prior to the Interim Design submission, which will:
 - (i) contain details to describe the assessments completed to develop the drainage design; and
 - (ii) meet the criteria outlined in Section 1000 of the BC Supplement to TAC.

2.8.3 Structure Design

The Final Design submission will contain, without limitation, the following:

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- (a) all design drawings, including for general arrangements, Foundations, Substructures, Superstructures, auxiliary components, Utilities on the Bridges, the Wildlife Ramp, drainage, inspection and maintenance accesses, barriers and all related information;
- (b) a geotechnical Design report for each of the Structures, including global stability reporting, if applicable, in accordance with Section 4.13(b) of Part 1 [Design and Construction Requirements] of this Schedule;
- (c) descriptions of maintenance considerations for all Structures;
- (d) independent review and Structure checking documentation including documented resolution of all major issues;
- (e) a spreadsheet (hard copy and electronic) containing Structure parameters data as specified by the Province's Representative;
- (f) settlement estimates in accordance with Section 4.7(b) of Part 1 [Design and Construction Requirements] of this Schedule and a plan for settlement monitoring of all Structures;
- (g) Category III Checking Team Report;
- (h) Designer's response to the Category III Checking Team comments, in accordance with Article 3 [Checking of Structures] of this Part; and
- (i) a neat, bound, indexed set of design calculations for each Structure initialled by the responsible engineer, who will be a duly experienced Professional Engineer of the appropriate discipline.

2.8.4 Pavement Design

- (a) For the Final Design submission, the Design-Builder will prepare a comprehensive pavement Design report for the Project. The pavement Design report will be submitted to the Province's Representative at the Interim Design review and be updated and resubmitted with the Final Design. The pavement Design report will contain, without limitation, the following:
 - (i) summary of subsurface conditions including pavement structure subgrade rock and soil type, stratigraphy and groundwater conditions in proposed excavations and embankments;
 - (ii) key pavement design issues, risks and assumptions that have been considered for the Design and Construction;
 - (iii) description of analyses conducted for pavement design, including:
 - (A) value of parameters required in AASHTO Guide for Design of Pavement Structures and the basis for deriving the parameters;
 - (B) methodology for computing pavement structure requirements; and

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- (C) supporting documentation with computations and results of analyses that confirm the pavement structure design criteria have been satisfied;
 - (iv) recommendations for asphalt concrete, granular base and select granular sub-base layer thicknesses, asphalt concrete mix and other elements required for construction of the pavement structure;
 - (v) plans and sections of proposed pavement structures for all roads; and
 - (vi) analysis indicating the chronology and description of projected rehabilitation requirements for a period of 20 years following Substantial Completion.
- (b) Details of pavements will be shown in IFC Drawings prepared prior to commencement of Construction.
 - (c) All reports and drawings will be sealed by a qualified Professional Engineer.

2.8.5 Geotechnical Design

- (a) For the Final Design submission, the Design-Builder will prepare comprehensive geotechnical Design reports for the Project's Structures, earthworks, rock slopes, debris flow/flood hazard mitigation works, disposal sites and any element having a geotechnical design requirement in accordance with Section 4.13(b) of Part 1 [Design and Construction Requirements] of this Schedule. The geotechnical Design reports will contain sufficient detail to describe the assessments completed to develop the geotechnical design. Geotechnical Design reports for Structures will be in accordance with the requirements of CSA-S6-19.
- (b) As a minimum each geotechnical Design report will contain, without limitation, the following information that pertains to each location and Project component (including proprietary structures):
 - (i) summary of subsurface conditions including soil and rock characterization, stratigraphy, groundwater conditions, and sulphate/chloride classification, and geotechnical data including test hole logs and laboratory results;
 - (ii) key geotechnical issues, risks and assumptions that have been considered in the selection of Design and Construction recommendations;
 - (iii) description of analyses, including those for settlement, deformation and stability, including:
 - (A) value of parameters used and the basis for deriving the parameters;
 - (B) methodology used to assess hazard, risk, and consequence including computation of magnitude-frequency distributions and return periods for natural hazards (rockfall, debris flows/floods), including consideration of climate change;

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- (C) methodology for developing recommended mitigation against debris flows/floods;
 - (D) methodology for computing geotechnical demands and capacities, and related dimensions for Foundation elements;
 - (E) supporting documentation with computations and results of analyses that confirm the geotechnical criteria have been satisfied and identifying the applicable criteria and including the Designer's justification for the Degree of Understanding assessment; and
 - (F) methodology and results of sensitivity analyses and documentation of how such analyses informed the design;
- (iv) supporting background geotechnical information, performance testing, design criteria, design parameters and methodology (including manufacturer's requirements and recommendations for design and construction) for any proprietary product to be incorporated in the Project Work;
 - (v) recommendations for structural, earthwork and other related designs and recommendations for construction, to ensure design criteria are satisfied;
 - (vi) recommended methodology for field inspections, testing, monitoring and other assessments during construction to validate design including assumptions and recommendations and also at Substantial Completion to confirm that the geotechnical engineering aspects of the Project Work satisfy acceptance criteria;
 - (vii) recommended geotechnical requirements for related constructability and site safety for workers, the public and adjacent facilities during construction;
 - (viii) assessment of environmental impacts and associated mitigation required due to the geotechnical recommendations;
 - (ix) the signature and seal of a qualified Professional Engineer; and
 - (x) evidence that another Geotechnical Engineer has independently reviewed and approved the contents of the geotechnical Design report.
- (c) Details of all Foundations, retaining walls, excavations, embankments, debris flow/flood mitigation works and any other project element requiring geotechnical Design will be shown in IFC Drawings prepared prior to commencement of construction.
 - (d) For all rockfall attenuator and stopping fence systems the Design-Builder will provide:
 - (i) design/installation IFC Drawings and specifications for the proposed systems with sufficient detail to show proposed layout of posts, bases, anchors, cables, net/mesh types and connection details;
 - (ii) details of design-life, corrosion protection, anchorage design including installation testing, Witness Points and Hold Points, and acceptance criteria;

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- (iii) written documentation of either:
 - (A) a full-scale field-testing program of the proposed rockfall mitigation system involving at least one dozen impacts of at least 50% of the SEL, and detailing any and all damages sustained during the testing, and resultant modifications made to the proposed system; or
 - (B) the performance of at least three comparable systems installed within the last decade, which documentation will detail rockfall energy parameters and expected rockfall frequency used for the design of each system, duration of service, and any damage sustained and necessary repairs made to each system since its installation; and
- (iv) documentation of the engineering basis for the design and dimensioning of the systems to be provided for the Project.
- (e) All rockfall attenuator and stopping fence design drawings and reports will be sealed by a qualified Professional Engineer.
- (f) The Final Design submission will contain applicable construction drawings for the Design of the MacDonald Disposal Site, prepared in accordance with Section 11.4 [MacDonald Disposal Site] of Part 1 of this Schedule.

2.8.6 *Signing and Pavement Markings Design*

- (a) The Final Design submissions will include signing and Pavement Marking plans sealed by a Professional Engineer.
- (b) All cantilever and sign bridge Structures submissions, if required, will be undertaken in accordance with Section 300 of the Electrical and Signing Materials Standards.

2.8.7 *Avalanche Assessment and Design*

- (a) The Design-Builder will submit an Avalanche hazard assessment and Design report that includes assessment of all Avalanche terrain that affects the proposed highway alignment within the Project Site, including currently existing as well as any new Avalanche terrain encountered or created by the New Project Infrastructure and Construction.
- (b) The Avalanche hazard assessment and Design report will contain sufficient detail to describe the assessments completed to develop the Avalanche design, and will include but not be limited to;
 - (i) summary of snow climate;
 - (ii) summary of Avalanche winter regime;
 - (iii) description of the analyses including:
 - (A) supporting background;

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- (B) assumptions
 - (C) methodology; and
 - (D) estimations of magnitudes and frequencies of all Avalanche terrain that potentially affects the highway alignment;
 - (iv) Avalanche Path mapping for all Avalanche Paths that affect the highway alignment;
 - (v) mitigation recommendations;
 - (vi) all Avalanche Design parameters, and the supporting calculations and assumptions, required for the Design of Avalanche mitigation measures; and
 - (vii) documentation of independent checking of Category III Structures as required in Article 3 [Checking of Structures] of this Part.
- (c) Details of all catchment excavation works, or any other Project Work element requiring Avalanche design will be shown on the IFC Drawings.
- (d) The Avalanche hazard assessment and Design report will be sealed by a Professional Engineer with expertise in Avalanche risk assessment and mitigation.

2.8.8 Landscaping and Site Restoration

The Final Design submission will contain a detailed landscape plan and drawings that reflect any highway design changes and incorporate comments made on the Interim Design submissions. The Design-Builder will document changes and describe the design work that has been completed since the Interim Design submission. Design will be compliant with DBSS 751, 754 and 757. Drawings will be of a suitable scale for legibility, and will provide enlarged detailing where needed.

2.8.9 Environmental Design

The Final Design submission will contain, without limitation:

- (a) applicable construction drawings that will include:
 - (i) all critical and sensitive wildlife habitats and ecosystems (including nest trees, red and blue listed plant communities and wetlands);
 - (ii) “environmentally sensitive areas” as shown on the Environmental Constraints Drawings; and
 - (iii) “historic place” (EhQk-9);
- (b) riparian restoration and terrestrial reclamation/revegetation drawings that, as a minimum, describe timing requirements, seed mixes and application rates of hydroseeding and site-specific restoration plans, including species type, size and spacing for riparian areas, areas of higher sensitivity, and areas prone to erosion or shallow slope movement;

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- (c) environmental design drawings that show environmental mitigation and compensation features and any environmental features to be constructed;
- (d) environmental design documentation including:
 - (i) all licences, notifications, permits, authorizations and approvals specific to the work designed;
 - (ii) a ML/ARD Prediction Assessment Report as described in Technical Circular T-04/13 and in accordance with the Prediction Manual for Drainage Chemistry from Sulphidic Geologic Materials, and including all information and reports required in accordance with Article 5 [Criteria for ML/ARD and MacDonald Disposal Site] of Part 1 of this Schedule; and
 - (iii) all assessments, studies, surveys and monitoring reports specific to the work designed; and
- (e) an environmental design criteria checklist for each environmental design package as specified in paragraphs (a), (b) and (c) of this Section that demonstrates consideration of and compliance with the environmental requirements and commitments applicable to the particular design package.

2.8.10 Electrical Design

The Final Design submissions will include electrical plans. Design drawings for all electrical systems will contain, without limitation, the following:

- (a) electrical equipment and all associated support structure locations;
- (b) lighting calculations where appropriate;
- (c) service locations; and
- (d) schematics showing electrical wiring layout.

The Final Design submission will include resolution of all issues identified during Interim Design reviews.

2.9 Road Safety Audit Design Data

All Design Data will be subject to Road Safety Audits in accordance with Article 13 [Road Safety Audit] of Part 1 of this Schedule as and where required pursuant to the provisions of the Design Management Plan, the Project Requirements and any other provision of this Agreement.

2.10 Objection to Design Data

If the Province objects to any Design Data in accordance with the Review Procedure, the Province will so notify the Design-Builder and the Design-Builder will, unless the Design-Builder disputes the objection by the Province to such Design Data in accordance with the Dispute Resolution Procedure, either:

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- (a) cause to be made such alterations and additions as may be necessary such that the Design Data accords with the Project Requirements and all other requirements of this Agreement, all in accordance with the Review Procedure; or
- (b) subject to the other provisions of this Agreement, submit a Value Engineering Proposal.

2.11 Adherence to Design Data

Design Data which has been the subject of a Certificate that has been submitted to the Province's Representative in accordance with the Design Management Plan, the Design and Certification Procedure or this Agreement will not be departed from otherwise than in accordance with Schedule 11 [Changes] of this Agreement.

2.12 IFC Drawings

- (a) The Design-Builder will submit copies of all IFC Drawings, together with manuals, instructions to the Design-Builder and other relevant information as requested by the Province, to the Province's Representative and to the Owner's Engineer.
- (b) The Design-Builder will provide one set of full-size hard copy IFC Drawings and one set of 11x17 hard copy IFC Drawings to the Province's Project office within two Business Days of issuance by the Design-Builder.

2.13 No Construction

The Design-Builder will not commence or permit the commencement of the Construction (including any Temporary Works) unless and until:

- (a) all Design Data and relevant Certificates required in respect of the relevant part of the Design and Construction have been submitted by the Design-Builder to the Province's Representative for consideration in accordance with the Design Management Plan and the Design and Certification Procedure;
- (b) all Environmental Work Plans in respect of the relevant part of the Construction have been submitted by the Design-Builder to the Province's Representative for review in accordance with Schedule 6 [Environmental Obligations] and there has been no objection thereto by the Province in accordance with the Review Procedure;
- (c) each of the Construction Environmental Management Plan, the Traffic Management Plan and the Construction Quality Management Plan has been submitted by the Design-Builder to the Province's Representative and has been accepted by the Province in accordance with the Consent Procedure; and
- (d) all of the respectful workplace policies and procedures in the Respect in the Workplace Plan have been fully implemented in accordance with Section 4.2 [Respect in the Workplace] of Schedule 13 to this Agreement.

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2.14 Designer Review during Construction

During Construction, the Design-Builder will ensure that the Designer, in accordance with the procedures set out in the Design Management Plan and the relevant Quality Documentation and other Project Requirements, examines the same and satisfies itself that such Project Work and every part thereof have been designed, constructed, completed, commissioned, tested and maintained in all respects so as to accord with:

- (a) Design Data in respect of which Design Certificates have been issued and to which there has been no objection in accordance with the Review Procedure; and
- (b) all applicable Project Requirements, and otherwise to comply in all respects with the requirements of this Agreement.

2.15 Temporary Works

- (a) As a minimum, Design submissions for Temporary Works will include those items intended for public use and/or potentially affecting public, CPKC or third party stakeholder safety. Final Designs, including TAFs and Design Certificates, for these Temporary Works will be submitted to the Province's Representative in accordance with the Review Procedure.
- (b) Design Data relating to any Temporary Works will be checked by a Checking Team independent of the Designer.
- (c) In performing the check referred to in paragraph (b) above, the Checking Team will satisfy itself that:
 - (i) the Design Data meets the Project Requirements and otherwise complies with the requirements of this Agreement;
 - (ii) the Temporary Works (as a whole and the constituent parts) are satisfactory for the safe and proper discharge of the Design-Builder's relevant obligations; and
 - (iii) the Design Data reflects the requirements of the relevant Governmental Authorities for all affected highways or other roads or areas used by or accessible to the public other than the New Project Infrastructure.
- (d) Where any Temporary Works may impact third party stakeholders or utilities or endanger public safety on any highway or other road or area used by or accessible to the public other than the New Project Infrastructure, the Design-Builder will consult the relevant highway Governmental Authority and the Design Data will reflect the requirements of such Governmental Authority.
- (e) Where any Temporary Works may impact the CPKC infrastructure or the Railway Operations, the Design-Builder will consult with CPKC and obtain CPKC's acceptance in accordance with Part 4 [CPKC Interface] of Schedule 3, and the Design Data will meet the requirements of Part 4 [CPKC Interface] of Schedule 3.

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2.16 Documentation for Ministry Jurisdictional Atlas

The Design-Builder will prepare drawings for the Ministry Jurisdictional Atlas. The Design-Builder will consult with the Province prior to preparing the drawings. The drawings will be submitted to the Province's Representative in accordance with the Review Procedure no later than 60 days prior to the Substantial Completion Date.

ARTICLE 3 CHECKING OF STRUCTURES

3.1 Independent Review

In addition to the requirements of this Article, all Structures will have, as part of the Interim Design submission, an independent review in accordance with Bylaw 14(b) [Quality Management] of the EGBC Bylaws and the EGBC Documented Independent Review of Structural Designs. The independent review will be completed prior to the Final Design submissions. A copy of the documentation for the independent review will be included in the Interim Design and Final Design submissions.

3.2 Categories of Structures

The "Category" of a Structure will determine the degree of independence of checking of Design Data required for that Structure. Every Structure will be placed in one of four Categories:

- (a) Category 0. Minor individual Structures provided they conform to one of the following:
 - (i) a Structure with a single span of less than 3 m and which is statically determinate; or
 - (ii) a buried Structure less than 3 m clear span/diameter, or multicell buried Structure where the cumulative span is less than 5 m and having more than 1 m cover; or
 - (iii) a conventional retaining wall without tie-back anchors and less than 2 m retained height; or
 - (iv) MSE with concrete facing panel systems less than 2 m in height.
- (b) Category I. Simple individual Structures provided they conform to one of the following:
 - (i) a conventional retaining wall without tie-back anchors and with 2 m or more but less than 7 m retained height; or
 - (ii) a buried concrete box or corrugated steel buried Structure with less than 8 m span; or
 - (iii) a Structure with a simply supported single span of less than 20 m and having less than 25 deg. skew; or
 - (iv) MSE with concrete facing panel system with 2 m or more, but less than 7 m, in height; or
 - (v) noise walls 2 m or more than 2 m in height.

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- (c) Category II. All those Structures not within the parameters of Categories 0, I or III.
- (d) Category III. Structures which:
 - (i) require sophisticated analysis; or
 - (ii) contain low structural redundancy; or
 - (iii) contain unconventional design aspects; or
 - (iv) have any span exceeding 50 m; or
 - (v) have a skew exceeding 45 degrees; or
 - (vi) have unusual or complex Foundation configurations; or
 - (vii) are Bridges with Avalanche snow expected to pass under or be deposited on the Superstructure; or
 - (viii) are Bridges with suspension systems, cable stayed Bridges, steel Bridges with orthotropic Bridge Decks, floating structures, hinged arch structures and all tunnels, movable Bridges and Bridge access gantries; or
 - (ix) are retaining walls with tie-back anchoring systems, including permanent shotcrete walls.

3.3 Category Proposal

As soon as sufficient Design Data for a Structure has been prepared to allow the determination of a category, the Design-Builder will submit its proposed category (together with such Design Data as necessary to support that proposal) to the Province's Representative in accordance with the Review Procedure.

3.4 Structure Checking Procedure

Design Data relating to each Structure (including without limitation calculations, assessments, drawings and bar schedules) will be checked as follows:

- (a) Category 0 and Category I Structures require an independent check by a Professional Engineer, other than the engineer who designed the Structure. The checking Professional Engineer may be from the original Design Team.
- (b) Category II Structures require a check by a Checking Team which may be from the Designer but will be independent of the Design Team.
- (c) Category III Structures require a check to be carried out by a Checking Team appointed to perform an independent detailed check by experts in Bridge structural, avalanche, and geotechnical analysis and design, by an organization not related to the Designer. The Checking Team will report directly to the Design-Builder.

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- (d) The independent check for Category III Structures will be conducted throughout the Design process with documentation of the comments received from the Category Checking Team and the resulting action taken by the Designer to address all such comments provided at the Interim Design and Final Design submission.

In addition to the checking procedures required above, the Design-Builder will conduct all checking procedures required by EGBC.

3.5 Checking Team

At the time it submits the initial Design Management Plan, the Design-Builder will submit to the Province's Representative under the Consent Procedure a proposal, which will be supported by a resume for each member of the proposed Checking Team, as to the organization to serve as the Checking Team and the proposed terms and conditions of its employment. The following responsibilities and expertise will be required of and incorporated in the Checking Team for Category III Structures:

- (a) The Checking Team will be responsible for:
 - (i) conducting design checks to ensure that the design of such Category III Structures meets performance expectations outlined in this Agreement and that such design is carried out according to accepted industry standards;
 - (ii) conducting design checks on avalanche characteristics and loading on Structures;
 - (iii) undertaking supplementary analyses to independently verify and confirm the design methodologies and assumptions used;
 - (iv) identifying deficiencies in the design and analyses, and notifying the Design-Builder and the Province of unresolved deficiencies;
 - (v) checking the Designers' materials and construction specifications for deep Foundation design and tie-back anchoring systems;
 - (vi) checking the Designers' acceptance criteria for deep Foundations and tie-back anchoring systems and verifying acceptance of deep Foundation and tie-back anchoring elements construction; and
 - (vii) providing a report (the "**Category III Checking Team Report**") including resolution of deficiencies.
- (b) The Checking Team will be comprised of recognized experts in all major disciplines relating to the structural, geotechnical and avalanche design being checked. The Checking Team will be individuals who are registered or qualified to be registered as Professional Engineers.

3.6 Structure Design Checking Responsibility

The Design Team, Designer and the Checking Team will each satisfy itself as to the applicability and accuracy of all computer programs used and will ensure the validity of the program for each application. The Design Team, Designer and the Checking Team will each also be responsible for its own interpretation of the relevant ground and avalanche information.

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3.7 Independence

Independence of the Design Team and Checking Team, and the independence of the Designer and the Design-Builder, will be maintained at all times. The method of analysis that they employ need not be the same. They may consult each other to ensure that the results they are obtaining are directly comparable.

ARTICLE 4 DESIGN CERTIFICATION

4.1 Design Certificates

The Design-Builder will issue a Design Certificate for each Final Design package that is submitted. All Design Certificates will be:

- (a) on the appropriate form(s) attached as Appendix 4A [Form of Design and Construction Certificates] to this Schedule; and
- (b) be signed and sealed by the responsible engineer, who will be a Professional Engineer and a principal of the Designer, and by the Design-Builder's Representative (or, in the case only of Design Certificates for environmental works incorporated in the Project Work, the AQP).

All parties that sign Design Certificates will clearly print their name and position held in their organization.

4.2 Submission of Design Certificates

All Design Certificates together with the supporting documentation will be submitted to the Province's Representative in accordance with the Review Procedure with original signatures, seals and registration numbers and in such form as to allow the Province to perform its function in respect of such Design Certificate without delay.

4.3 Road Safety Audit Certificates

- (a) The Design-Builder will submit to the Province's Representative a certificate (a "**Road Safety Audit Certificate**") in the form attached as Appendix 4A [Form of Design and Construction Certificates] to this Schedule in respect of the Stage 1, Stage 2, Stage 3 and Stage 4 Road Safety Audits respectively. Each Road Safety Audit Certificate will be signed by the Designer, the Road Safety Audit Team, the Design-Builder and the Design-Builder's Representative.
- (b) The Stage 3 Road Safety Audit Certificate will be provided to the Owner's Engineer and the Province's Representative, and the Certificate of Substantial Completion will not be issued unless a Stage 4 Road Safety Audit Certificate in respect thereof has been submitted and signed by the Designer, the Road Safety Audit Team, the Design-Builder and the Design-Builder's Representative.

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ARTICLE 5 TESTING

5.1 Conduct of Testing

To the extent and in the manner provided by the Design Management Plan, Quality Documentation and other Project Requirements including Hold Points and Witness Points required by the Inspection and Testing Plan, all testing will be carried out by a duly accredited and certified testing facility and organization in accordance with Schedule 7 [Quality Management]. The Province's Representative will be given timely advance notice (being not less than 2 Business Days) of the date of such tests, unless the Province gives written notice that it does not require such notice for any categories of tests. The Province will be entitled to attend at any test. Any materials or Plant which fail such tests will be rejected.

5.2 Test Recording and Reporting

- (a) In addition to the requirements of Schedule 7 [Quality Management], the Design-Builder will develop and employ a test recording system which will permit ready retrieval of all test readings and will provide live internet-based access to the test recording system and its data to the Province's Representative.
- (b) With respect to continuous testing operations (such as concrete quality, structural concrete strengths, aggregate quality, compaction tests and bituminous material quality) the Design-Builder will provide to the Province's Representative at regular intervals (not to exceed weekly unless otherwise agreed by the Province's Representative) test summary sheets and statistical analyses indicating strength and quality trends and will do so in accordance with the requirements of Schedule 17 [Records and Reports], including Section 1.6 [Province Access to Records] thereof.

ARTICLE 6 CONSTRUCTION CERTIFICATES

6.1 Construction Certificates

The Design-Builder will, in accordance with the procedures set out in the Design Management Plan and the relevant Quality Documentation or other Project Requirements, submit Construction Certificates to the Province's Representative in accordance with the Review Procedure. Construction Certificates will be submitted to the Province's Representative prior to opening any New Project Infrastructure for use by the public. All Construction Certificates will be signed by the Design-Builder's Representative, the Designer and the Design-Builder. The Design-Builder will provide a copy of all Construction Certificates to the Owner's Engineer.

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**PART 3
TRAFFIC MANAGEMENT**

ARTICLE 1 GENERAL TRAFFIC MANAGEMENT REQUIREMENTS

1.1 Order of Precedence

The Traffic Management Plan and traffic control operations for all Construction will be in accordance with the criteria contained in this Part and the following codes and standards and if there is any conflict between the criteria and any of the Reference Documents, the following will apply in descending order of precedence:

- (a) the criteria contained in this Part;
- (b) the applicable Ministry Technical Bulletins and Circulars;
- (c) Traffic Management Manual;
- (d) DBSS;
- (e) Electrical and Traffic Engineering Manual;
- (f) Manual of Standard Traffic Signs and Pavement Markings;
- (g) BC Catalogue of Traffic Signs;
- (h) BC Supplement to TAC;
- (i) TAC Geometric Design Guide;
- (j) Electrical and Signing Materials Standards; and
- (k) Specifications for Standard Highway Sign Materials, Fabrication and Supply;

1.2 Recognized Products List

All traffic control devices used in the Project are to be selected from the Recognized Products List. The use of traffic control devices not on the Recognized Products List requires written acceptance from the Province in accordance with the Consent Procedure.

1.3 General Requirements

- (a) The restrictions outlined in this Part will be the basis for the development of the Traffic Management Plan and Traffic Control Plans, to be provided in accordance with Article 4 [Traffic Management Plan] of this Part. Variations to the restrictions at specific locations may be permitted for such specific locations, but only if substantiated through a plan by the Design-Builder that addresses, at a minimum, traffic requirements, analysis and stakeholder consultation, where applicable, and such plan is accepted by the Province in accordance with the Consent Procedure.

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- (b) All available traffic data can be found through the Province's Traffic Data Program, available through the BC Ministry of Transportation & Infrastructure website.
- (c) Except where permitted in accordance with this Part, implementation and removal of any Stoppages, Lane Closures, Full Closures, Detours, Lane Shifts or other changes in traffic patterns will be completed outside of Restricted Periods.
- (d) The Design-Builder will not engage in any activity that could result in the occurrence of a Traffic Disruption Event, or that could otherwise impede or disrupt the flow of traffic, during a Restricted Period.
- (e) For each scheduled Lane Closure, Full Closure or Detour, the Design-Builder will provide advance notice to the travelling public and other stakeholders of the scheduled Lane Closure, Full Closure or Detour in accordance with Article 3 [Traffic Management Communications] of this Part.
- (f) Traffic Management Auditing will be carried out by the Design-Builder and the Province in accordance with Section 4.8 [Traffic Management Auditing] of Schedule 7. If the Traffic Control Supervisor determines that any traffic delays, queues or disruptions are not in compliance with the Project Requirements, then in addition to the requirements of Section 4.8 [Traffic Management Auditing] of Schedule 7:
 - (i) the Design-Builder will cease any relevant Project Work and safely make all the necessary travel lanes available to traffic as quickly as possible to bring the traffic delays, queues and disruptions to compliance; and
 - (ii) the Traffic Control Supervisor will submit a notification to the Province's Representative within 12 hours of the non-compliance event documenting the time, type (queue, delay, both), action taken, and duration of non-complying conditions.
- (g) Any proposed Stoppages, Lane Closures, Full Closures, Detours and Lane Shifts not included in the Design-Builder's accepted Traffic Control Plan will be subject to prior acceptance by the Province in accordance with the Consent Procedure.
- (h) The Design-Builder will not use private roads or access any other private property without making prior written arrangements with all affected or Interested Parties and the Province. The Design-Builder will be responsible for all costs arising from or in connection with the use of the private roads or access to any other private property.
- (i) Full access for emergency and first responders will be maintained at all times in accordance with Section 1.5(b) of this Part.

1.4 Location and Storage of Materials and Equipment

- (a) The Design-Builder will not store equipment on the travel portion or Shoulder of any road outside of permitted Full Closure periods.
- (b) Equipment stored within the Clear Zone of any road will have barriers set up to protect road users. Concrete barriers will be provided where Clear Zone requirements cannot be met.

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1.5 Incident Management

- (a) The Design-Builder will organize and implement an Incident Management Plan in accordance with the requirements specified in the Traffic Management Manual and Section 4.2.2 [Incident Management Plan] of this Part.
- (b) The Design-Builder will contact Provincial and local emergency services through the Operations/Traffic Manager. In anticipation of the requirement for emergency vehicles to pass through the Project Site, the Design-Builder will have adequate equipment and labour available to clear a passage should a Stoppage or scheduled Closure be in effect. The Design-Builder will act immediately upon notification by emergency services personnel of an emergency, to provide safe passage for the emergency services within 125 minutes of notification.
- (c) The Design-Builder will maintain a reliable communication system between the Traffic Control Supervisor and the Province's Representative, including a back up communication system, at all times. The same communication system will be accessible to the emergency services to provide three-way communications.
- (d) The Design-Builder will coordinate the details of the Incident Management Plan with the Traffic Control Plans.

1.6 Detours and Lane Shifts

- (a) The Design-Builder will prepare a design by a Professional Engineer for each Detour and Lane Shift within the Project Site that will conform to the minimum design requirements of this Schedule, the Traffic Management Manual and the DBSS. Detour and Lane Shift designs will be submitted to the Province's Representative under the Consent Procedure.
- (b) Table 1.6 [Minimum Design Requirement for a Two-Lane Construction Detour and Lane Shift – Highway 1] below summarizes the minimum geometric design criteria that will be incorporated into the design of Detours and Lane Shifts for Highway 1.

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**Table 1.6: Minimum Design Requirements for a Two-Lane Construction Detour and Lane Shift
– Highway 1**

During Periods of Active Work	Design/Posted Speed	50 km/h or as accepted by the Province
	Design Vehicle	WB20
	Design Grade	Highway 1: 6%
	Maximum Superelevation	6%
	Minimum Radius	As per BC Supplement to TAC
	Vertical Clearance	The lesser of 5.0 m or existing travel lane clearance
	Stopping Sight Distance	As per TAC Chapter 2
	Lane Width	3.6 m travel lanes (min)
	Paved Shoulder Width (Open)	1.0 m (min) paved
	Paved Shoulder Width (Closed by Barrier)	1.3 m (min) to face of barrier
	Gravel Shoulder Width	0.5 m (min)
	Gravel Shoulder Width Behind Barrier	0.3 m (min)
	Side Slopes (w/o Barrier)	The lesser of 4 : 1 (max) or existing
During Periods of Inactivity	Design/Posted Speed	80 km/h or as accepted by the Province
	Design Vehicle	WB20
	Design Grade	Highway 1: 6%
	Maximum Superelevation	6%
	Minimum Radius	As per BC Supplement to TAC
	Vertical Clearance	The lesser of 5.0 m or existing travel lane clearance
	Stopping Sight Distance	As per TAC Chapter 2 (see note 3)
	Lane Width	3.6 m travel lanes (min)
	Paved Shoulder Width (Open)	1.0 m (min) paved
	Paved Shoulder Width (Closed by Barrier)	1.3 m (min) to face of barrier
	Gravel Shoulder Width	0.5 m (min)
	Gravel Shoulder Width Behind Barrier	0.3 m (min)
	Side Slopes (w/o Barrier)	The lesser of 4 : 1 (max) or existing

Notes:

- (1) Minimum Shoulder Widths will be permitted except where dictated otherwise by sight distance requirements, in which case widened Shoulder Width in order to meet sight distance requirements will be provided.
- (2) Minimum 0.5 m clearance behind barrier to be maintained at all time.
- (3) A reduction of lateral stopping sight distance to 60 km/h design speed is acceptable during periods of inactivity

- (c) All Detours and Lane Shifts within the Project Site will be paved with appropriate Pavement Markings and signs placed in accordance with the Traffic Management Manual.
- (d) The Design-Builder will ensure the condition of the pavement used for all Detours and Lane Shifts is adequate for its intended purpose and does not adversely impact on the safety and intended function of such Detours and Lane Shifts.

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- (e) Milled surfaces open to traffic will be clean and allow adequate drainage. Traffic will not be permitted on a milled surface for more than 14 consecutive calendar days. Traffic will not be permitted on a gravel or pulverized surface for more than five consecutive calendar days.
- (f) Methods used to transition between Periods of Active Work and Periods of Inactivity will be described in the Traffic Management Plan.
- (g) Pavement drainage for Detours and Lane Shifts will be designed in accordance with Section 1050 of the BC Supplement to TAC. Temporary drainage appurtenances for Detours and Lane Shifts will be designed to a minimum design return period of 1 in 20 years.
- (h) Traffic barriers for Detours and Lane Shifts, where provided, will be provided along both sides, and adequately terminated to current Ministry standards as required. Where Traffic Barriers are used, the Design-Builder will make provision for drainage and removal of snow, ice and debris in accordance with Part 6 [Operation and Maintenance] of Schedule 3 to prevent impacts to the proposed Detour or Lane Shift.
- (i) Pavement Markings for all Detours and Lane Shifts will be in accordance with Section 1.10 [Temporary Pavement Markings] of this Part and the Traffic Management Manual.

1.7 Traffic Control Devices

- (a) Construction and Advisory Signs
 - (i) The Design-Builder will be responsible for the design, supply, installation, relocation, maintenance, and removal of all requisite signage and Pavement Markings, including temporary regulatory, warning, guide, advisory, directional, and dynamic message signs (“DMS”) and portable dynamic message signs (“PDMS”). The location and type of each sign will be indicated on the Traffic Control Plan in accordance with the Electrical and Signing Materials Standards, the Traffic Management Manual and the Manual of Standard Traffic Signs and Pavement Markings.
 - (ii) In accordance with Section 194 [Traffic Management for Work Zones] of the DBSS, all standard signs, new and replacement, will meet the Specifications for Standard Highway Sign Materials, Fabrication and Supply.
- (b) Dynamic Message Signs
 - (i) The Design-Builder will provide and use PDMSs to advance warn motorists and allow them adequate opportunity to divert prior to reaching the applicable location by providing:
 - (A) advance notice of each scheduled Lane Closure, Full Closure, Stoppage or Detour and of all traffic pattern changes and disruptions in accordance with Article 3 [Traffic Management Communications] of this Part and the Public Information Plan; and
 - (B) notification of Incidents or unplanned traffic pattern changes as deemed necessary by the Incident Management Plan.

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- (ii) The location of all, and all information displayed on, DMSs and PDMSs will be submitted to the Province in accordance with Section 3.2.3(b) of this Part and the Design-Builder will be responsible for the input and programming of the approved messaging for PDMSs.
 - (iii) The deployment of the PDMSs with regards to application and placement will be in accordance with Section 4.3.2 of the Traffic Management Manual.
 - (iv) The existing permanent (overhead) DMS on Highway 1 at Revelstoke and Golden will be used for advance messaging to the public. These DMS will be managed by the Province. An additional advance PDMS will be provided by the Design-Builder at the Revelstoke location as shown in the Dynamic Message Sign Locations Sketch provided in the Data Room.
 - (v) Programming of messaging for display on DMSs will be carried out by the Province.
- (c) Speed Reader Boards
- (i) The Design-Builder will provide a minimum of two Speed Reader Boards (“SRB”) for use, one on each approach to the Project Site.
 - (ii) The deployment of the SRBs with regards to application and placement will be in accordance with Section 4.11.3 of the Traffic Management Manual.

1.8 Traffic Barrier Requirements

- (a) The Design-Builder will supply and install traffic barriers in the following situations:
 - (i) between traffic and wall construction;
 - (ii) between traffic and excavations/embankment construction;
 - (iii) to meet drop-off delineation requirements;
 - (iv) where required in accordance with this Part; and
 - (v) where required by the Traffic Control Plan.
- (b) Traffic Barriers within the Project Site will be continuous or adequately protected by terminals, flares, or impact attenuators in accordance with the Traffic Management Manual. Temporary barriers will have reflectors installed in accordance with the Manual of Standard Traffic Signs and Pavement Markings.

1.9 Drop-Offs

The Design-Builder will perform all Construction to minimize drop-offs (abrupt changes in roadway elevation) left exposed to traffic. The treatment of drop-offs and travel lane excavations will be in accordance with Section 6.5 of the Traffic Management Manual. In addition to the requirements of

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Section 6.5 of the Traffic Management Manual, drop-offs left exposed to traffic during non-working hours will be delineated as follows:

- (a) no drop-offs will be allowed between adjacent lanes of traffic;
- (b) drop-offs greater than 300 mm:
 - (i) cannot remain for more than three consecutive days; and
 - (ii) cannot be present at any time during any Restricted Period described in Section 2.3 [Holidays] of this Part; and
- (c) all areas of excavation and their proposed safety measures will be shown in the Traffic Control Plan.

1.10 Temporary Pavement Markings

- (a) Further to Section 4.4 of the Traffic Management Manual, the Design-Builder will be responsible for the supply, application, maintenance and removal of all temporary Pavement Markings and reflective devices in accordance with Section 4.4.2 of the Traffic Management Manual. Further to the Traffic Management Manual, the material used for any temporary Pavement Markings will be paint with glass bead. The Design-Builder will apply all Pavement Markings in accordance with the signing and Pavement Markings drawings and the Detour and Lane Shift Design drawings. Only permanent Pavement Markings will be applied to the final pavement surface.
- (b) When traffic lanes are to be redefined for long-duration work (more than one daytime shift), the Design-Builder will eradicate all redundant temporary or permanent Pavement Markings that are not required for the intended traffic patterns and install revised markings.
- (c) The Design-Builder will always maintain positive delineation and will re-apply temporary Pavement Markings, delineators and barrier reflectors that are faded, damaged or missing.

1.11 Speed Limits

- (a) Further to Section 2.4 of the Traffic Management Manual, the Province reserves the right to determine speed limits within the Project Site considering the ongoing Project Work in the area and the Design-Builder's requirements.
- (b) Unless agreed to in writing by the Province, the Design-Builder will post the speed through the Project Site at:
 - (i) 80 km/h during Periods of Inactivity including Holiday Restricted Periods, nights and weekends; and
 - (ii) 50 km/h during Periods of Active Work.

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1.12 Accommodation of Railway and CPKC Vehicular Traffic

The Design-Builder will accommodate railway traffic and CPKC vehicular traffic in accordance with Part 4 [CPKC Interface] of Schedule 3.

1.13 Pedestrians and Cyclists

The Design-Builder will implement a strict monitoring program for ensuring the safe passage of pedestrians and cyclists through the work zone at all times, except during Full Closures. This program must be clearly detailed in the Traffic Management Plan.

ARTICLE 2 STOPPAGES AND CLOSURES

2.1 General Requirements

- (a) Two lanes of Highway 1, one in each direction, will be maintained at all times unless a Stoppage or Closure is permitted in accordance with this Article.
- (b) The types of Stoppages and Closures are defined in Table 2.1 [Stoppages and Closures] below:

Table 2.1: Stoppages and Closures

Stoppage	An occasional, temporary interruption of traffic flow in one or both directions caused or directed by the Design-Builder for the purpose of facilitating Construction.
Lane Closure (SLAT)	A Closure whereby one direction of traffic is held while the other is permitted to proceed, and then vice versa, with a single lane open to serve traffic in each direction in alternating cycles.
30 Minute Full Closure	A scheduled Closure, in both directions, that continues for a maximum duration of 30 minutes.
2 Hour Full Closure	A scheduled Closure, in both directions, that continues for more than 30 minutes and for a maximum duration of two hours.

2.2 Permitted Stoppages and Closures

Subject to acceptance by the Province's Representative in accordance with the Consent Procedure, to Section 2.3 [Holidays], Section 2.4 [Hold Points and Queue Requirements for Stoppages and Closures] and Section 2.5 [Rock Blasting Requirements for Stoppages and Closures] of this Part, Stoppages, Lane Closures and Full Closures are permitted on the dates, within the timeframes and with the durations each as set out in Table 2.2:

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Table 2.2: Permitted Stoppages and Closures

Type of Stoppage or Closure	Permitted Duration	Permitted Timeframes	
		May 15 – September 30	October 1 – May 14
Stoppage	Maximum 2 minutes	00:00 – 24:00	00:00 – 24:00
SLAT or 30 Minute Full Closure	Governed by delay, which must not exceed 30 minutes	00:00 - 08:00 19:00 - 24:00	00:00 - 24:00
2 Hour Full Closure	Up to 2 hours	00:00 - 06:00 23:00 - 24:00	00:00 - 08:00 22:00 - 24:00

and subject to the following additional requirements:

- (a) A Stoppage or Closure will not be permitted if any part of a Stoppage or Closure is outside of the permitted timeframes, or if the duration of a Stoppage or Closure is longer than the permitted durations, each as set out in Table 2.2.
- (b) A maximum of one 2 Hour Full Closure per night is permitted.
- (c) 2 Hour Full Closures will start at the top of the hour.
- (d) 2 Hour Full Closures will start at the same time for any calendar month.
- (e) The delay (defined as the time between when a vehicle is stopped to when that vehicle begins moving continuously so as to clear the queue) for a Closure will not exceed 30 minutes. If delay exceeds 30 minutes, the Design-Builder will immediately clear a lane, or lanes, as required to permit safe passage of traffic, even if the permitted Stoppage or Closure duration has not been reached. The Design-Builder will monitor and record delay durations associated with each Closure and combination of Closures to better determine Stoppage and Closure durations and provide such records to the Province's Representative for review. Delay performance will be managed in conjunction with queue performance as detailed in Section 2.4 [Hold Points and Queue Requirements for Stoppages and Closures] of this Part, and failure to comply with either or both such delay criteria and queue performance criteria will require the Design-Builder to open a lane or lanes.
- (f) At the end of a Lane Closure, the last car in the queue must be cleared before another Lane Closure can be implemented in the same direction of traffic.

2.3 Holidays

- (a) The Design-Builder will not implement any Closures during the Restricted Periods for all Holidays as set out in Table 2.3a [Holiday Restricted Periods] as follows:

Table 2.3a: Holiday Restricted Periods

Day on which Holiday falls	Restricted Periods
Weekday (Monday to Friday)	From 12:00 of the weekday before the Holiday to 12:00 of the weekday following the Holiday.

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Day on which Holiday falls	Restricted Periods
Weekend (Saturday, Sunday)	From 12:00 of the Friday before the Holiday to 12:00 of the Tuesday following the Holiday that is observed on a Monday. From 12:00 of the Thursday before the Holiday to 12:00 of the Monday following the Holiday that is observed on a Friday.

- (b) Holidays (each, a ‘**Holiday**’) are identified in Table 2.3b [Holidays] as follows:

Table 2.3b: Holidays

Name of Holiday	Year				
	2023	2024	2025	2026	2027
New Year’s Day	January 2	January 1	January 1	January 1	January 1
BC Family Day / AB Family Day	February 20	February 19	February 17	February 16	February 15
Good Friday	April 7	March 29	April 18	April 3	March 26
Easter Monday	April 10	April 1	April 21	April 6	April 29
Victoria Day	May 22	May 20	May 19	May 18	May 24
Canada Day	July 3	July 1	July 1	July 1	July 1
BC Day / AB Heritage Day	August 7	August 5	August 4	August 3	August 2
Labour Day	September 4	September 2	September 1	September 7	September 6
National Day for Truth and Reconciliation	September 30	September 30	September 30	September 30	September 30
Thanksgiving Day	October 9	October 14	October 13	October 12	October 11
Christmas Day	December 25	December 25	December 25	December 25	December 25
Boxing Day	December 26	December 26	December 26	December 26	December 26

- (c) The Design-Builder will assess all Holidays and include them in the Traffic Management Plan.

2.4 Hold Points and Queue Requirements for Stoppages and Closures

- (a) Hold points for Stoppages and Closures must be approved by the Province’s Representative in accordance with the Consent Procedure prior to implementing a Stoppage or Closure and are restricted for public safety based on avalanche hazard and sight distance. In the westbound direction, east of the snowsheds, traffic hold points are restricted to the locations identified on the Traffic Management Key Locations Plan.

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- (b) Hold points for Stoppages and Closures must be planned considering traffic volumes and queue lengths such that traffic queues do not extend into any of the No Stopping Zones identified on the Traffic Management Key Locations Plan.
- (c) Access to Jumping Creek Road must be retained at all times.
- (d) In addition to the permitted timeframes and durations for Stoppages and Closures set out In Section 2.2[Permitted Stoppages and Closures] of this Part, the Design-Builder will monitor and manage actual queue lengths during Stoppages and Closures and ensure that the:
 - (i) queue length for any Closure does not:
 - (A) extend into any of the No Stopping Zones identified on the Traffic Management Key Locations Plan; or
 - (B) exceed 3 km, measured from the hold points determined in accordance with Section 2.4(a) of this Part
 - (ii) maximum queue clearing time for any:
 - (A) Stoppage does not exceed five minutes; or
 - (B) Closure does not exceed 30 minutes,and provided that, if any such requirement is not met, the Design-Builder will immediately clear a lane for safe passage of traffic, even if the permitted Stoppage or Closure duration has not been reached.
- (e) The westbound back of queue must be managed with traffic control personnel and signing to ensure approaching drivers have sufficient warning to come to a safe stop. This queue management requires a traffic control vehicle to be driven slowly eastbound, with a traffic control person flagging approaching drivers to ensure they are aware of the stopped vehicles they are approaching. Sign placement must be continually monitored such that advance warning signs are located at the appropriate distance ahead of the back of queue, in accordance with the Traffic Management Manual.
- (f) In addition to complying with all applicable WorkSafeBC requirements; the Design-Builder will ensure that traffic queues that form from any Stoppages or Closures are not located within or extend into any of the Avalanche Hazard Areas during the Avalanche season as noted in Appendix 4C [Snow Avalanche Safety Measures] to this Schedule.
- (g) Traffic must not be stopped or held in snowsheds except with prior consent of the Province along with appropriate traffic management to ensure the safety of the travelling public.
- (h) Queues will be continually monitored to ensure the public remains in their vehicles at all times.

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2.5 Rock Blasting Requirements for Stoppages and Closures

- (a) The Design-Builder must demonstrate to the Province's Representative that all Project Work causing any Stoppages or Closures can be completed within the applicable permitted durations and timeframes for any such Stoppage or Closure as specified in Article 2.2 [Permitted Stoppages and Closures] of this Part, by progressive build-up of Construction activities in order to satisfy the Province's Representative that the queue can be cleared within the maximum specified Queue Clearing Times. For example, during blasting activities the Design-Builder will carry out a gradual build-up of the blast sizes from 50% to 75%, 90%, and 100% of estimated design blasts. In this manner, the Design-Builder will assess and modify (as required) the blasting design and activities to ensure that all aspects and implications of blasting and excavation including, but not limited to, safety, traffic management, rock blasting procedures, physical relationship between Highway 1, CPKC, Project Infrastructure and blast location, natural conditions of the rock, and volume of blasted material, have been met to the satisfaction of the Province's Representative before proceeding to the next increase.
- (b) Production rock blasting and excavation will be permitted during Stoppages and Closures only after the Design-Builder has successfully completed rock blasting testing in accordance with the Rock Excavation Process Progressive Test Procedure Plan, as required by Section 5.5.3 [Rock Excavation Process Progressive Test Procedure Plan] of Part 1 of this Schedule, which demonstrates that blasting during Stoppages and Closures can be done within the permitted Stoppage and Closure durations that the Design-Builder is proposing. For example, if the Design-Builder is proposing to do blasting within the two hour permitted Closure timeframes, then the Design-Builder must demonstrate that the production rock blasting and excavation can be completed and that the lanes can be safely opened to traffic within that duration.
- (c) Once the Design-Builder has successfully demonstrated this process, the Design-Builder may perform production rock blasting and excavation within the applicable Stoppage or Closure timeframes unless and until one of the following situations occurs:
 - (i) a new rock blasting and excavation location or face is identified;
 - (ii) the geology of the rock to be blasted changes significantly;
 - (iii) the methodology for rock blasting or excavation is changed;
 - (iv) a non-compliant Stoppage or Closure has occurred;
 - (v) changes in natural rock characteristics such as geology, faults, and fractures exist; or
 - (vi) the proximity of the rock excavation to the travelled roadway or height of rock excavation changes.
- (d) Following the occurrence of any one of the situations set out in Section 2.5(c) of this Part, the Design-Builder will not continue with production rock blasting and excavation requiring any Stoppage or Closure until a Rock Excavation Process Progressive Test Procedure Plan

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for the new situation has been accepted by the Province's Representative in accordance with the Consent Procedure.

2.6 Non-Permitted Traffic Disruption Events

Any Stoppage or Closure occurring:

- (a) other than as expressly permitted pursuant to this Article; or
- (b) in the circumstances contemplated in Section 2 [Avalanche Safety Responsibility] of Appendix 4C to this Schedule,

is a Non-Permitted Traffic Disruption Event, and Traffic Management Payments will be payable by the Design-Builder to the Province pursuant to and in accordance with Schedule 9 [Performance Mechanism], in respect of each such Non-Permitted Traffic Disruption Event.

ARTICLE 3 TRAFFIC MANAGEMENT COMMUNICATIONS

3.1 Performance Measures

- (a) The table in Section 3.2 [Traffic Management Performance Measures] of this Part sets out:
 - (i) performance measures to be met by the Design-Builder in relation to traffic management communications;
 - (ii) the timing for each such performance measure, where applicable; and
 - (iii) whether any deliverables included within such performance measures are required to be submitted under the Review Procedure or the Consent Procedure.
- (b) In respect of any performance measure set out in such table with a designation of "Major" or "Severe" in the column entitled "Performance Mechanism Index", such designation will inform the basis on which NCE Points will be assigned in accordance with Appendix 9A [Assignment of NCE Points] to Schedule 9, and NCE Points may be assigned in accordance with Section 6.1 [Nonconformity Reporting Process] of Schedule 7 for any other performance measures set out in such table.
- (c) Any timing requirements in such table will be in addition to, and will not replace, any other timing requirements provided in this Agreement.

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3.2 Traffic Management Communications

	Performance Measure	Timing	Performance Mechanism Index
3.2.1	Construction and Traffic Notifications: The Design-Builder will:		
	(a) provide, using email templates provided by the Province, email notification regarding Construction and Operation and Maintenance activities that have the potential to adversely affect traffic, including but not limited to approved Stoppages, Lane Closures, Full Closures, Lane Shifts or Detours, to emergency responders (including but not limited to Police, fire, ambulance, search and rescue, Parks Canada, regional health authorities, area hospitals and regional emergency service providers):	(A) no later than 7 days in advance of the approved activity;	
		(B) immediately upon actual occurrence of the approved activity and upon its termination; and	
		(C) within 15 minutes in the event that the activity is postponed or rescheduled	
	(b) develop and distribute, using email or mail templates provided by the Province, notification of approved Construction, or Operations and Maintenance activity, including traffic notifications, for email subscribers and Interested Parties:	(A) no later than 7 days in advance of the approved activity for activities such as a Lane Closure, 30 Minute Full Closure or daytime construction;	
		(B) no later than 15 days in advance of the approved activity for activities such as pile driving, significant noise, and 2 Hour Full Closures; and	

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	Performance Measure	Timing	Performance Mechanism Index
		(C) within 1 Business Day in the event that the activity is postponed or rescheduled;	
	(c) submit all email notifications for approved activities to the Province pursuant to the Review Procedure;	Submit 15 days prior to scheduled distribution	
	(d) keep the Design-Builder's electronic tracking system established in accordance with Schedule 15 [Communications and Engagement] updated to track Construction and traffic notification activities, including a description of the type of notification, date it was issued, method of delivery and to whom the notice was issued (including mail-out areas, email distribution lists, door-to-door delivery or visits) and any related correspondence; and	Current to within 1 Business Day	
	(e) enter information regarding Construction and Operation and Maintenance activities that have the potential to adversely affect traffic, including but not limited to approved Stoppages, Lane Closures, Lane Shifts or Detours, into the Transportation Management Centre of British Columbia/Drive BC traveller information system:	(A) no later than 7 days in advance of the approved activity	
		(B) immediately upon actual occurrence of the approved activity and upon its termination; and	
		(C) within 15 minutes in the event that the activity is postponed or rescheduled	
3.2.2	Advertising Communications: The Design-Builder will:		
	(a) provide information and content regarding general Project information, Construction activities and traffic impacts to the Province to support advertising or Project updates that the Province may undertake;	Within 15 days of request by the Province	
	(b) using templates provided by the Province, communicate notice of Construction activities that are of significant impact or duration, via construction notices through direct mail to residents and businesses within a 2 kilometre distribution radius of the area/interchange of impact and via email;	Not less than 7 days in advance of scheduled Construction activity	Major

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	Performance Measure	Timing	Performance Mechanism Index
	(c) submit all material in Section 3.2.2(a) and (b) of this Part to the Province's Representative pursuant to the Consent Procedure; and	Not less than 30 days before intended distribution	
	(d) submit to the Province for consideration pursuant to the Consent Procedure any other proposed forms of notification that provide equivalent or better reach, including text message notifications, or other techniques.	Before adopting for use	
3.2.3	Information Signs: The Design-Builder will:		
	(a) during Construction: (i) arrange, produce, install, remove, store and manage static and dynamic signs to provide road users with information about upcoming Construction activities that have the potential to affect traffic;	As required	Major
	(ii) ensure that signs meet Province standards and are of appropriate size, colour, lighting and location to ensure visibility;		
	(iii) include the Project phone line number on all Project signs and all Design-Builder signs in a font size large enough to be visible to drivers;		
	(iv) keep signs in good condition when installed and repair or replace damaged signs within 48 hours;		
	(v) remove graffiti on signs within 48 hours, or, if graffiti cannot be removed, replace signs within 72 hours; and		
	(vi) provide personnel to install, remove, and relocate signs on an expedited basis as required and if requested by the Province;		
	(b) submit to the Province pursuant to the Review Procedure before intended deployment, proposed text, timing and location of all proposed static and dynamic message signs including shop drawings; installation details and a mock-up of the text; and confirmation of permits (if applicable);	Not less than 15 days before deployment	
	(c) ensure that portable dynamic message signs provide advance notification of planned traffic pattern changes; and	Minimum of 5 Business Days prior to the date of implementation	
	(d) for all static signs, use colours and designs, consistent with the visual identity and graphic standard provided that: (i) identifies the Project Infrastructure in such a manner as to ensure that it is clear in the general public's perception that the Project Infrastructure is part of the Provincial Highway System;		

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	Performance Measure	Timing	Performance Mechanism Index
	(ii) visually differentiates from the Province and other government agencies;		
	(iii) clearly communicates the Project intent; and		
	(iv) is consistent with other Design-Builder communications and engagement material for the Project, as accepted by the Province in accordance with this Schedule.		

ARTICLE 4 TRAFFIC MANAGEMENT PLAN

4.1 General Requirements

- (a) Within 90 days following the Effective Date, the Design-Builder will submit an initial Traffic Management Plan to the Province's Representative pursuant to the Consent Procedure. At a minimum the initial Traffic Management Plan and sub-plans will cover the first year of Construction activities following the Effective Date. Following Province acceptance of the initial Traffic Management Plan, the Design-Builder will submit all subsequent proposed changes to the Traffic Management Plan, including sub-plans, to the Province's Representative pursuant to the Consent Procedure.
- (b) The Traffic Management Plan will be a specific plan for the Project Work detailing the strategies for protecting workers, and safely and efficiently moving road users through the work zone, including any requirements of the Ministry and other Governmental Authorities, and will include detailed documentation of risk assessment developed in accordance with Section 18.3 (and applicable sub-sections) of the OHS Regulation including, as an appendix to the Traffic Management Plan, a risk assessment, compliant with Section 18.3 of the OHS Regulation, which is independent of the Traffic Management Manual Section 3.3.2 Project Risk Analysis used for project category determination and will include the following:
 - (i) site specific risks and hazards;
 - (ii) the Design-Builder's traffic control strategy as it pertains to Order of Control Measures;
 - (iii) justification for use of Traffic Control Plans (if utilized), and measures taken for Traffic Control Plan safety; and
 - (iv) other applicable specifications referenced in Part 18 [Traffic Control] of the OHS Regulation.
- (c) The Traffic Management Plan and all updates thereto will be consistent with and comply with all of the requirements set forth in this Part and all other relevant provisions of this Agreement.
- (d) The Traffic Management Plan will reference and interface with the Construction Quality Management Plan provided in accordance with Schedule 7 [Quality Management] and coordinate with the Rock Excavation Process Progressive Test Procedure Plan provided in

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accordance with Section 5.5.3 [Rock Excavation Process Progressive Test Procedure Plan] of Part 1 of this Schedule.

- (e) In addition to the requirements set out in this Section, the Design-Builder will not conduct any Construction that affects traffic without a current Traffic Management Plan that has also been accepted and signed and sealed by the Traffic Engineer.
- (f) This work has been assessed to be a Category 3 Project in accordance with the Traffic Management Manual. The Traffic Management Plan will comply with the definitions and guidelines provided in the Traffic Management Manual.
- (g) The Traffic Management Plan will outline how general traffic, as well as the traffic generated by Project Work, is to be managed.
- (h) The Traffic Management Plan will include coordination of traffic management strategies with the District Avalanche Technician, the Winter Maintenance Contractor and Parks Canada in accordance with Appendix 4C [Snow Avalanche Safety Measures] to this Schedule and any coordination with the Province and its maintenance contractors as contemplated in Section 6.2(d) of Schedule 3 [Design and Construction General Requirements].
- (i) The following sub-plans for the Traffic Management Plan are required:
 - (i) Traffic Control Plans;
 - (ii) Incident Management Plan;
 - (iii) Public Information Plan; and
 - (iv) Implementation Plan.
- (j) Starting on the Effective Date, the Design-Builder will provide to the Province a schedule of proposed Closures for the upcoming three months and the schedule will be updated and resubmitted to the Province on a monthly basis.

4.2 Traffic Management Sub-Plans

4.2.1 Traffic Control Plans

- (a) The Design-Builder will prepare Project specific Traffic Control Plans in accordance with the Traffic Management Plan, the Traffic Management Manual and other Reference Documents for all activities that affect traffic operations, including but not limited to:
 - (i) site-specific traffic control layouts;
 - (ii) each Construction stage; and
 - (iii) activation of newly constructed roads and Structures.

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- (b) The Design-Builder is assigned responsibility for, and will at all times make provision for, traffic to pass throughout the Project Site in accordance with this Part as well as ensuring the convenience and safety of the public, vehicular, cycling and pedestrian traffic, and the workers on the Project Site, and the protection of the Project Work.
- (c) Any one or more of the advance warning areas, transition areas, buffer spaces, queuing areas, work areas and termination areas of the Traffic Control zone may be outside the Project Site, but this will in no way diminish the Design-Builder's responsibility to meet the requirements of the Traffic Management Manual.
- (d) Construction signs, specific to an operation, will be either removed or effectively covered so that their message is obscured whenever such operation is not in progress.
- (e) Further to the Category 3 Traffic Management Plan requirements in the Traffic Management Manual, the Design-Builder will demonstrate to the Province's Representative that each proposed Closure can be managed to meet the required performance criteria set out in this Part by progressive build up of Closure durations, undertaken during periods with similar traffic volumes so as to be representative, in order to prove to the Province's Representative that the queue length can be managed, and delays do not exceed prescribed limits. The Design-Builder will record the time of day, duration of Closure, length of queue and delay and submit to the Province's Representative in accordance with the Review Procedure. For each subsequent Closure request, the Design-Builder will submit to the Province's Representative the historical performance data for recent Closures to the Province's Representative along with a rationale for how such data demonstrates that the proposed Closure will meet the performance criteria set out in this Part, with reference to traffic profiles and time and day.
- (f) Each Traffic Control Plan will include a brief narrative detailing how traffic will be managed including queue management.
- (g) The Design-Builder will be responsible for including Construction generated traffic data in the Traffic Control Plan and any associated traffic analysis.
- (h) The Design-Builder will continuously measure the effectiveness of Traffic Control Plans and, if those measurements indicate a Traffic Control Plan is non-compliant:
 - (i) the Design-Builder will immediately adjust the Traffic Control Plan to bring it into compliance and resubmit it in accordance with Section 2.5.6 of the Traffic Management Manual; and
 - (ii) the Traffic Control Supervisor will submit a notification of such non-compliance to the Province's Representative in accordance with Section 1.3(f)(ii) of this Part.
- (i) The Traffic Control Plan will include designs prepared by a Professional Engineer for each Stoppage, Lane Closure, Full Closure, Detour and Lane Shift. The locations and details of all signs, PDMSs, Pavement Markings, barriers, and protective works will be provided on the drawings. All traffic control layout drawings are to be signed/sealed by the Traffic Engineer.
- (j) The Traffic Control Plans and traffic analysis will consider regional traffic, planned works by others on Highway 1 and other Parks Canada projects in the region. In addition, the

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Design-Builder will cooperate with the Province and Parks Canada with respect to coordination of traffic stoppages to minimize inconvenience and delays to the travelling public.

4.2.2 Incident Management Plan

- (a) The Design-Builder will prepare and submit an Incident Management Plan in accordance with the requirements of the Traffic Management Manual for Category 3 projects, Article 3 [Traffic Management Communications] of this Part, and Sections 1.4(e) and 5.3(b) of Schedule 15 [Communications and Engagement].
- (b) Should any unplanned events or Incidents occur, the Design-Builder will notify, in addition to the Road Authority as defined in the Traffic Management Manual, the Regional Transportation Management Centre regarding worker and public safety, traffic conditions, and actions taken to normalize traffic flow.
- (c) The Incident Management Plan will specify how the Design-Builder will provide access for emergency vehicles. The Design-Builder will provide a dedicated radio channel for uninterrupted communication at all times with each of the emergency providers. The Design-Builder will supply its own radios, which will be compatible with the radio system of the emergency services providers in the corridor. The Design-Builder is responsible for coordinating the setup of the radio channels in a timely manner prior to start of Construction, since there can be a long lead time associated with the approvals and the set up.
- (d) The Design-Builder will consult with emergency responders (including but not limited to Police, fire, ambulance, search and rescue, regional health authorities, area hospitals and municipal and regional emergency service providers) in developing the Incident Management Plan, and liaise closely with them throughout Construction.
- (e) The Incident Management Plan will also address access via the Project Site for Incidents or emergencies external to the Project Site but for which emergency vehicles and response personnel require passage over the Project Site.
- (f) The Incident Management Plan will also address access via the Project Site for Incidents or emergencies along the railway tracks, external to the Project Site, but for which emergency vehicles and response personnel from CPKC require passage over the Project Site.
- (g) The Incident Management Plan will include a description of how the Design-Builder proposes to address the following scenarios:
 - (i) an Incident on Highway 1 within the Project Site when Lane Closures are in place;
 - (ii) an Incident on another Highway 1 location when Lane Closures are in place on Highway 1 within the Project Site; and
 - (iii) an Incident involving Railway Operations.

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4.2.3 Public Information Plan

- (a) The Design-Builder will prepare and submit a Public Information Plan that meets the requirements of a Category 3 project in the Traffic Management Manual for the communications required in accordance with Article 3 [Traffic Management Communications] of this Part and Sections 3.2.3 and 3.4.3 of the Traffic Management Manual.
- (b) As part of the Public Information Plan, the Design-Builder will prepare and implement an Advisory Signing Plan. The primary objective of the Advisory Signing Plan is to notify the travelling public in advance of the scheduled Construction, Detours, Lane Closures, Full Closures and Stoppages.

4.2.4 Implementation Plan

The Design-Builder will prepare and submit an Implementation Plan in accordance with the requirements of the Traffic Management Manual for Category 3 projects. This plan will identify the Traffic Control Supervisor, Traffic Engineer and Operations/Traffic Manager, along with the qualifications and experience of those named individuals. This plan will also define processes to ensure that the Traffic Control and Incident Management Plans are developed and implemented efficiently and appropriately, and that they are kept up-to-date with necessary modifications during Construction.

ARTICLE 5 RESPONSIBILITIES FOR TRAFFIC MANAGEMENT PLAN

5.1 Design-Builder Responsibilities

The Design-Builder will accept full responsibility for quality control and quality assurance of all activities affecting the Traffic Management Plan in accordance with Sections 2.5.5 and 2.6 of the Traffic Management Manual. The Traffic Management Plan quality control process will be included in the Traffic Quality Management Plan. The Design-Builder will ensure that all personnel identified in the Traffic Management Plan are suitably qualified and licensed compliant with WorkSafeBC regulation.

5.2 Operations/Traffic Manager

The Design-Builder will designate an Operations/Traffic Manager, who will be a Key Individual subject to the applicable requirements of Section 3.3 [Key Individuals] of this Agreement and who will be responsible for the following:

- (a) developing, implementing and managing the Traffic Management Plan;
- (b) ensuring the Design-Builder's traffic management personnel are trained and certified;
- (c) ensuring the required traffic control equipment is available for use and maintained per manufacturer's or equipment maintenance specifications;
- (d) ensuring the Province's Representative is kept informed of all upcoming traffic activities and any revisions to the Traffic Management Plan;
- (e) ensuring that appropriate modifications are made to the Traffic Management Plan if the specified traffic control measures are not achieving the desired effect; and

SCHEDULE 4: DESIGN AND CONSTRUCTION TECHNICAL REQUIREMENTS

Part 3: Traffic Management

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- (f) coordinating with adjacent work areas, including work being carried out by others;

5.3 Traffic Engineer

- (a) The Design-Builder will designate a Professional Engineer as the Traffic Engineer, who has the Design-Builder's authority to review and seal the Traffic Management Plan and associated sub-plans and take responsibility for ensuring that all traffic engineering issues and requirements are taken into account.
- (b) The Traffic Engineer will be a certified Professional Traffic Operations Engineer, currently registered and in good standing with the Transportation Professionals Certification Board Inc. and/or have a minimum of eight years of experience in the field of traffic engineering.
- (c) The Traffic Engineer will sign and seal the Traffic Management Plan, all Traffic Control Plans and all traffic engineering checklists and signal timing sheets.

5.4 Traffic Control Supervisors

- (a) The Design-Builder will designate one or more Traffic Control Supervisors, each of whom will have the Design-Builder's authority to respond to traffic control requirements and each of whom will personally perform all the duties of the Traffic Control Supervisor, in accordance with this Part.
- (b) Further to Section 194.04 of the DBSS, a Traffic Control Supervisor will be on the Project Site full-time when active Construction is underway. The Traffic Control Supervisor will have direct line authority over all of the Design-Builder's traffic control personnel and procedures on the Project Site. The Design-Builder will not designate the Site Superintendent as the Traffic Control Supervisor. The Traffic Control Supervisor will have no other duties.
- (c) The duties of the Traffic Control Supervisor will include but not be limited to the following:
 - (i) directing all traffic control operations on the Project Site and coordinating with other contractors for any adjacent construction or maintenance operation;
 - (ii) liaising with the Province's Representative, as required;
 - (iii) recording the actual duration of Lane Closures, Stoppages, Full Closures, Detours and Lane Shifts and unauthorized traffic delays and forwarding this information, on a daily basis, to the Province for information;
 - (iv) monitoring and recording queue lengths in active Construction zones and implementing appropriate measures when such queues become excessive;
 - (v) documenting Traffic Control measures and activities in accordance with this Part; and
 - (vi) overseeing all requirements of the Agreement that contribute to the convenience, safety, and orderly movement of vehicular, cycling and pedestrian traffic.

SCHEDULE 4: DESIGN AND CONSTRUCTION TECHNICAL REQUIREMENTS

Part 3: Traffic Management

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- (d) Traffic control supervision will be provided by the Traffic Control Supervisor on the Project Site on a 24 hour per day basis when active Construction is underway. During non-work periods, the Traffic Control Supervisor or accepted alternate will be on the Project Site within 45 minutes of being notified. The Traffic Control Supervisor will have appropriate personnel and equipment available on call, at all times.

5.5 Traffic Control Personnel

All traffic control personnel will be suitably qualified and licensed compliant with WorkSafeBC regulation and in accordance with Health and Safety Laws.

5.6 Temporary Traffic Control On-site Road Safety Audits

- (a) Temporary Traffic Control [Design and On-site] Road Safety Audits will be carried out in accordance with Article 13 [Road Safety Audit] of Part 1 of this Schedule.
- (b) In addition, the Design-Builder will audit each Detour, Lane Shift or other Traffic Management in accordance with the requirements of Section 4.8 [Traffic Management Auditing] of Schedule 7.

SCHEDULE 4: DESIGN AND CONSTRUCTION TECHNICAL REQUIREMENTS

**APPENDIX 4A
FORM OF DESIGN AND CONSTRUCTION CERTIFICATES**

1. Design Certificate (General)
2. Design Certificate (Independent Check for Category III Structures)
3. Design Certificate (Environmental)
4. Road Safety Audit Certificate (Stage 1)
5. Road Safety Audit Certificate (Stage 2)
6. Road Safety Audit Certificate (Stage 3)
7. Road Safety Audit Certificate (Stage 4)
8. Construction Certificate
9. Assessment Certificate (Structures)/Avalanche

SCHEDULE 4: DESIGN AND CONSTRUCTION TECHNICAL REQUIREMENTS

Appendix 4A: Form of Design and Construction Certificates

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Certificate Form 1

Certificate Ref No. []

DESIGN CERTIFICATE (GENERAL)

In respect of :..... (Provide details e.g. Highways/Geotechnical/Traffic Operations Modelling/Landscape etc.)

Agreement between His Majesty the King in right of the Province of British Columbia, BC Transportation Financing Authority and Emil Anderson Construction (EAC) Inc. dated July 31, 2024 ("the Agreement") relating to the Project. Defined terms and expressions used in the Agreement have the same meanings in this Certificate.

Form of Certificate to be used for certifying the Design in accordance with Part 2 of Schedule 4 to the Agreement.

1. We certify that we have the requisite professional qualifications, skill and experience to prepare the Design Data referred to herein in accordance with the requirements of the Agreement and all relevant Project Requirements.
2. We certify that we have prepared the Design Data for [.....] listed in the Schedule hereto in accordance with all applicable requirements contained in the Design Management Plan and the Design Quality Management Plan and utilizing the standards of care, skill and diligence that, in accordance with the standards of our profession, are required of experienced professionals undertaking the preparation of such Design Data, and that in our professional opinion such Design Data:
 - (i) complies with all applicable Project Requirements, as amended by the following:
[List, if any, the changes made by the issue of Change Certificates];
 - (ii) complies with all applicable design requirements of the Agreement;
 - (iii) complies with all applicable standards, codes and current Good Industry Practice;
and
 - (iv) accurately describes and depicts the work to be undertaken.

**JUMPING CREEK TO MACDONALD SNOWSHED PROJECT
DESIGN-BUILD AGREEMENT**

***Commercial in Confidence
Execution***

SCHEDULE 4: DESIGN AND CONSTRUCTION TECHNICAL REQUIREMENTS

Appendix 4A: Form of Design and Construction Certificates

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SCHEDULE

[Include here drawing numbers and titles, reports, calculations, etc.]

Signed:
Designer (Principal)
Name:
Title:
Date:
Professional Registration Number:
Affix Professional Seal

Signed:
Design-Builder's Representative
Name:
Date:

SCHEDULE 4: DESIGN AND CONSTRUCTION TECHNICAL REQUIREMENTS

Appendix 4A: Form of Design and Construction Certificates

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Certificate Form 2

Certificate Ref. No []

DESIGN CERTIFICATE (INDEPENDENT CHECK FOR CATEGORY III STRUCTURES)

Agreement between His Majesty the King in right of the Province of British Columbia, BC Transportation Financing Authority and Emil Anderson Construction (EAC) Inc. dated July 31, 2024 ("the Agreement") relating to the Project. Defined terms and expressions used in the Agreement have the same meanings in this Certificate.

Form of Certificate to be used for certifying the design of Category III Structures incorporated in the Project Work, in accordance with Part 2 of Schedule 4 to the Agreement.

1. We certify that we have the requisite professional qualifications, skill and experience to perform an independent check of the Design Data referred to herein in accordance with the requirements of the Agreement.
2. We certify that we have performed an independent check (as required in the Agreement for Category III Structures) of the Design Data for [.....] **[Name of the Structure and list of all elements of the Structure included in the Design Data]** listed in the Schedule hereto **[and annexed in accordance with all applicable requirements contained in the Design Management Plan and the Design Quality Management Plan]** and utilizing the standards of care, skill and diligence that, in accordance with the standards of our profession, are required of experienced professionals undertaking such an independent check, and that in our professional opinion:
 - i. the said Design Data meets performance expectations outlined in the Agreement, **[including Technical Appraisal Form]** No. [.....] dated [.....], as amended by the following:

[List, if any, the changes made by the issue of Change Certificates, and any Addenda to the foregoing Technical Appraisal Form]; and
 - ii. the design, methodologies and assumptions are consistent with Good Industry Practice.

SCHEDULE 4: DESIGN AND CONSTRUCTION TECHNICAL REQUIREMENTS

Appendix 4A: Form of Design and Construction Certificates

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SCHEDULE

[Include here drawing numbers and titles and reports, calculations, etc.]

Signed:
Checking Team (Principal)
Name:
Title:
Date:
Professional Registration Number:
Affix Professional Seal

Signed:
Design-Builder's Representative
Name:
Date:

SCHEDULE 4: DESIGN AND CONSTRUCTION TECHNICAL REQUIREMENTS

Appendix 4A: Form of Design and Construction Certificates

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Certificate Form 3

Certificate Ref No. []

DESIGN CERTIFICATE (ENVIRONMENTAL)

Agreement between His Majesty the King in right of the Province of British Columbia, BC Transportation Financing Authority and Emil Anderson Construction (EAC) Inc. dated July 31, 2024 ("the Agreement") relating to the Project. Defined terms and expressions used in the Agreement have the same meanings in this Certificate.

Form of Certificate to be used for certifying the design of environmental works incorporated in the Project Work, in accordance with Part 2 of Schedule 4 to the Agreement.

1. We certify that we have the requisite professional qualifications, skill and experience to prepare the Design Data referred to herein in accordance with the requirements of the Agreement and all relevant Project Requirements.
2. We certify that we have prepared the Design Data for [.....] **[Site Restoration and Revegetation Planting; Wildlife Ramp]** in the Schedule hereto and annexed in accordance with all applicable requirements contained in the Design Management Plan and the Design Quality Management Plan and utilizing the standards of care, skill and diligence that, in accordance with the standards of our profession, are required of experienced professionals undertaking the preparation of such Design Data, and that in our professional opinion:
 - i. the said Design Data complies with all applicable Project Requirements, including Technical Appraisal Form No. [.....] dated [.....], as amended by the following:

[List, if any, the changes made by the issue of Change Certificates, and any Addenda to the foregoing Technical Appraisal Form];
 - ii. the said Design Data complies with all applicable design requirements of the Agreement; and
 - iii. the said Design Data complies with all applicable standards, codes and current Good Industry Practice.

**JUMPING CREEK TO MACDONALD SNOWSHED PROJECT
DESIGN-BUILD AGREEMENT**

***Commercial in Confidence
Execution***

SCHEDULE 4: DESIGN AND CONSTRUCTION TECHNICAL REQUIREMENTS

Appendix 4A: Form of Design and Construction Certificates

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SCHEDULE

[Include here drawing numbers and titles and reports, calculations, etc.]

Signed:
Designer (Principal)
Name:
Title:
Date:
Professional Registration Number:
Affix Professional Seal

Signed:
Environmental Manager
Name:
Title:
Date:
Professional Registration Number:
Affix Professional Seal

SCHEDULE 4: DESIGN AND CONSTRUCTION TECHNICAL REQUIREMENTS

Appendix 4A: Form of Design and Construction Certificates

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Certificate Form 4

Certificate Ref No. []

ROAD SAFETY AUDIT CERTIFICATE (STAGE 1)

Agreement between His Majesty the King in right of the Province of British Columbia, BC Transportation Financing Authority and Emil Anderson Construction (EAC) Inc. dated July 31, 2024 ("the Agreement") relating to the Project. Defined terms and expressions used in the Agreement have the same meanings in this Certificate.

Form of Certificate to be used for certifying that a Stage 1 Road Safety Audit has been carried out in accordance with Article 13 of Part 1 of Schedule 4 to the Agreement.

1. We certify that the preliminary design of [.....] has been the subject of a Stage 1 Road Safety Audit in accordance with Article 13 of Part 1 of Schedule 4 to the Agreement, the Design Management Plan, the Design Quality Management Plan and all other relevant provisions of the Agreement.
2. The Audit Team's report and statement certifying the audit has been carried out are attached.

Signed:
Audit Team (Principal)
Name:
Title:
Date:
Professional Registration Number:
Affix Professional Seal

3. We certify that the preliminary design of [.....] has been the subject of a Stage 1 Road Safety Audit in accordance with Article 13 of Part 1 of Schedule 4 to the Agreement, the Design Management Plan, the Design Quality Management Plan and all other relevant provisions of the Agreement and that all observations and recommendations in the Audit Team's report have been satisfactorily addressed and resolved.

Signed:
Design-Builder (Principal)
Name:
Title:
Date:
Professional Registration Number:
Affix Professional Seal

**JUMPING CREEK TO MACDONALD SNOWSHED PROJECT
DESIGN-BUILD AGREEMENT**

***Commercial in Confidence
Execution***

SCHEDULE 4: DESIGN AND CONSTRUCTION TECHNICAL REQUIREMENTS

Appendix 4A: Form of Design and Construction Certificates

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Signed:
Designer (Principal)
Name:
Title:
Date:
Professional Registration Number:
Affix Professional Seal

Signed:
Design-Builder's Representative
Name:
Date:

SCHEDULE 4: DESIGN AND CONSTRUCTION TECHNICAL REQUIREMENTS

Appendix 4A: Form of Design and Construction Certificates

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Certificate Form 5

Certificate Ref. No. []

ROAD SAFETY AUDIT CERTIFICATE (STAGE 2)

Agreement between His Majesty the King in right of the Province of British Columbia, BC Transportation Financing Authority and Emil Anderson Construction (EAC) Inc. dated July 31, 2024 ("the Agreement") relating to the Project. Defined terms and expressions used in the Agreement have the same meanings in this Certificate.

Form of Certificate to be used for certifying that a Stage 2 Road Safety Audit has been carried out in accordance with Article 13 of Part 1 of Schedule 4 to the Agreement.

1. We certify that the Detailed Design of [.....] has been the subject of a Stage 2 Road Safety Audit in accordance with Article 13 of Part 1 of Schedule 4 to the Agreement, the Design Management Plan, the Design Quality Management Plan and all other relevant provisions of the Agreement.
2. The Audit Team's report and statement certifying the audit has been carried out are attached.

Signed:
Audit Team (Principal)
Name:
Title:
Date:
Professional Registration Number:
Affix Professional Seal

3. We certify that the Detailed Design of [.....] has been the subject of a Stage 2 Road Safety Audit in accordance with Article 13 of Part 1 of Schedule 4 to the Agreement, the Design Management Plan, the Design Quality Management Plan and all other relevant provisions of the Agreement and that all observations and recommendations in the Audit Team's report have been satisfactorily addressed and resolved.

Signed:
Design-Builder (Principal)
Name:
Title:
Date:
Professional Registration Number:
Affix Professional Seal

**JUMPING CREEK TO MACDONALD SNOWSHED PROJECT
DESIGN-BUILD AGREEMENT**

***Commercial in Confidence
Execution***

SCHEDULE 4: DESIGN AND CONSTRUCTION TECHNICAL REQUIREMENTS

Appendix 4A: Form of Design and Construction Certificates

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Signed:
Designer (Principal)
Name:
Title:
Date:
Professional Registration Number:
Affix Professional Seal

Signed:
Design-Builder's Representative
Name:
Date:

SCHEDULE 4: DESIGN AND CONSTRUCTION TECHNICAL REQUIREMENTS

Appendix 4A: Form of Design and Construction Certificates

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Certificate Form 6

Certificate Ref. No. []

ROAD SAFETY AUDIT CERTIFICATE (STAGE 3)

Agreement between His Majesty the King in right of the Province of British Columbia, BC Transportation Financing Authority and Emil Anderson Construction (EAC) Inc. dated July 31, 2024 ("the Agreement") relating to the Project. Defined terms and expressions used in the Agreement have the same meanings in this Certificate.

Form of Certificate to be used for certifying that a Stage 3 Road Safety Audit has been carried out in accordance with Article 13 of Part 1 of Schedule 4 to the Agreement.

1. We certify that the [Final Design/IFC Drawings] of [.....] has been the subject a Stage 3 Road Safety Audit in accordance with Article 13 of Part 1 of Schedule 4 to the Agreement, the Design Management Plan, the Design Quality Management Plan and all other relevant provisions of the Agreement.
2. The Audit Team's report and statement certifying the audit has been carried out are attached.

Signed:
Audit Team (Principal)
Name:
Title:
Date:
Professional Registration Number:
Affix Professional Seal

3. We certify that the [Final Design/IFC Drawings] of [.....] has been the subject of a Stage 3 Road Safety Audit in accordance with Article 13 of Part 1 of Schedule 4 to the Agreement, the Design Management Plan, the Design Quality Management Plan and all other relevant provisions of the Agreement addressing all changes subsequent to the review of the Final Design of [.....] and that all observations and recommendations in the Audit Team's report have been satisfactorily addressed and resolved.

Signed:
Design-Builder (Principal)
Name:
Title:
Date:
Professional Registration Number:
Affix Professional Seal

**JUMPING CREEK TO MACDONALD SNOWSHED PROJECT
DESIGN-BUILD AGREEMENT**

***Commercial in Confidence
Execution***

SCHEDULE 4: DESIGN AND CONSTRUCTION TECHNICAL REQUIREMENTS

Appendix 4A: Form of Design and Construction Certificates

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Signed:
Designer (Principal)
Name:
Title:
Date:
Professional Registration Number:
Affix Professional Seal

Signed:
Design-Builder's Representative
Name:
Date:

SCHEDULE 4: DESIGN AND CONSTRUCTION TECHNICAL REQUIREMENTS

Appendix 4A: Form of Design and Construction Certificates

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Certificate Form 7

Certificate Ref. No. []

ROAD SAFETY AUDIT CERTIFICATE (STAGE 4)

Agreement between His Majesty the King in right of the Province of British Columbia, BC Transportation Financing Authority and Emil Anderson Construction (EAC) Inc. dated July 31, 2024 ("the Agreement") relating to the Project. Defined terms and expressions used in the Agreement have the same meanings in this Certificate.

Form of Certificate to be used for certifying that a Stage 4 Road Safety Audit has been carried out in accordance with Article 13 of Part 1 of Schedule 4 to the Agreement.

1. We certify that the [reference relevant works] as constructed, tested and commissioned has been the subject a Stage 4 Road Safety Audit in accordance with Article 13 of Part 1 of Schedule 4 to the Agreement, the Design Management Plan, the Design Quality Management Plan and all other relevant provisions of the Agreement.
2. The Audit Team's report and statement certifying the audit has been carried out are attached.

Signed:
Audit Team (Principal)
Name:
Title:
Date:
Professional Registration Number:
Affix Professional Seal

3. We certify that the [reference relevant works] as constructed, tested and commissioned has been the subject of a Stage 4 Road Safety Audit in accordance with Article 13 of Part 1 of Schedule 4 to the Agreement, the Design Management Plan, the Design Quality Management Plan and all other relevant provisions of the Agreement and that all observations and recommendations in the Audit Team's report have been satisfactorily addressed and resolved.

Signed:
Design-Builder (Principal)
Name:
Title:
Date:
Professional Registration Number:
Affix Professional Seal

**JUMPING CREEK TO MACDONALD SNOWSHED PROJECT
DESIGN-BUILD AGREEMENT**

***Commercial in Confidence
Execution***

SCHEDULE 4: DESIGN AND CONSTRUCTION TECHNICAL REQUIREMENTS

Appendix 4A: Form of Design and Construction Certificates

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Signed:
Designer (Principal)
Name:
Title:
Date:
Professional Registration Number:
Affix Professional Seal

Signed:
Design-Builder's Representative
Name:
Date:

SCHEDULE 4: DESIGN AND CONSTRUCTION TECHNICAL REQUIREMENTS

Appendix 4A: Form of Design and Construction Certificates

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Certificate Form 8

Certificate Ref. No. []

CONSTRUCTION CERTIFICATE

Agreement between His Majesty the King in right of the Province of British Columbia, BC Transportation Financing Authority and Emil Anderson Construction (EAC) Inc. dated July 31, 2024 ("the Agreement") relating to the Project. Defined terms and expressions used in the Agreement have the same meanings in this Certificate.

Form of Certificate to be used for certifying the Substantial Completion or Total Completion of Construction of the Project Work in accordance with Section 6.1 of Part 2 of Schedule 4 to the Agreement.

Design-Builder's Statement

1. We certify that **[name and element of construction]** has been designed, constructed, [Substantially Completed] [Totally Completed], commissioned and tested in all respects in accordance with:
 - (i) the relevant Design Data and Design Certificates in each case to which there has been no objection under the Review Procedure; and
 - (ii) the provisions of the Agreement including all applicable Project Requirements [as amended by the following Province Changes and Value Engineering Proposals: [.....]].

Signed.....
Design-Builder (Principal)
Name.....
Title.....
Date.....
Professional Registration Number:
Affix Professional Seal

Signed:
Design-Builder's Representative
Name:
Date:

Designer's Statement

2. We certify that we have examined the **[name and element of construction]** in accordance with the requirements for examination of the Project Work contained in the Design Management Plan, the Design Quality Management Plan and the Construction Quality Management Plan and utilizing the standards of care, skill and diligence that, in accordance with the standards of our profession, are required of experienced professionals undertaking such examinations, and that in our professional opinion the said element of the Project Work or other works has been designed,

SCHEDULE 4: DESIGN AND CONSTRUCTION TECHNICAL REQUIREMENTS

Appendix 4A: Form of Design and Construction Certificates

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constructed, [Substantially Completed] [Totally Completed], commissioned and tested in all respects in accordance with:

- (i) the relevant Design Data and Design Certificates in each case to which there has been no objection under the Review Procedure; and
- (ii) the provisions of the Agreement including all applicable Project Requirements [as amended by the Province Changes and Value Engineering Proposals listed in paragraph 1 above].

Signed.....

Designer (Principal)

Name.....

Title.....

Date.....

Professional Registration Number:

Affix Professional Seal

SCHEDULE 4: DESIGN AND CONSTRUCTION TECHNICAL REQUIREMENTS

Appendix 4A: Form of Design and Construction Certificates

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Certificate Form 9

Certificate Ref. No. []

ASSESSMENT CERTIFICATE (STRUCTURES)/AVALANCHE

Agreement between His Majesty the King in right of the Province of British Columbia, BC Transportation Financing Authority and Emil Anderson Construction (EAC) Inc. dated July 31, 2024 ("the Agreement") relating to the Project. Defined terms and expressions used in the Agreement have the same meanings in this Certificate.

1. We certify that in assessing [.....] **[Name and Category of the Structure and list of all elements of the Structure and related avalanche risk included in the assessment]** listed in the Schedule hereto and annexed we have complied with all applicable requirements contained in the Design Management Plan, the Design Quality Management Plan and the Construction Quality Management Plan and have utilized the standards of care, skill and diligence that, in accordance with the standards of our profession, are required of experienced professionals undertaking such assessments, and that in our professional opinion:

i the said assessment complies with all applicable Project Requirements, including Technical Appraisal Form No. [.....] dated [.....], as amended by the following:

[List, if any, the changes made by the issue of Change Certificates and addenda to the foregoing Technical Appraisal Form];

and the said assessment complies in all other respects with the Agreement; and

ii the assessed capacity of each element of the Structure is as follows:

SCHEDULE 4: DESIGN AND CONSTRUCTION TECHNICAL REQUIREMENTS

Appendix 4A: Form of Design and Construction Certificates

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SCHEDULE

[Include here drawing numbers and title used for the assessment.]

Signed.....
Designer (Principal)
Name.....
Title.....
Date.....
Professional Registration Number:
Affix Professional Seal

Signed:
Design-Builder's Representative
Name:
Date:

SCHEDULE 4: DESIGN AND CONSTRUCTION TECHNICAL REQUIREMENTS

**APPENDIX 4B
SAMPLE CONTENTS FOR A STRUCTURAL TAF**

Ref. No.....

- 1. NAME OF PROJECT.....**
 - 1.1 Type of highway
 - 1.2 Permitted traffic speed (for a Bridge give over and/or under).
- 2. NAME OF STRUCTURE (for example).....**
 - 2.1 Obstacles crossed.
- 3. PROPOSED STRUCTURE**
 - 3.1 Description of Structure.
 - 3.2 Structural type) Include reasons
 - 3.3 Foundation type)) for choice
 - 3.4 Span arrangements)
 - 3.5 Articulation arrangements.
 - 3.6 Parapet type.
 - 3.7 Proposed arrangements for inspection and maintenance.
 - 3.8 Materials and finishes.
- 4. DESIGN/ASSESSMENT CRITERIA**
 - 4.1 Live Loading, Headroom.
 - 4.1.1 BC Bridge Code loading:
 - 4.1.2 Design Vehicle.....
 - 4.1.3 Footway or footbridge live loading.
 - 4.1.4 Provision for exceptional abnormal loads.
 - 4.1.4.1 Gross weight tonnes on vehicle no. m.
 - 4.1.4.2 Axle load and spacing.
 - 4.1.4.3 Air cushion tonnes over m x m.
 - 4.1.4.4 Location of vehicle track on deck cross-section.

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- 4.1.5 Any special loading not covered above.
- 4.1.6 MOT heavy or high load route requirements and arrangements being made to preserve the route.
- 4.1.7 Authorities consulted and any special conditions required.

4.2 List of relevant design documents.

4.3 Proposed Alternative Proposals.

5. STRUCTURAL ANALYSIS

- 5.1 Methods of analysis proposed for superstructure, substructure and Foundations.
- 5.2 Description and diagram of idealised structure to be used for analysis.
- 5.3 Assumptions intended for calculation of structural element stiffness.
- 5.4 Proposed earth pressure coefficients (k_a , k_o , or k_p) to be used in design of earth retaining elements.

6. SEISMIC DESIGN

- 6.1 Seismic design inputs.
- 6.2 Load paths.
- 6.3 Identification of capacity protected members and hinge locations.
- 6.4 Special devices such as dampers or bearings.

7. SEISMIC INSTRUMENTATION

- 7.1 Proposed layout of seismic instrumentation.

8. GROUND CONDITIONS

- 8.1 Acceptance of interpretative recommendations of the soils report to be used in the design and reasons for any proposed departures.
- 8.2 Describe Foundations fully including the reasons for adoption of allowable and proposed bearing pressures/pile loads, strata in which Foundations are located, provision for skin friction effects on piles and for lateral pressures due to compression of underlying strata, etc.
- 8.3 Differential settlement to be allowed for in design of structure.

SCHEDULE 4: DESIGN AND CONSTRUCTION

Appendix 4B: Sample Contents for a Structural TAF

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- 8.4 Anticipated ground movements or settlement due to embankment loading, mineral extraction, flowing water, and measures proposed to deal with these defects as far as they affect the structure.
- 8.5 Results of tests of ground water (e.g. pH value, chloride or sulphate content) and any counteracting measures proposed.
- 8.6 Anticipated ground movements or settlement due to seismic loading, measures proposed to deal with these impacts as far as they affect the structure.

9. CHECKING

- 9.1 Name of proposed Checking Team.

10. DRAWINGS AND DOCUMENTS

- 10.1 List of drawings (including numbers) and documents accompanying the submission. To include (without limitation):
 - 10.1.1 a location plan;
 - 10.1.2 a preliminary general arrangement drawing; and
 - 10.1.3 relevant parts of the ground investigation report.

11. THE ABOVE DESIGN AND CONSTRUCTION PROPOSALS ARE SUBMITTED FOR REVIEW.

For permanent works:

Signed:
Designer (Principal)
Name:
Engineering Qualifications:.....
Date:
Professional Registration Number:
Affix Professional Seal

Signed:.....
Design-Builder's Representative
Name:.....
Date:.....

For Temporary Works:

Signed:

JUMPING CREEK TO MACDONALD SNOWSHED PROJECT
DESIGN-BUILD AGREEMENT
SCHEDULE 4: DESIGN AND CONSTRUCTION
Appendix 4B: Sample Contents for a Structural TAF

Commercial in Confidence
Execution

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Designer (Principal) or designer (Principal), as applicable

Name:

Engineering Qualifications:.....

Date:

Professional Registration Number:

Affix Professional Seal

Signed:.....

Design-Builder (Principal)

Name:.....

Date:.....

Signed:.....

Design-Builder's Representative

Name:.....

Date:.....

SCHEDULE 4: DESIGN AND CONSTRUCTION TECHNICAL REQUIREMENTS

**APPENDIX 4C
SNOW AVALANCHE SAFETY MEASURES**

1. INTRODUCTION

1.1 General

The TransCanada Highway 1 passes through the steep terrain of the western Selkirk Mountain range east of Revelstoke. The Province is responsible for managing the Avalanche hazard affecting the highway from the eastern Boundary of Revelstoke National Park to the western boundary of Glacier National Park, except to the extent of the Design-Builder's responsibilities in accordance with this Agreement, including this Appendix. This area includes Avalanche Path 46.4 (Helen's Path), located at approximately Station 144.780. A second Avalanche path - Path 47.8 (Jack Macdonald) is located at the MacDonald Snowshed at the easterly limit of the Project Site. This path is known to overrun the MacDonald Snowshed on the western side and reach the Project Site limit, as shown on the Avalanche Strip Map and photos, both provided in the Data Room. These locations represent hazard areas for traffic stoppages and queues.

This Appendix describes the general Avalanche risk management measures required and defines the Avalanche safety-related responsibilities of the Province and the Design-Builder.

1.2 References

- (a) BC Ministry of Transportation and Infrastructure Avalanche Safety Plan, available by public link: https://www2.gov.bc.ca/assets/gov/driving-and-transportation/transportation-infrastructure/highway-bridge-maintenance/avalanche/avalanche_safety_plan.pdf
- (b) OHS Regulation Part 4.1.1, available by public link: <https://www.worksafebc.com/en/law-policy/occupational-health-safety/searchable-ohs-regulation/ohs-regulation/part-04-general-conditions#SectionNumber:4.1.1>
- (c) The Avalanche Strip Map provided in the Data Room shows Avalanche Paths in the corridor.

1.3 Roles

For the purposes of this Appendix, the following roles apply:

- (a) District Avalanche Technician – provided by the Province, and means the Province's Avalanche technician based in Revelstoke and responsible for Avalanche risk management for the road corridor along Highway 1;
- (b) Avalanche Professional – provided by the Design-Builder, and means a Qualified Person as described in OHS Regulation 4.1.1 with experience in developing and coordinating Avalanche safety programs, with a minimum of 15 years of experience in avalanche safety and control and avalanche structural design, and meeting the requirements of an AQP; and
- (c) Avalanche Supervisor – provided by the Design-Builder, and means a worker who has completed the Canadian Avalanche Association Resource and Transportation Avalanche Management course (or equivalent) as a minimum.

SCHEDULE 4: DESIGN AND CONSTRUCTION TECHNICAL REQUIREMENTS

Appendix 4C: Snow Avalanche Safety Measures

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1.4 Background

Avalanches are possible at any time. Generally, this hazard condition exists between the months of November and April, but sometimes extends into shoulder seasons beginning in October, and lasting until late May.

The Province maintains an Avalanche safety program for the Highway 1 corridor from Revelstoke to the Glacier National Park border via Avalanche Technicians based in Revelstoke.

The Province's Avalanche safety program has three objectives:

- (a) ensuring the safety of the travelling public;
- (b) ensuring the safety of Ministry personnel; and
- (c) minimizing traffic flow interruptions.

The District Avalanche Technician coordinates hazard forecasting, daily conditions monitoring (including regular patrols) and active control actions from October through May, with a core season typically from November 1st to April 30th.

The dates when Avalanche season is in effect are defined by the Province for the segments of highway that are managed by the Province, including the Project Site. Although these dates are normally considered to be November 1st to April 30th, the District Avalanche Technician may extend these dates to start earlier in the fall or end later in the spring. These dates set Avalanche season to be in effect regardless of the dates that the Design-Builder sets for Avalanche season for its own workers. In addition, Parks Canada defines its own Avalanche season for segments of highway within Glacier National Park.

The Province may close Highway 1 occasionally as required, either because avalanches are expected, or to allow the Province's Avalanche staff to perform explosive Avalanche control. Historical information regarding road closures due to Avalanches is provided in the Data Room.

In addition to the Province's Avalanche safety program, Parks Canada maintains an Avalanche safety program to the east of the Project Site in Glacier National Park through Rogers Pass, and temporary winter closures due to Avalanche control may be expected.

2. AVALANCHE SAFETY RESPONSIBILITY

At all times during the Access Period, the Design-Builder will be responsible for the following:

- (a) developing, implementing and maintaining an Avalanche safety program that will protect all workers within the Project Site;
- (b) operating under and in conjunction with the Province's Avalanche safety program; and
- (c) carrying out Avalanche hazard forecasting for the Project Site that includes site-specific Avalanche safety measures for workers within the Project Site.

SCHEDULE 4: DESIGN AND CONSTRUCTION TECHNICAL REQUIREMENTS

Appendix 4C: Snow Avalanche Safety Measures

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The Design-Builder is responsible for coordinating with the District Avalanche Technician the Project Work activities, including traffic management, and communicating conditions and relevant planned activities.

During the Project, the Province in conjunction with the Design-Builder, is responsible for communicating with the Winter Maintenance Contractor and Parks Canada regarding Avalanche safety closures.

The Traffic Quality Management Plan will describe the coordination of traffic management strategies with the District Avalanche Technician, the Winter Maintenance Contractor, and Parks Canada.

The Design-Builder is responsible for determining the location of areas within the Project Site that may be at risk of Avalanche hazards (each, an “**Avalanche Hazard Area**”). At a minimum, all locations within the boundaries of Ministry Avalanche paths, as designated by the Avalanche Strip Map and confirmed by the District Avalanche Technician at the start of each winter, together with any new Avalanche path created by the Design-Builder within the course of Construction, and any other areas identified by the District Avalanche Technician from time to time, will be considered Avalanche Hazard Areas.

The Design-Builder will avoid placing any property, including equipment and materials, in Avalanche Hazard Areas during Avalanche season when advised by the Province but generally during periods of elevated Avalanche risk. District Avalanche Technicians may, in their sole discretion, require the Design-Builder to remove all personnel or property from Avalanche Hazard Areas at any time (a “**Removal Demand**”) and the Design-Builder will immediately comply with a Removal Demand. Where the District Avalanche Technician delays explosive Avalanche control in order to allow the Design-Builder time to comply with a Removal Demand and such delay results in an extension of a closure of Highway 1, the extension of the closure of Highway 1 will be considered a Non-Permitted Traffic Disruption Event.

Without limiting Section 2.3 [Assumption of Risk and Responsibility] of this Agreement, the Design-Builder assumes all risk to any personnel or property placed within an Avalanche Hazard Area.

3. HAZARD TO THE HIGHWAY

The Province may close the highway through the Project Site area when Avalanches are expected to affect traffic or when Avalanche control is planned. The Province will define the Avalanche closure area and will notify the Design-Builder of planned Avalanche control activities and planned closures. Parks Canada may also carry out temporary winter closures due to Avalanche control to the east of the Project Site in Glacier National Park through Rogers Pass.

The Design-Builder will coordinate its activities, including traffic management, to ensure that all personnel are removed from any closure area and equipment and materials are removed from any Avalanche Hazard Areas and in a manner such that the Province or Parks Canada, as the case may be, is not impeded when conducting its Avalanche control measures.

If the Avalanche Professional determines that the hazard is acceptable within the Project Site limits to allow the Design-Builder to work safely during an Avalanche control closure implemented by the Province or Parks Canada external to the Project Site limits, the Design-

SCHEDULE 4: DESIGN AND CONSTRUCTION TECHNICAL REQUIREMENTS

Appendix 4C: Snow Avalanche Safety Measures

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Builder may, subject to a contrary order of the District Avalanche Technician, continue to work, but must adjust its activities so as not to interfere in any manner with safety or logistical measures implemented by the Province or Parks Canada, as the case may be, which may include the parking of public traffic at any location along the Highway 1 corridor that the Province deems safe.

There may be snow and debris material deposited on the Project Site resulting from Avalanche control activities. The Winter Maintenance Contractor will remove the snow and debris to the most convenient locations to allow timely reopening of the highway. The Winter Maintenance Contractor may have to re-handle this material and will do so as soon as practical after traffic flow is restored. The Design-Builder may assist with this process at its own cost.

The Design-Builder will not increase Avalanche risk to traffic during Construction. Increased Avalanche risk may arise from directing traffic flow during winter (November 1st to April 30th) under newly created Avalanche Paths (from tree clearing), prior to the construction of ditches as specified in Article 11 [Snow Avalanche Measures] of Part 1 of Schedule 4, and/or by not maintaining (clearing snow out of) temporary ditches created during Construction.

The Design-Builder will not be entitled to make any claim for any Supervening Event arising as a result of any Avalanche closures or control activities by the Province or Parks Canada.

4. HAZARD TO THE WORKSITE

In furtherance of the Design-Builder's responsibility for safety at the Project Site in accordance with Section 8.1 [Site Safety and Security] and Section 8.3 [Design-Builder as Prime Contractor] of Schedule 3, the Design-Builder will:

- (a) retain the services of an Avalanche Professional acceptable to the Province; and
- (b) cause the Avalanche Professional to develop an avalanche safety plan (the "**Avalanche Safety Plan**") outlining a framework to reduce avalanche risk to workers and the travelling public, and as defined in OHS Regulation Part 4.1.1, and implement and maintain all activities described in the Avalanche Safety Plan.

The Avalanche Safety Plan will be submitted by the Design-Builder to the Province's Representative 30 days prior to implementation, and no later than October 1, 2025 in accordance with the Consent Procedure. Failure to provide the Avalanche Safety Plan by this date may impact the Project Work. The Province will take steps, including stopping work, if the Avalanche Safety Plan is not submitted.

The Avalanche Safety Plan will include, but not be limited to:

- (a) identification of Avalanche Hazard Areas within the Project Site as contemplated in Section 2 [Avalanche Safety Responsibility] of this Appendix;
- (b) Avalanche hazard forecasting services specific to the Project Site;
- (c) communication of Avalanche hazard to workers and the Province;

SCHEDULE 4: DESIGN AND CONSTRUCTION TECHNICAL REQUIREMENTS

Appendix 4C: Snow Avalanche Safety Measures

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- (d) posting of the site Avalanche hazard rating at locations that are visible to all workers coming on shift, and communicating any changes throughout shifts;
- (e) defining and identifying worker activities or restrictions that are acceptable at the various hazard levels;
- (f) details regarding Avalanche control planning and methods of control;
- (g) traffic management requirements for Avalanche control closures;
- (h) details regarding Avalanche safety training for workers, including follow up training;
- (i) an Avalanche rescue plan in accordance with Section 7 of this Appendix; and
- (j) details regarding provision and maintenance of Avalanche safety equipment, including transceivers, rescue equipment and radios.

All persons on the Project Site will comply with the requirements of the Avalanche Safety Plan.

The Design-Builder will ensure that a designated Avalanche Supervisor is at the Project Site at all times while conducting Project Work at the Project Site during the period from November 1st to April 30th in each Contract Year unless a variance is accepted by the District Avalanche Technician.

The Design-Builder will provide and communicate daily Avalanche hazard forecasts to all workers on the Project Site as well as to the Province's Representative. The Design-Builder must immediately notify all workers on the Project Site when the Avalanche hazard level changes and ensure work is conducted in accordance with any instructions given by the Avalanche Professional.

Table G provides an example of a scale that may be used to communicate Avalanche hazard and work restrictions for the Project Site:

Table G – Sample Avalanche hazard scale

AVALANCHE HAZARD RATING	DEFINITION AND WORK RESTRICTIONS
LOW	Avalanches are unlikely to affect the highway road or worksites. Standard avalanche safety measures apply.
MODERATE	Small avalanches possible to affect the highway or worksites. Large avalanches unlikely to affect the access road or worksites. Check the hazard bulletin for specific restrictions in effect.
HIGH	Large avalanches are likely to affect the highway or worksites. Area closures in effect until further notice

Locations for safe storage of equipment and material required for the Project should be specified by the Avalanche Professional and must be outside all Avalanche Hazard Areas.

SCHEDULE 4: DESIGN AND CONSTRUCTION TECHNICAL REQUIREMENTS

Appendix 4C: Snow Avalanche Safety Measures

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5. TRAINING

The Design-Builder will ensure that all workers who are working in Avalanche Hazard Areas between November 1st and April 30th of each Contract Year are trained in Avalanche safety. An Avalanche Professional or their designate with specific industry sector experience, acceptable to the Province, will provide Avalanche safety training.

Training will include one mock rescue practice (transceiver, probe and shovel practice) as a minimum. The Avalanche safety training session will occur prior to November 1st of each Contract Year. New workers coming onto the Project Site between November 1st and April 30th of each Contract Year are required to complete the Avalanche safety training before working in Avalanche Hazard Areas.

The Design-Builder will keep Avalanche training records for all workers at the Project Site. These records must be available to the Province upon request.

6. AVALANCHE RESCUE TRANSCEIVERS

All workers must wear 457 kHz avalanche rescue transceivers set on “transmit” (or “send”) while working in Avalanche Hazard Areas between November 1st and April 30th of each Contract Year, and outside of these dates if the Avalanche Professional deems there to be Avalanche hazard to workers. If the District Avalanche Technician determines that there is no Avalanche hazard, they may provide written authorization to the Design-Builder to allow work without transceivers.

The Design-Builder will supply the transceivers and ensure that all personnel are trained in their use.

7. RESCUE PLAN

As part of the Avalanche Safety Plan, the Design-Builder will provide a written Avalanche rescue plan describing the tasks to be performed by Design-Builder when a worker is (or may be) buried in an Avalanche. The rescue plan will follow industry standard, and incorporate an Incident Command System (ICS), as per the current CAA Avalanche Search and Rescue Advanced Skills (AvSAR) course. Training in the use of the rescue plan will be included in the training course.

Avalanche rescue equipment will be supplied by the Design-Builder and the Design-Builder will be solely responsible for the care of such Avalanche rescue equipment. Equipment must meet industry standard, as designated by the Avalanche Professional.

8. RADIOS

The Avalanche Supervisor must maintain radio contact with the District Avalanche Technician whenever work is being done on the Project Site.

The Design-Builder will supply its own radios, which will be compatible with the Province radio system and other operators in the corridor.

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PART 1
INSURANCE REQUIRED – CONSTRUCTION

1.1 Third Party Liability Insurance - Construction

- (a) From and including the Effective 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 term 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 will 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 Design-Builder or the Subcontractors of any tier, and including all persons, firms, corporations or partnerships who perform any of the Project Work contemplated by this Agreement, anywhere within Canada (and the USA, if and to the extent the Project Work is undertaken or performed in 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.
- (b) From and including the Effective Date and through to and including the Substantial Completion Date, if ships, boats or other vessels are used in the performance of the Project Work contemplated by this Agreement and are owned, leased, rented, operated or used by the Design-Builder or any Subcontractor, then for bodily injury or death and property damage arising from any one accident or occurrence for all ships, boats and other vessels, insurance coverage is to be provided through either:
 - (i) the “Wrap-Up” Commercial General Liability Insurance policy referred to in Section 1.1(a) of this Schedule; or
 - (ii) a separate Protection and Indemnity insurance policy or such other policy or policies or combination thereof appropriate for this risk in the context of the Project, in any case with limits of not less than _____ for bodily injury or death and property damage arising from any one accident or occurrence and in the term aggregate.

The Design-Builder will be responsible for ensuring that any changes to the requirements of the *Marine Liability Act* (Canada) and/or the regulations of the *Marine Liability Act* (Canada) are reflected in the insurance coverage provided.

- (c) From and including the Effective Date and through to and including the Substantial Completion Date, if aircraft (including helicopters) are used in the performance of the Project Work contemplated by this Agreement and are owned, leased, rented, operated or used by the Design-Builder or any Subcontractor, then third party Aircraft liability coverage with limits of not less than _____ for bodily injury or death and property damage arising from any one accident or occurrence and in the annual aggregate must be provided.
- (d) From and including the Effective Date and through to and including the Substantial Completion Date, if unmanned air vehicles (UAV) are used in the performance of the

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Project Work contemplated by this Agreement and are owned, leased, rented, operated or used by the Design-Builder or any Subcontractor, then third party Aircraft liability coverage with limits of not less than _____ for bodily injury or death and property damage arising from any one accident or occurrence and in the annual aggregate. This coverage may be provided by a separate policy or with the Wrap-Up Commercial General Liability policy referred to in Section 1.1(a) of this Section. All UAV movements to comply with all Transport Canada requirements, including the requirement to obtain, and comply with, a Transport Canada “Special Flight Operation Certificate”.

(e) Extensions of Coverage

The liability insurance referred to in Sections 1.1(a), 1.1(b), 1.1(c) and 1.1(d) of this Schedule will cover liability assumed by the Design-Builder in connection with and applicable to this Agreement and will include the following coverage extensions applicable to the following liability policies:

- (i) Coverage Extensions Applicable to the “Wrap-Up” Commercial General Liability Policy
 - Canada and USA coverage territory
 - Products/Completed Operations
 - Occurrence Property Damage
 - Broad Form Property Damage
 - Broad Form Completed Operations
 - Damage to Existing Structures
 - Contingent Employers Liability
 - Medical Payments
 - Incidental Medical Malpractice
 - Blanket Written Contractual
 - Cross Liability and Severability of Interest Clause
 - Attached Machinery
 - Non Owned Automobile
 - Legal Liability for damage to hired automobiles
 - Hazardous Operations (XCU)
 - Elevator and Hoist Collision Liability
 - Tenant Legal Liability (All Risk)
 - Fire Fighting Expenses
 - Products and Completed Operations (as more fully outlined under Section 1.5(b) of this Schedule)
 - 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
 - 60 days notice of Cancellation or Limitation of coverage (as more fully outlined under Section 1.6 [Cancellation/Limitation] of this Schedule)
 - Blanket Additional Insureds

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- (ii) Coverage Extensions Applicable to the Marine and Aviation Policies
 - Canada and USA coverage territory
 - 60 days notice of Cancellation or Limitation of coverage (as more fully outlined under Section 1.6 [Cancellation/Limitation] of this Schedule)

(f) Inclusions / Exclusions Not Permitted

The following inclusions/exclusions are not permitted for any insurance referred to in Sections 1.1(a), 1.1(b), 1.1(c) and 1.1(d) of this Schedule, except in the case of any insurance referred to in Sections 1.1(b), 1.1(c) and 1.1(d) of this Schedule where such insurance is obtained under policies that are separate from the policy for the insurance referred to in Section 1.1(a) of this Schedule, as such separate policies are described in Sections 1.1(b), 1.1(c) and 1.1(d) of this Schedule:

- (i) 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 Project Work will not be excluded from insurance coverage.
- (ii) 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.
- (iii) Liability assumed by the insureds under contract with railroad companies for the use and operation of railway sidings or crossings will not be excluded.
- (iv) Liability arising out of all products where the Design-Builder supplies the material will not be excluded.
- (v) Tort liability assumed by the Design-Builder under this Agreement will not be excluded.
- (vi) Exclusions for design/build or joint venture projects will not be permitted.
- (vii) Other types of services not listed above, to be performed by or on behalf of the Design-Builder under this Agreement will not be excluded.

(g) Deductible

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

(h) Self-Insured Retention

A maximum self-insured retention of up to for any one accident or per occurrence will be permitted for the Design-Builder providing umbrella/excess liability insurance subject to having a minimum primary insurance policy of underlying the umbrella/excess.

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1.2 Professional Liability Insurance (Errors & Omissions)

- (a) Single Project Specific Professional Liability insurance with minimum limits of per claim and term aggregate insuring against all insured loss or damage including coverage for third party property damage, bodily injury or death, arising out of any professional services rendered by the Design-Builder or Subcontractors, and/or any engineers, architects, surveyors, and any of their respective employees including personnel on loan to the Design-Builder or Subcontractors and personnel who perform normal services of the Design-Builder under this Agreement. The named insured will also include all architectural firms and all engineering firms, including project managers, construction managers and applied science technologists, and all land surveyors, quantity surveyors and others engaged in providing professional services to the Project.
- (b) Coverage will be maintained:
 - (i) From and including the Effective Date and, subject to Section 1.2(b)(ii) of this Schedule, for a period of at least 24 months after the Substantial Completion Date; and
 - (ii) in the case of any Project Work carried out by the Design-Builder after the Substantial Completion Date, for a period of at least following completion of the work that is the subject of the Project Work;provided that coverage will not be required to be maintained for longer than after the effective date of the policy.
- (c) A maximum deductible of will be allowed.
- (d) Exclusions for design/build or joint venture projects will not be permitted.
- (e) The insurance referred to in this Section 1.2 will 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 Securities 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).
- (f) The insurance referred to in this Section 1.2 will be effected on the Effective Date but will have a "retroactive date" (as such term is understood by the insurance industry with respect to "claims made" policies) to coincide with the verifiable start of design for any work covered by such insurance, such verification to be the sole responsibility of the Design-Builder.

1.3 Automobile Insurance

From and including the Effective Date and through to and including the Substantial Completion Date, 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

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licensed that are owned, leased or rented by the Design-Builder and are used in the performance of the Project Work contemplated by this Agreement.

1.4 Property Insurance

(a) Builders' Risk

From and including the Effective 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 specifically not including Seismic Event or Flood) of direct physical loss of or damage to (including full resultant loss or damage) all Project Infrastructure (including all Structures forming part thereof) including the value of any material and/or structure and/or property destined for or entering into or forming part of the Project Infrastructure, whether belonging to the Design-Builder or any of the Subcontractors and/or the Province and/or BCTFA and/or the engineers and/or otherwise and including automatically any changes in design or method of construction occurring during the term of the policy, such cost to be determined at the time of replacement, which will include the following terms:

- (i) specify a policy limit of not less than (including full resultant loss or damage (LEG 3 or equivalent) and including both soft and hard costs);
- (ii) include the following additional covers:
 - (A) off premises service interruption;
 - (B) interruption by civil authority or apparent civil authority;
 - (C) underground services, temporary buildings and structures, temporary boilers and pressure vessels, scaffolding, false work, forms, hoardings, excavation, site preparation, landscaping and similar work;
 - (D) electronic data processing equipment and media, including the cost to restore or recreate data;
 - (E) prevention of ingress or egress;
 - (F) resultant damage from faulty materials, faulty workmanship, and design errors and omissions;
 - (G) damage to existing structures while they are being worked upon;
 - (H) subsurface structures;
 - (I) expediting expense;
 - (J) extra expense; and

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- (K) increased costs due to bylaws or ordinances including demolition, increased costs of repairs and replacement;
- (iii) the following sub-limits (per occurrence unless specified otherwise):
 - (A) unnamed locations, not less than
 - (B) professional fees, including costs to establish quantum of any covered loss, not less than ;
 - (C) off-site property or property in transit, not less than
 - (D) off premises service interruption, not less than
 - (E) prevention of ingress or egress, for a period of not less than ;
 - (F) firefighting expense, not less than ;
 - (G) debris removal and clean up, not less than
 - (H) expediting expense, not less than ;
 - (I) extra expense, not less than
 - (J) increased costs due to bylaws or ordinances including demolition, increased costs of repairs and replacement subject to a sub-limit of not less than with respect to existing or renovated buildings;
 - (K) valuable papers, not less than ;
 - (L) off premises power interruption;
 - (M) accounts receivable, not less than ; and
 - (N) interruption by civil authority or apparent civil authority, not less than and
- (iv) include the following special terms:
 - (A) cover for unintentional errors and omissions;
 - (B) cover for breach of conditions;
 - (C) soft cost coverage extension:
 - (1) in an amount sufficient to compensate the Design-Builder for extra costs related to the insured risks, including but not limited to additional capital payments, additional interest for the extension of financing necessary for the completion of Construction, legal and accounting expenses, property taxes, insurance premiums,

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building permits and other miscellaneous costs, various incurred fees, fixed expenses and additional commissions;

(2) with an indemnity period of not less than and

(3) subject to a waiting period of not more than

(b) Equipment Insurance

From and including the Effective Date and through to and including the Substantial Completion Date, “All Risks” Equipment Insurance, including flood and waterborne coverages, satisfactory to the Province covering all Construction Plant, including Construction Plant owned, rented or leased by the Design-Builder or any Subcontractor and used in the performance of any Project Work (including maintenance activities in connection with continuing operations undertaken by the Design-Builder or Subcontractors as part of the Project Work) or for which the Design-Builder may be responsible.

(c) Deductibles Per Occurrence

All losses under the Builders’ Risk Property Insurance or the Equipment Insurance – up to per occurrence.

(d) Waiver of Subrogation/Builders’ Risk Insurance

The following Waiver of Subrogation is to be added to the Builders’ Risk Property Insurance Policies:

“In the event of any physical loss or damage to property, the settlement or payment of the subsequent claim will be made without the right of subrogation against:

- (i) His Majesty the King in right of the Province of British Columbia or the BC Transportation Financing Authority, or any of the employees, agents and servants of His Majesty the King in right of the Province of British Columbia or the BC Transportation Financing Authority, or any of the architects, engineers, consultants or contractors of His Majesty the King in right of the Province of British Columbia;
- (ii) the BC Transportation Financing Authority, or any of the servants, agents, employees, volunteers, directors, or parent, subsidiary, affiliated or related firms of any such architects, engineers, consultants or contractors, engaged in or connected with the design, construction and related operations known as the “Highway 1: Jumping Creek to MacDonald Snowshed Project”; or
- (iii) any other insured under the policies required under Schedule 5 to the design-build agreement for the “Highway 1: Jumping Creek to MacDonald Snowshed Project”.”

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(e) Waiver of Subrogation / Equipment Insurance

The following Waiver of Subrogation is to be added to the equipment insurance policies:

“In the event of any physical loss or damage to equipment of Emil Anderson Construction (EAC) Inc. or any of its contractors or subcontractors, the settlement or payment of the subsequent claim will be made without the right of subrogation against:

- (i) His Majesty the King in right of the Province of British Columbia or the BC Transportation Financing Authority, or any of the employees, agents and servants of His Majesty the King in right of the Province of British Columbia or the BC Transportation Financing Authority, or any of the architects, engineers, consultants or contractors of His Majesty the King in right of the Province of British Columbia;
- (ii) the BC Transportation Financing Authority, or any of the servants, agents, employees, volunteers, directors, or parent, subsidiary, affiliates or related firms of any such architects, engineers, consultants or contractors, engaged in or connected with the design, construction and related operations known as the “Highway 1: Jumping Creek to MacDonald Snowshed Project”; or
- (iii) any other insured under the policies required under Schedule 5 to the design-build agreement for the “Highway 1: Jumping Creek to MacDonald Snowshed Project”.”

1.5 Additional Conditions In Property and Liability Policies in this Part

- (a) The Province and BCTFA will be named as additional named insureds in all policies for the property insurance referred to in Section 1.4(a) of this Schedule by an endorsement as follows:

“His Majesty the King in Right of the Province of British Columbia and the BC Transportation Financing Authority are added as Additional Named Insureds.”

- (b) The builders’ risk policy referred to in Section 1.4(a) of this Schedule will include as additional insureds any other party which, by virtue of its interest or involvement in the Highway 1: Jumping Creek to MacDonald Snowshed Project is identified as an additional insured in respect of the builders' risk coverage.

- (c) Notwithstanding any other terms, conditions or exclusions elsewhere in the policies or in this Schedule, it is understood and agreed that all policies for the liability insurance referred to in Section 1.1(a) of this Schedule will be extended to include insurance coverages and clauses as follows:

“His Majesty the King in Right of the Province of British Columbia and the BC Transportation Financing Authority, together with all their employees, agents and servants, and all architects, engineers, consultants, contractors and any of their servants, agents, employees, volunteers, directors, parent, subsidiary, affiliated or related firms, engaged in or connected with the design, construction and related operations known as the “Highway 1: Jumping Creek to MacDonald Snowshed Project” (all the foregoing being referred to in this Section as “Additional Named Insureds”), are added as additional named insureds in respect of liability arising from the work or operations of the Insured and the Additional

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Named Insureds, in connection with contracts entered into between the Insured and the Additional Named Insureds.

The insurance provided by this policy will apply in the same manner and to the same extent as though a separate policy had been issued to each Insured and Additional Named Insured. Any breach of a condition of the policy by any Insured or Additional Named Insured will not affect the protection given by this policy to any other Insured or Additional Named Insured. The inclusion herein of more than one Insured and Additional Named Insured will not operate to increase the limit of liability under this policy.

Products and Completed Operations Hazard coverage will be provided and such cover will remain in full force and effect for a period of _____ after the work has been completed, irrespective of the expiry date of the policy.”

- (d) The wrap-up liability insurance referred to in Section 1.1(a) of this Schedule will include as additional insureds any other party which, by virtue of its interest or involvement in the Highway 1: Jumping Creek to MacDonald Snowshed Project is identified as an additional insured in respect of the wrap-up liability insurance.

1.6 Cancellation/Limitation

- (a) The insurance coverages referred to in this Part (except owned automobile insurance and professional liability insurance) will 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 Securities 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 will apply. In the case of Marine and Aviation Policies the Design-Builder will use all reasonable efforts to fulfill the 60 days’ notice requirement, but if, after using all reasonable efforts, the Design-Builder cannot fulfill 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.
- (b) The insurance coverages referred to in this Part will 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 Securities 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).

1.7 Loss Payable

The insurance policies under Section 1.4(a) of this Schedule must contain a loss payable clause directing payment in accordance with the provisions of Section 6.17 [Application of Proceeds of Insurance] of this Agreement.

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1.8 Use and Occupancy

Use and occupancy of any Project Infrastructure or any part thereof prior to any applicable date of completion will not be cause for any termination of insurance coverage shown in the applicable sections of this Part.

PART 2 INSURANCE REQUIRED – OPERATION AND MAINTENANCE

2.1 Insurance - Operation and Maintenance

For any Operation and Maintenance activities that are not covered under the insurances provided in Part 1 [Insurance Required – Construction] of this Schedule, the Design-Builder will maintain, from and including the Effective Date and through to and including the Substantial Completion Date, the following:

- (a) Third Party Liability Insurance consistent with the coverages, extensions of coverages and endorsements set out in Section 1.1 [Third Party Liability Insurance – Construction] of this Schedule, with limits of not less than
- (b) Automotive Liability Insurance consistent with the coverages and endorsements set out in Section 1.3 [Automobile Insurance] of this Schedule, with limits of not less than
; and
- (c) Equipment Insurance consistent with the coverages and endorsements set out in Section 1.4(b) of this Schedule.

2.2 Additional Conditions in Liability Policies in this Part

Notwithstanding any other terms, conditions or exclusions elsewhere in the policies or in this Schedule, it is understood and agreed that all policies for the liability insurance referred to in Section 2.1(a) of this Schedule will be extended to include insurance coverages and clauses as follows:

“His Majesty the King in Right of the Province of British Columbia and the BC Transportation Financing Authority, together with all their employees, agents and servants, and all architects, engineers, consultants, contractors and any of their servants, agents, employees, volunteers, directors, parent, subsidiary, affiliated or related firms, engaged in or connected with the design, construction and related operations known as the “Highway 1: Jumping Creek to MacDonald Snowshed Project” (all the foregoing being referred to in this Section as “Additional Named Insureds”), are added as additional named insureds in respect of liability arising from the work or operations of the Insured and the Additional Named Insureds, in connection with contracts entered into between the Insured and the Additional Named Insureds.

The insurance provided by this policy will apply in the same manner and to the same extent as though a separate policy had been issued to each Insured and Additional Named Insured. Any breach of a condition of the policy by any Insured or Additional Named Insured will not affect the protection given by this policy to any other Insured or Additional Named Insured. The inclusion herein of more than one Insured and Additional Named Insured will not operate to increase the limit of liability under this policy.

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Products and Completed Operations Hazard coverage will be provided and such cover will remain in full force and effect for a period of _____ after the work has been completed, irrespective of the expiry date of the policy.”

2.3 Cancellation/Limitation

- (a) The insurance coverages referred to in this Part (except owned automobile insurance) will 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 Securities 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 will apply.
- (b) The insurance coverages referred to in this Part will 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 Securities 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).

PART 3 GENERAL INSURANCE PROVISIONS

3.1 Project Work after the Substantial Completion Date

- (a) The insurance described in this Schedule will apply *mutatis mutandis* in connection with any Project Work carried out after the Substantial Completion Date and any warranty period extending beyond the Substantial Completion Date, in each case until completion of the relevant part of the Project Work, provided that the Province will have the right to make, and the Design-Builder will comply with, any reasonable variations in such insurance requirements, including adjustments in policy limits and additions of coverages in connection with any particular part of the Project Work.
- (b) Any variations made by the Province as contemplated in Section 3.1(a) of this Schedule will not impose more stringent or less stringent requirements than those imposed by the Province for contracts of a similar nature or value to the relevant part of the Project Work undertaken after the Substantial Completion Date and any warranty period extending beyond the Substantial Completion Date and will be based on the Province’s assessment of the risks involved, based on the then current version of the Ministry Form INS152 or INS172, as appropriate. If the Design-Builder disputes the Province’s assessment of the relevant risks and any resulting variation to the insurance requirements under this Section with respect to any particular part of the Project Work, the Design-Builder will notify the Province of its dispute within 10 Business Days after the Province has notified the Design-Builder of the insurance requirements that will apply to the relevant part of the Project Work. If the Province and the Design-Builder have not resolved the dispute within 10 Business Days after the Design-Builder’s notice of disagreement, the dispute will be referred for resolution under the Dispute Resolution Procedure. If the Province does not

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propose any variation or adjustment to the insurance requirements in respect of any particular part of the Project Work, then the insurance described in this Schedule will be required.

3.2 Amendments to Insurance Coverages

The Province may from time to time, acting reasonably, and on written notice to the Design-Builder, amend or vary the insurance coverages described in Parts 1 or 2 of this Schedule, including by adjusting the policy limits and by changing the scope of coverages. Any such amendment will be considered a Province Change unless the amendment or variation is contemplated by the other provisions of this Schedule.

3.3 Primary and Excess Coverage

The Design-Builder may satisfy limit requirements through the use of primary and excess insurance programs.

PART 4 INSURANCE REQUIRED – WORKERS’ COMPENSATION

4.1 Workers’ Compensation Coverage

The Design-Builder will at all times during the Term carry and pay for or cause to be carried and paid for full workers' compensation coverage of all workers, employees and others engaged in the performance of the Project Work. The Design-Builder will, at the request of the Province from time to time, provide to the Province's Representative evidence satisfactory to the Province that such coverage is in effect and that all assessments payable under the WCA in respect of the Project have been paid.

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Appendix 6A Table of Commitments and Performance Index

**PART 1
GENERAL PROVISIONS**

1.1 Order of Precedence

The Design-Builder will carry out the Design-Builder's Environmental Obligations in accordance with the criteria set out in the Agreement, including this Schedule, and the other documents, codes and standards listed below, and if there is any conflict with the criteria set out in this Schedule and any of such other documents, codes and standards, the following will apply in descending order of precedence:

- (a) the criteria contained in this Schedule;
- (b) the applicable Ministry Technical Bulletins and Circulars;
- (c) the DBSS, including 165 *Protection of the Environment*;
- (d) the Environmental Constraints Drawings; and
- (e) all applicable Reference Documents.

1.2 Environmental Reference Documents

The Design-Builder will ensure that the Project Work at all times during the Term complies with all guidelines, policies or practices of an environmental nature applicable to the Project and the Project Work, including each of the Environmental Reference Documents set out in Part 2 [Environmental Reference Documents] of Appendix 1C to Schedule 1.

1.3 Design-Builder's Environmental Obligations

- (a) The Design-Builder will be responsible for managing all environmental issues associated with the Project, and will comply with, observe, satisfy and perform all of the Design-Builder's Environmental Obligations. The Design-Builder will perform the Project Work in full compliance with the Design-Builder's Environmental Obligations, including compliance with the following, subject in each case to Section 1.3(b) of this Schedule:
 - (i) all applicable Environmental Laws, Permits and relevant requirements under any other applicable Laws and all applicable Reference Documents that are current at the time of the relevant Project Work;
 - (ii) the conditions, commitments, responsibilities and information set forth in this Schedule, including those set out in the Table of Commitments and Performance Index; and
 - (iii) a requirement for the Environmental Manager to attend Design-Builder meetings with the Province, with such frequency as the Province deems necessary.
- (b) For greater certainty, the Design-Builder will be responsible, at its own cost and risk, for complying (and will cause all of its employees, agents and Subcontractors and employees of any of them to comply) with all environmental obligations except only for those specifically identified in this Agreement as being the obligation of the Province or not the

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responsibility of the Design-Builder, notwithstanding that the responsibility for any such environmental obligation may not specifically be an obligation of the Design-Builder.

1.4 Table of Commitments and Performance Index

- (a) Without limiting the generality of Section 1.3 [Design-Builder's Environmental Obligations] of this Schedule, the Design-Builder will at all times comply with and will do or not omit to do anything necessary to ensure satisfaction of, and will be responsible for the activities set forth in the Table of Commitments and Performance Index.
- (b) In the case of any conflict, ambiguity or inconsistency between or among the Table of Commitments and Performance Index and any other provision within this Agreement, including within this Schedule and within any of the other Schedules hereto, such other provision will prevail over the Table of Commitments and Performance Index, as the case may be.

1.5 Environmental Constraints Drawings

- (a) The Design-Builder will:
 - (i) ensure that no Project Work will occur:
 - (A) in any restricted zone identified on the Environmental Constraints Drawings, including any "designated environmentally sensitive areas" (the "**Environmentally Sensitive Areas**") in accordance with DBSS 165.01.04; or
 - (B) outside the "project limits" as identified on the Environmental Constraints Drawings,without the prior written consent of the Province's Representative in accordance with the Consent Procedure;
 - (ii) in respect of "historic place" (EhQk-9) as identified in the Environmental Constraints Drawings, provide, after Construction is completed, in the environmental completion report, the Design-Builder's assessment of the post-Construction characteristics of the historical materials, including describing if such historical materials have been partially or completely covered with material or removed, or are partially or completely still intact and accessible at the post-Construction ground surface;
 - (iii) ensure that neither the Design-Builder nor any person for whom the Design-Builder is in law responsible physically disturb the ground, watercourses or archaeological, heritage or cultural resources in any area identified in Section 1.5(a)(i) of this Schedule;
 - (iv) comply with all of the requirements set out in DBSS 165 in respect of the Environmentally Sensitive Areas, including taking all steps necessary to protect the Environmentally Sensitive Areas from disturbance in accordance with the

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Project Requirements, including demarcating such areas in accordance with the requirements for Environmentally Sensitive Areas;

- (v) where feasible, maintain appropriate riparian setbacks along upland watercourses and ditches within the Project Site, as shown on the Environmental Constraints Drawings; and
 - (vi) identify and demark Environmentally Sensitive Areas and wildlife features within the Project Site in accordance with the Environmental Constraints Drawings.
- (b) The Design-Builder, in consultation with Appropriately Qualified Professionals, will in a timely manner submit to the Province's Representative in accordance with the Consent Procedure proposed modifications to the Environmental Constraints Drawings from time to time during the course of Project Work in response to new information regarding resources, habitat or species within or proximate to the Project Lands, including designating additional Environmentally Sensitive Areas, or modifying or removing such areas or restrictions.

1.6 Best Management Practices

The Design-Builder will perform the Design-Builder's Environmental Obligations in accordance with Best Management Practices and will comply with, at its own cost, the provisions of the Best Management Practices, and will not do or omit or permit to be done or omitted anything which is inconsistent with such Best Management Practices.

1.7 Environmental Permits

- (a) Except as otherwise specifically provided in this Agreement, including in relation to Province Permits, the Design-Builder is required, at its own cost and risk, to obtain all Permits which relate to, or are required under Environmental Laws in connection with the Project and the Project Work, including all Permits necessary for the Design-Builder to fulfill the Design-Builder's Environmental Obligations.
- (b) Without limiting any of its other obligations under this Agreement, the Design-Builder will observe and comply with the standards, practices and requirements in connection with Province Permits required under Environmental Laws in connection with the Project and the Project Work.

1.8 Inquiries and Reports to Environmental Authorities

- (a) The Design-Builder will, promptly on request, provide the Province's Representative with such written authorizations as the Province may require from time to time in order to make inquiries of any Environmental Authorities regarding the Design-Builder or any of the Subcontractors or the compliance by the Design-Builder or any of the Subcontractors with Environmental Laws.
- (b) The Design-Builder will promptly forward to the Province's Representative a copy of any report, submission, application, data or other document relating to environmental matters on or at or affecting the Project Work, the Project Site or the Project Infrastructure that is filed or lodged by the Design-Builder, or any person for whom the Design-Builder is in

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law responsible, with or otherwise provided to any Environmental Authority and which is not otherwise required to be provided directly by the Design-Builder to the Province pursuant to this Agreement.

1.9 Environmental Records

The Design-Builder will maintain in accordance with the Records Management Protocol all environmental documents and records (including all Permits) relating to the Project Site and the performance of the Project Work relating to environmental matters, including all records required to be maintained pursuant to the Construction Environmental Management Plan but excluding any documents or records retained in the possession of the Province.

1.10 Site Materials

The Design-Builder may only excavate, extract, dispose of, exploit or otherwise deal with Site Materials:

- (a) in accordance with applicable Laws, Permits, and the terms of all relevant Project Site Agreements, Compulsory Acquisition Orders, Project Site Encumbrances and Utility Agreements;
- (b) if and to the extent that, in the case of excavation or extraction of Site Materials, such excavation or extraction is necessary for the purpose of carrying out the Project Work in accordance with the Project Requirements;
- (c) subject to and in accordance with the rights of all third parties, whether being rights in or to the Site Materials, Land Rights, rights under Project Site Agreements, Project Site Encumbrances, Utility Agreements, Indigenous Requirements, Requirements of Interested Parties, or otherwise;
- (d) subject to all limitations, restrictions and conditions, whether pursuant to Laws or otherwise, that would apply to or affect the right of the Province or BCTFA to undertake any such excavation, extraction, disposal, exploitation or other dealing if the Province or BCTFA were undertaking the same; and
- (e) in a manner that does not contravene any of the requirements of this Schedule or the Environmental Constraints Drawings and is in accordance with all applicable Permits including those obtained by the Design-Builder to permit such excavation, extraction, disposal of, exploitation or dealing with the Site Materials.

1.11 Cutting of Trees or Logging

- (a) The Design-Builder will not cut down or remove trees or timber grown on or make any use of forested lands comprised in the Project Site except in accordance with all applicable Laws and Permits, this Schedule and, in the case of cutting or removal of trees or timber, where:
 - (i) the Design-Builder, acting reasonably, determines that certain trees must be removed for bona fide construction or safety reasons or in order to comply with any of its other obligations under this Agreement; or

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- (ii) the prior approval of the Province (in the case of trees or timber on Crown land) or BCTFA (in the case of trees or timber on land owned by BCTFA) is obtained.
- (b) The Design-Builder will pay all costs and be responsible for all Claims and Direct Losses arising from or in connection with the cutting or removal of trees or timber, and will obtain at its expense all required Permits in connection therewith other than Province Permits.
- (c) The Design-Builder will not sell or otherwise dispose of or deal with any trees or timber cut or removed from the Project Site except subject to and in accordance with directions received from the Province (in the case of trees or timber on Crown land) or BCTFA (in the case of trees or timber on land owned by BCTFA) and, if applicable, in accordance with the *Forest Act* (British Columbia).

1.12 Performance Measures

- (a) The Table of Commitments and Performance Index sets out:
 - (i) performance measures to be met by the Design-Builder in relation to environmental matters; and
 - (ii) the timing for each such performance measure, where applicable.
- (b) In respect of any performance measure set out in the Table of Commitments and Performance Index with a designation of “Major” or “Severe” in the column entitled “Performance Mechanism Index”, such designation will inform the basis on which NCE Points will be assigned in accordance with Appendix 9A [Assignment of NCE Points] to Schedule 9, and NCE Points may be assigned in accordance with Section 6.1 [Nonconformity Reporting Process] of Schedule 7 for any other performance measures set out in the Table of Commitments and Performance Index.
- (c) Any timing requirements in the Table of Commitments and Performance Index will be in addition to, and will not replace, any other timing requirements provided in this Agreement.

PART 2 ENVIRONMENTAL MANAGEMENT

2.1 Environmental Manager

- (a) The Design-Builder’s Environmental Manager will, irrespective of such person’s other responsibilities, have defined authority for ensuring the establishment and maintenance of the Construction Environmental Management Plan and auditing and reporting on the performance and implementation of the Construction Environmental Management Plan, the Table of Commitments and Performance Index, and any terms and conditions associated with environmental Permits.
- (b) The Environmental Manager will be a Key Individual subject to the applicable requirements of Section 3.3 [Key Individuals] of this Agreement.
- (c) The Environmental Manager will have a minimum of ten years of experience on major projects that are comparable in scope, complexity and nature to the Project in:

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- (i) developing and managing environmental plans, procedures and practices to address Project environmental requirements;
 - (ii) leading a multidisciplinary environmental team;
 - (iii) environmental regulatory management, including experience with federal and provincial Environmental Authorities relevant to the Project;
 - (iv) working with Indigenous communities and regulatory agencies;
 - (v) maintaining all required environmental Records; and
 - (vi) implementing environmental quality management systems and procedures.
- (d) The Environmental Manager will have the following attributes:
 - (i) be an Appropriately Qualified Professional;
 - (ii) have an understanding of federal and provincial environmental regulations and legislation relevant to the Project; and
 - (iii) have effective communication, conflict resolution and organization skills.
- (e) Without limiting the generality of the foregoing, the job specification and responsibilities of the Environmental Manager will include the following:
 - (i) directing all aspects of the Design-Builder's environmental program for the Project Work, including overseeing the environmental auditing program;
 - (ii) managing all environmental issues associated with the Project on a day-to-day basis, including overseeing the environmental monitoring program;
 - (iii) effective development and implementation of the Construction Environmental Management Plan and other environmental plans on a day-to-day basis;
 - (iv) ensuring environmental issues, reporting and requirements are met in accordance with this Agreement;
 - (v) establishing and maintaining working relationships with relevant Environmental Authorities and Interested Parties,
 - (vi) liaising and coordinating with the Indigenous Coordinator for monitors and observers throughout the duration of the Project;
 - (vii) taking a lead role in internal environmental review of designs including development of mitigation and compensation proposals, acceptable to the Province and Environmental Authorities;

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- (viii) liaising with the Province's Representative and acting as the single point representative for the Design-Builder on all matters relating to environmental management;
- (ix) preparing and submitting to the Province's Representative all plans, reports and documents required under Section 2.4 [Environmental Plans and Reports] of this Schedule, the Table of Commitments and Performance Index and the Construction Environmental Management Plan;
- (x) carrying out other responsibilities as outlined in the Table of Commitments and Performance Index; and
- (xi) ensuring environmental issues and requirements are met in accordance with this Agreement.

2.2 Environmental Specialists

The Design-Builder will have available, at all times throughout the Term until the Total Completion Date, a multi-disciplinary team of Appropriately Qualified Professionals and thereafter will have available such a team of Appropriately Qualified Professionals to the extent relevant to the Design-Builder's obligations that continue after the Total Completion Date until the expiry of the General Project Work Defect Warranty Period.

2.3 Environmental Management Requirements

The Design-Builder will:

- (a) comply with all environmental requirements as set out in Section 1.3 [Design-Builder's Environmental Obligations] of this Schedule;
- (b) prepare all environmental submissions as set out in or required by this Agreement, including Section 2.5 [Environmental Plans and Reports] of this Schedule and Part 2 [Design and Certification Procedure] of Schedule 4;
- (c) issue and sign the Design Certificate (Environmental) in accordance with the procedures as set out in Part 2 [Design and Certification Procedure] of Schedule 4;
- (d) manage programs in accordance with Schedule 15 [Communications and Engagement];
- (e) carry out the Project Work in a manner that:
 - (i) protects and maintains surface and groundwater resources, both within and outside the Project Site, including drinking water sources and infrastructure (groundwater wells) and surface water diversion infrastructure; and
 - (ii) will prevent the Release of Hazardous Substances into the receiving environment in contravention of applicable Environmental Laws or the Construction Environmental Management Plan;

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- (f) restore and revegetate those portions of the Project Infrastructure and Project Site that will be discontinued for road or Construction purposes;
- (g) be responsible for planning, scheduling and performing the Project Work in such a manner that the quality and quantity of water flowing from the Project Site, is, at all times, acceptable to all relevant Environmental Authorities, and take immediate action to correct any deficiency in water quality; and
- (h) apply current Best Management Practices to the design of all stormwater management systems and be responsible for implementing a stormwater design for the Project Infrastructure that will ensure that existing water quality and quantity conditions improve or, at a minimum, do not deteriorate.

2.4 Environmental Impacts

- (a) The Design-Builder will use all reasonable efforts to keep environmental impacts from the Project within the magnitude and extent identified in this Schedule.
- (b) The Design-Builder will be responsible for identifying and addressing the mitigation and compensation of all Project Work-related environmental impacts, except where the Province identifies otherwise in writing or as otherwise expressly provided in this Agreement.

2.5 Environmental Plans and Reports

- (a) The Design-Builder will develop, implement, maintain, and update the plans, reports and data listed in Table 2.5:

Table 2.5 Schedule of Plans, Reports and Data (Response Time Measures)

Deliverable Name	Specification Reference	Due Date	Review Procedure or Consent Procedure
Construction Environmental Management Plan (First Submission)	2.6(b)	Prior to the start of site preparation or ground-disturbing Project Work or 45 days from the Effective Date, whichever is sooner	Consent Procedure
Construction Environmental Management Plan (Updates)	2.6(c)	As soon as completed when required, and in any event no later than the annual anniversary of the Effective Date	Review Procedure
Environmental Procedures	2.5(e)	30 days prior to commencement of activity for which the Environmental Procedure is required	Consent Procedure
Monthly Environmental Reports	2.5(f)	Within 14 days of the end of the month for which the report prepared	Review Procedure

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Commercial in Confidence
Execution

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Deliverable Name	Specification Reference	Due Date	Review Procedure or Consent Procedure
Annual Environmental Reports	2.5(g)	Within 1 month of the annual anniversary of the Effective Date	Review Procedure
Environmental Completion Report	2.5(h)	Within 30 days of Total Completion Date	Review Procedure
Certificate of Compliance with all Environmental Laws	2.5(i)	Prior to the Substantial Completion Date and where otherwise requested by Province	Review Procedure
Independent Environmental Site Assessment and/or Environmental Audit	2.5(j)	Within 60 days of audit being requested by the Province's Representative	Review Procedure
Planting Effectiveness Monitoring Reports	2.5(k)	In September of each year during the General Project Work Defect Warranty Period	Review Procedure

- (b) The documents referred to in Table 2.5 will be submitted to the Province's Representative for acceptance or review, as applicable, in accordance with the Consent Procedure or the Review Procedure, as the case may be, pursuant to Schedule 2 [Review Procedure and Consent Procedure].
- (c) The Design-Builder will develop, implement, maintain and update other plans in accordance with the Table of Commitments and Performance Index and the other terms set out in this Agreement, each of which will, where applicable and in addition to meeting all applicable requirements set out in this Agreement, be submitted to the Province's Representative:
- (i) in the case of an initial plan not previously submitted and accepted by the Province under this Agreement, in accordance with the Consent Procedure prior to submitting such plan to any other Interested Party, including any appropriate Environmental Authority or Identified Indigenous Group; or
 - (ii) in the case of a plan which is an update to a plan previously submitted and accepted by the Province under this Agreement, in accordance with the Review Procedure prior to, or at the same time as, submitting such plan to any appropriate Environmental Authority,
- or as otherwise expressly specified in this Agreement.
- (d) At any time whether before or after the Effective Date, the Design-Builder will provide the Province's Representative with copies of all environmental site assessments, audits, reports, test results and raw data relating to the Project Site promptly upon their production

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by or on behalf of the Design-Builder or upon their coming into the possession or control of the Design-Builder.

- (e) Each Environmental Procedure will be outlined in the Environmental Procedures Plan included as a component plan of the Construction Environmental Management Plan, will be prepared by the Design-Builder and submitted to the Province's Representative as supplementary to the Construction Environmental Management Plan, and will include site-specific and activity-specific mitigation measures to be implemented to address Construction or Project Work.
- (f) The Design-Builder will prepare and submit to the Province's Representative and Environmental Authorities, during any period during which Construction is undertaken, a monthly, or more frequent if requested by the Province's Representative, environmental report that:
 - (i) outlines the Design and Construction undertaken as part of the Project Work during the period, as well as future activities, key environmental issues, monitoring activities (physical and/or biophysical sampling data collected during reporting period, including water and soil quality monitoring results and photographs), and results, effectiveness of mitigation measures and detailed description of corrective actions (successes and failures), resolutions to any identified environmental impacts or non-compliances with any specific conditions in applicable Permits or this Agreement, environmental issues and impacts corrective actions tracking table, and how the Design-Builder was able to comply with all applicable Permits;
 - (ii) provides a quantitative summary of the Design-Builder's environmental performance based on monitoring data, key performance indicators, and observed month-over-month trends;
 - (iii) provides an update on the status of the implementation of and compliance with the Construction Environmental Management Plan and Environmental Procedures; and
 - (iv) has appended thereto all notes of meetings with the Province's Representative, Environmental Authorities and other Interested Parties, including action items, environmental sub-consultant reports, environmental incident reports, specific mitigation plans, and sediment and drainage plans for that period.

The Province may, in its discretion, require the Design-Builder to commence providing weekly environmental monitoring reports to the Province's Representative in addition to the requirements set out in this Section, including in situations where the Design-Builder has failed to identify or report environmental issues and/or incidents in accordance with the requirements of this Schedule or where the Design-Builder has failed to resolve environmental issues in a timely manner.

- (g) Annual environmental reports, which will be inclusive of all Design and Construction periods of the Project, will be prepared by the Design-Builder and submitted to the Province's Representative to provide a Project wide state of the environment summary. The summary will describe the Design-Builders environment team, key activities, and monitoring effort, Project progress and key Construction activities as they relate to

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environmental aspects, status of environmental Permits, environmental work by others (including Subcontractors), environmental issues, incidents, non-conformances and audits completed, analyses of environmental performance across the Project including issues and incidents trends, root causes, efficacy of corrective actions and opportunities for improvement; and upcoming key activities.

- (h) An environmental completion report will be prepared by the Design-Builder and submitted to the Province's Representative, which will include:
 - (i) Project information, including scope, prime contractor and environmental representative names and credentials;
 - (ii) Construction activities and environmental monitoring undertaken, including a summary of each of the following:
 - (A) environmental monitoring site inspections;
 - (B) Construction and environmental monitoring activities;
 - (C) soil and/or water quality monitoring results;
 - (D) environmental issues encountered, and mitigation measures implemented during the Project by environmental design component (as referenced in Section 2.8.9 [Environmental Design] of Part 2 of Schedule 4);
 - (E) corrective measures to address site deficiencies; and
 - (F) incident reports;
 - (iii) select site photographs that illustrate issues, mitigation, corrective measures and incidents; and
 - (iv) include the assessment referred to in Section 1.5(a)(ii) of this Schedule.
- (i) The Design-Builder will, at the request of the Province's Representative from time to time where there are reasonable grounds for making such request and in any event prior to Substantial Completion, provide the Province's Representative with a certificate signed by the Design-Builder's Environmental Manager certifying that the Design-Builder has complied with all Environmental Laws and with all of its obligations under this Agreement in respect of environmental matters, providing full and complete particulars of such compliance and all documentation in connection therewith (or if any occurrence of non-compliance has taken place, providing full and complete particulars thereof and all documentation in connection therewith). The certificate is to confirm that (to the best of the knowledge, information and belief of the Environmental Manager, having made reasonable inquiry) no adverse environmental occurrence has taken place on or at or affecting the Project Site or any part thereof (or, if any such occurrence has taken place, providing full and complete particulars thereof and all documentation in connection therewith).

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- (j) The Design-Builder will, at the request of the Province's Representative from time to time where there are reasonable grounds for making such request, obtain and submit to the Province's Representative pursuant to the Review Procedure, from an independent environmental consultant (the identity of which has been accepted by the Province's Representative pursuant to the Consent Procedure), an environmental assessment of the Project Site (or any part or parts thereof) and/or an environmental audit of the Project Work, such compliance with any such request to be at the Design-Builder's own cost, including obtaining any additional investigations recommended by the environmental consultant.
- (k) During the General Project Work Defect Warranty Period, the Design-Builder will prepare and submit to the Province's Representative a Planting Effectiveness Monitoring Report which will, further to DBSS 754.71, include annual reporting detailing planting survival and corrective measures required for that year. Basic Site Restoration planting will be deemed as complete if planted vegetation achieves greater than 80% survival at the end of the General Project Work Defect Warranty Period.

2.6 Construction Environmental Management Plan

- (a) The Design-Builder will develop, implement, maintain and update until the Total Completion Date the Construction Environmental Management Plan for the carrying out of the Project Work in an environmentally responsible manner to avoid or mitigate negative impacts. The Construction Environmental Management Plan, including each of its component plans as set out in Section 2.6(d), will:
 - (i) comply with DBSS 165, with site and work specific requirements as set out in this Agreement;
 - (ii) comply with all of the Design-Builder's Environmental Obligations and the applicable requirements set out in this Schedule;
 - (iii) identify applicable roles and responsibilities of the Design-Builder's environmental team;
 - (iv) identify monitoring and reporting requirements;
 - (v) include an overview of Project Work scheduling, including a Construction schedule that considers Environmental Timing Windows; and
 - (vi) include each of the component plans listed in Section 2.6(d) of this Schedule.
- (b) The Design-Builder will submit the initial Construction Environmental Management Plan, including each of its component plans as set out in Section 2.6(d) of this Schedule, to the Province's Representative in accordance with the Consent Procedure prior to submitting such initial Construction Environmental Management Plan to any appropriate Environmental Authorities. The Design-Builder will provide, through the Indigenous Coordinator, the initial draft Construction Environmental Management Plan to the Identified Indigenous Group for review, and its comments will be considered in the next revision thereof, all in accordance with the Indigenous Participation Plan to be developed in accordance with Section 1.2 [Indigenous Participation Plan] of Schedule 12.

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- (c) The Construction Environmental Management Plan, including each of its component plans set out in Section 2.6(d) of this Schedule, will be expanded and updated through the Term until the Total Completion Date to reflect the Project Work scheduling, Project Site conditions and weather-dependent contingency measures, including those required in accordance with Section 2.7 [Seasonal Shut-Down Environmental Protection] of this Schedule. The Design-Builder will submit all such updates to the Province's Representative in accordance with the Review Procedure prior to, or at the same time as, submitting such updates to any appropriate Environmental Authorities.
- (d) The Construction Environmental Management Plan will include the following component plans and any other plans required for Construction:
 - (i) Air Quality and Dust Control Plan, which will describe the measures to be used to control dust during Construction and include vehicle emissions and anti-idling measures in an idle reduction strategy section as contemplated by Section 2.8 [Idle Reduction Strategy] of this Schedule.
 - (ii) Clearing and Grubbing Plan, in accordance with DBSS 165.05, which will describe how vegetation clearing and grubbing boundaries will be determined and demarcated in the field as per DBSS 165.05.01 to avoid encroachment on Environmentally Sensitive Areas and describe how an AQP will assess the potential for presence of red- and blue-listed plants and ecological communities in proposed clearing/grubbing areas and plan and conduct vegetation surveys in the appropriate season prior to commencing clearing in areas potentially supporting such species. If red- or blue-listed plants or ecological communities are found within areas to be affected, the Design-Builder will provide an Environmental Procedure of mitigation measures proposed, and any pre-clearing survey results obtained, in accordance with Section 2.9(c) of this Schedule. The Environmental Procedure will be provided to the Province's Representative in accordance with the Consent Procedure and, through the Indigenous Coordinator, to the Identified Indigenous Group for review, a minimum of 30 days prior to the planned commencement of vegetation clearing in areas of the Project Site with listed plants and/or ecological communities. The Clearing and Grubbing Plan will describe how the Design-Builder will meet all requirements for clearing and grubbing as set out in Section 2.10 [Wildlife and Habitat Management] of this Schedule.
 - (iii) Construction and Hazardous Waste Management and Disposal Plan, which will describe procedures and Best Management Practices to manage Construction materials, waste materials, anthropogenic debris, concrete or other Hazardous Substances, measures to be implemented to effectively manage material that may attract wildlife, appropriate disposal of materials including the prohibition of disposal of land clearing debris by burning, and the requirement to reuse materials wherever possible.
 - (iv) Construction Water Management Plan, which will identify the surface water and groundwater management measures required to ensure safe and timely control of water pressures and flows relative to Project Work within the Project Site, those to address potential for slope destabilization, effects on downslope areas and CPKC, erosion and sedimentation, planned Environmental Procedures to address site-

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specific issues, and measures that will need to be specified in any applications under the *Water Sustainability Act* (British Columbia).

- (v) Environmental Awareness and Education Plan, which will describe how, when and the type of environmental training, education and awareness programs that will be provided to the personnel of the Design-Builder and its Subcontractors, including how Environmentally Sensitive Areas will be identified, communicated, and demarcated in the field as required to avoid disturbance and how personnel will be trained in the Construction and Hazardous Waste Management and Disposal Plan and the Spill Management and Emergency Response Plan.
- (vi) Environmental Incident Reporting Plan, which will describe how, when and the type of environmental monitoring and reporting that will be provided to the Province's Representative, follow-up reporting and corrective action procedures to demonstrate how Construction is complying with this Schedule and the Construction Environmental Management Plan.
- (vii) Environmental Monitoring Plan, which will describe the Design-Builder's environmental monitoring program including, as a minimum, general environmental monitoring of Construction as well as more specialized monitoring to check the effective implementation of the component plans of the Construction Environmental Management Plan, including monitoring rationale, parameters, sampling approach, issue and corrective action tracking mechanism and reporting.
- (viii) Environmental Procedures Plan that outlines the anticipated Environmental Procedures for the Project Work in and around Environmentally Sensitive Areas as per DBSS 165.02.03.
- (ix) Erosion and Sediment Control Plan as per DBSS 165.04.01, with specific attention to protection of water quality in the Illecillewaet River, any drainage features with connectivity to the Illecillewaet River, and the licensed water supply for TAMS.
- (x) Soil and Water Management Plan, which will describe measures for characterizing, testing, handling, and management of excavated soil following all applicable Laws, Permits and Reference Documents. The Soil and Water Management Plan will also describe the measures to be implemented to manage, appropriately remediate and/or dispose of soil, sediment, surface water, and/or groundwater in the event that Contamination or potential Contamination is encountered or an accidental release or other accident results in soil, sediment, surface water, and/or groundwater Contamination.
- (xi) Spill Management and Emergency Response Plan as per DBSS 165.14.02.
- (xii) Vegetation and Invasive Plant Management and Site Restoration Plan, which will describe the approach to be used for surveys, protection and removal of trees and other vegetation along the Project alignment; describe measures to be used to minimize the disturbance of riparian vegetation, protect upland vegetation, manage and protect rare or listed plants and plant communities, manage removal and storage of merchantable timber, restore and/or replant reclaimed abandoned roadways and temporarily disturbed areas with native species, as well as measures

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for handling, storing, re-using and/or disposing of non-merchantable vegetation, and site restoration and reclamation in accordance with Article 9 [Landscape and Site Restoration Design Criteria] of Part 1 of Schedule 4 and Permit requirements, and outlining management methods, disposal sites and options, as well as best management practices, for the management of invasive plants in accordance with Section 2.9 [Invasive Plant Management] of this Schedule.

- (xiii) Wildlife and Habitat Management Plan, which will identify and describe wildlife species at risk and Species of Concern that may be present, provide for reasonable protection of such species prior to and during Construction, provide for the identification and description of sensitive wildlife habitat on Construction drawings, identify measures to be implemented to minimize impacts to wildlife and address noise management including Project Site specific schedule, procedures and Best Management Practices to control Construction noise emissions, in accordance with this Schedule and Schedule 4 [Design and Construction Technical Requirements] and referencing, together with associated Environmental Procedures, the Environmental Timing Windows in accordance with Section 2.10 [Wildlife and Habitat Management] of this Schedule.

2.7 Seasonal Shut-Down Environmental Protection

- (a) All environmental protection requirements set out in this Agreement will continue to be the responsibility of the Design-Builder through all seasonal shut-down periods.
- (b) During any seasonal shut-down period, all areas of the Project Site excavated, graded, or otherwise disturbed by the Design-Builder will be shaped and stabilized by revegetation seeding or other means so as to prevent weathering, erosion, sloughing or siltation, and so that all requirements for protection of the environment have been, and will continue through such seasonal shut down period to be, met in accordance with this Agreement.
- (c) If, during a seasonal shut-down period, there is an increasing risk that sediment or any pollutants will be released from the Project Site, the Design-Builder will be responsible for implementing a remedial sediment and drainage management plan and environmental protection measures in accordance with the requirements of this Agreement.

2.8 Idle Reduction Strategy

- (a) The Design-Builder will develop an idle reduction strategy meeting the requirements of DBSS 165.16 for air emissions and air quality mitigation, and may utilize the following sample idle reduction strategies, grouped within four areas of opportunity, in the development of innovative and practical methods to influence workers to participate in such reduced idling measures:
 - (i) Location of staging areas to minimize impact of emissions:
 - (A) Locate combustion engines away from sensitive receptors such as fresh air intakes, air conditioners, and windows.
 - (B) Establish a staging zone for trucks that are waiting to load or unload material in the Project Site area, away from sensitive receptors.

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(ii) Idling time restrictions:

- (A) During periods of inactivity and while stopped within a queue formed under the direction of a traffic control person or device, idling of Design-Builder and Subcontractor off-road equipment will be minimized and are not to exceed the following:
 - (1) motor vehicles and light diesel trucks - 1 minute;
 - (2) heavy duty diesel vehicles - 5 minutes;
 - (3) diesel vehicles involved in Project Site passenger transportation – 10 minutes; and
 - (4) Construction equipment - exempt when actually employed at the Project Site for Project Work intended.
- (B) Idling for more than the above times is permitted only under the following circumstances:
 - (1) when the vehicle or equipment is forced to remain motionless because of other traffic conditions or mechanical difficulties over which the operator has no control;
 - (2) to bring the vehicle or equipment to the manufacturer's recommended operating temperature;
 - (3) when the outdoor temperature is below 0°C or above +30°C and the operator or passengers are inside the vehicle, and there are no auxiliary power sources available to provide temperature control;
 - (4) when it is necessary to operate auxiliary equipment that is located in or on the vehicle or equipment to accomplish the intended use of the vehicle or equipment (for example, cranes and cement mixers);
 - (5) when the vehicle is detaching or exchanging a trailer;
 - (6) when the vehicle or equipment is being repaired or engaged in repairing another vehicle, if idling is necessary for such repair;
 - (7) when the vehicle or equipment is queued for inspection, if idling is necessary for such inspection;
 - (8) for designated emergency vehicles or any vehicle or equipment assisting in police, fire or ambulance services; and/or
 - (9) when defrosting or defogging windows, provided that idling will end when fog, frost, or ice conditions have been eliminated.

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(iii) Outreach and Communications:

- (A) The Design-Builder will implement a system of education and training as part of Project Site orientation for all on-site staff and Subcontractors.
- (B) The Design-Builder will reinforce the idle reduction initiative via signage and during toolbox, health and safety, and Province meetings.

(iv) Idle Reduction Technologies:

The Design-Builder is encouraged to utilize idle reduction technologies where appropriate and applicable. Some examples are available at:

<https://www.epa.gov/verified-diesel-tech/learn-about-idling-reduction-technologies-irts-trucks-and-school-buses>

2.9 Invasive Plant Management

- (a) The Design-Builder and its Subcontractors will be responsible for undertaking invasive plant management for invasive plants that will be disturbed during Construction. Invasive plant species are as designated under the *Weed Control Act* (British Columbia) and prioritized and ranked by the Columbia Shuswap Invasive Species Society within the Revelstoke Invasive Plant Management Area.
- (b) To minimize the spread of invasive plant seeds or reproductive plant parts between Construction sites and gravel pits/quarries, all equipment must be cleaned to the standards outlined in DBSS 165.08.02 before entering gravel pits/quarries and after leaving areas containing invasive plants.
- (c) Where invasive plants are present, they must be managed and, if necessary, disposed of by the Design-Builder under the methods described in the Vegetation and Invasive Plant Management and Site Restoration Plan, or as directed by the Environmental Manager. All identification, treatment, disposal and monitoring of invasive plants will be as per the accepted Vegetation and Invasive Plant Management and Site Restoration Plan. Disturbed areas will be seeded and or planted as soon as practicable to prevent invasive plant establishment and colonization.

2.10 Wildlife and Habitat Management

- (a) The environmental timing windows (the “**Environmental Timing Windows**”) relevant for local wildlife Species of Concern and known Project Work activities to occur at the Project Site are listed in Table 2.10.

Table 2.10: Environmental Timing Windows

Wildlife Species of Concern	Constraints for Blasting*	Constraint for Vegetation Clearing/Rock Scaling*	Environmental Timing Window (Least Risk)	Location
	n/a	Minimize clearing with the Critical Habitat Parcel and Ungulate Winter Range (i.e., avoid unnecessary incursion into mature forest cover)	n/a	Forested areas up and downslope of Highway 1 within the Project Site
	See 2.10(c)(i) and 2.10(c)(iii) below	Clearing outside of the Environmental Timing Window only after pre-clearing breeding bird surveys and appropriate buffers established around active nests.	Sep 1 – Feb 28	Forested areas up and downslope of Highway 1 within the Project Site
	See (c)(i) and 2.10(c)(iv) below	Clearing outside of the Environmental Timing Window only after pre-clearing raptor nest surveys and appropriate buffers established around protected nests.	Tree Clearing and Blasting: Oct 1 – Dec 31*	Forested areas up and downslope of Highway 1 within Project Site and setback buffers recommended by AQP
	See 2.10(c)(ii) below	Clearing outside of the Environmental Timing Window only after pre-clearing roost surveys.	Oct 1 - Mar 31	Forested areas up and downslope of Highway 1 and rock faces within Project Site

* AQP to establish buffer zone outside of which disturbance behaviours unlikely to occur.

- (b) Clearing and grubbing work occurring within the Environmental Timing Windows will still require mitigation for protection of
under the *Wildlife Act* (British Columbia), and
under the *Migratory Birds Convention Act* (Canada), if present, as they are protected year-round regardless of whether they are active or not.
- (c) The Design-Builder's AQP will develop mitigation measures to avoid or minimize impacts to wildlife and wildlife habitat if Environmental Timing Windows cannot be met, including pre-activity wildlife surveys and the implementation of specific Environmental Procedures as follows:

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- (i) : In accordance with the *Migratory Birds Convention Act* (Canada) and the *Wildlife Act* (British Columbia), to minimize potential impacts on nesting birds, the Design-Builder will not clear vegetation or remove original rock faces outside the Environmental Timing Windows. If clearing or rock face removal is required outside the Environmental Timing Windows, it will only proceed following implementation of a nest survey. If active nests or breeding evidence is observed during the nest survey, a no-disturb buffer will be established and remain in effect until the nest is no longer active as determined by an AQP. Nests of g are protected year-round, regardless of whether they are active or not, under the *Wildlife Act* (British Columbia). nest cavities are also protected year-round under the *Migratory Birds Convention Act* (Canada). Nest surveys will be conducted according to a protocol detailed in the Construction Environmental Management Plan or an Environmental Procedure. Environmental Procedures will be prepared for activities that do not meet the Environmental Timing Windows.
- (ii) In consideration of their endangered status on the *Species at Risk Act* (Canada) and Best Management Practices, to minimize potential impacts on blasting or other Project Work activities that could affect active must be avoided, unless the Design-Builder's AQP has developed Environmental Procedures to avoid such impacts or otherwise confirms in writing that impacts to these species will be avoided.
- (iii) Pre-Construction Survey Requirements - Vegetation Clearing and Grubbing: Should the Project Work require clearing of vegetation outside of the Environmental Timing Windows for , minimum requirements for Construction Environmental Management Plan protocols or Environmental Procedures for pre-construction surveys will include the following:
- (A) sign-off by the AQP;
 - (B) completion of pre-construction nest surveys for consistent with applicable Best Management Practices, to determine presence of active potentially impacted by the Project;
 - (C) identification of any required no-disturb buffer areas and applicable timing restrictions for active ; and
 - (D) procedure for determining whether a has become inactive (and clearing can commence).
- (iv) Pre-Construction Survey Requirements – Blasting: The Design-Builder's AQP will review blasting plans for Project Work outside of Environmental Timing Windows and verify that the proposed blast plan meets the Design-Builder's Environmental Obligations for avoidance of significant adverse effects on Species of Concern and their habitat. Prior to blasting activities within the Environmental Timing Window, a dedicated survey will be performed

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to identify any that may be located within 1 km of blasting activities.
Should an active be identified, an AQP will determine an appropriate
setback distance and determine any other appropriate mitigation measures that the
Design-Builder must implement to prevent disturbance to by the
blasting activities. Mitigations may include adjustments to blasting activities
and/or behavioural and acoustic monitoring to confirm blasting is not causing
disturbance to the .

- (d) If Environmental Timing Windows cannot be met, the Design-Builder will provide an Environmental Procedure of wildlife mitigation measures, and any pre-clearing survey results obtained, in accordance with Section 2.10(c) of this Schedule. The Environmental Procedure will be provided to the Province's Representative for review in accordance with the Consent Procedure a minimum of 30 days prior to the planned commencement of vegetation clearing and/or Construction activities in areas of the Project Site where there is the potential to affect active bird nests or bat roosts.

PART 3 CONTAMINATION AND HAZARDOUS SUBSTANCES

3.1 Waiver of Site Disclosure Statement

The Design-Builder waives the requirement, if any, for the Province to provide a site disclosure statement to the Design-Builder for the Project Site under the *Environmental Management Act* (British Columbia) and acknowledges that it may obtain from the Environmental Authorities site disclosure statements for any site listed in the site registry established and maintained pursuant to the *Environmental Management Act* (British Columbia).

3.2 No Use of Hazardous Substances

- (a) The Design-Builder will not use or permit to be used on the Project Site or any part thereof for the sale, storage, manufacture, disposal, handling, treatment, generation, use, transport, refinement, processing, production, remediation or Release of, or any other dealing with, any Hazardous Substance without the prior approval of the Province unless the Province normally conducts or permits such activities in the case of other "controlled access highways" as defined in the *Transportation Act* (British Columbia).
- (b) Approval may be granted or withheld in the Province's discretion, and then only in compliance with all Environmental Laws.

3.3 Dealing with Hazardous Substances

The Design-Builder will:

- (a) deal with all Hazardous Substances on the Project Site in accordance with all Environmental Laws; and
- (b) at all times comply with and cause all persons for whom the Design-Builder is responsible to comply with all Environmental Laws in respect of the Project Site and the performance of the Project Work.

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3.4 Notification to Province

The Design-Builder will promptly, and in any event within 24 hours, notify the Province's Representative of:

- (a) any Release of a Hazardous Substance or any other occurrence or condition involving Hazardous Substances at or affecting the Project Site that could cause Contamination of the Project Infrastructure, the Project Site or any other lands in their vicinity or subject the Design-Builder, the Province or BCTFA to any fines, penalties, orders, investigations or other proceedings under any Environmental Laws, together with full particulars of such Release, occurrence or condition including the location, time, agencies involved, damages suffered or caused and remedial action taken;
- (b) all charges, orders, investigations or notices of violation or non-compliance issued against the Design-Builder or relating to the performance of the Project Work or the Project Site under any Environmental Laws; and
- (c) any notice, claim, action or other proceeding by any person against the Design-Builder or relating to the performance of the Project Work or the Project Site concerning the Release or alleged Release of any Hazardous Substance.

3.5 Notification to Environmental Authorities

The Design-Builder will, as required pursuant to and in accordance with Environmental Laws, immediately notify the relevant Environmental Authorities of any Release of any Hazardous Substance at or from the Project Site. Failure to provide such notice means the Province may notify the relevant Environmental Authorities of any Release of any Hazardous Substance.

3.6 Removal and Remediation

- (a) The Design-Builder will:
 - (i) promptly at any time, if requested by the Province or by any other Environmental Authority pursuant to Environmental Laws; and
 - (ii) in any event upon the expiry or earlier termination of this Agreement,

remove from the Project Site or remediate or manage any and all Hazardous Substances to the numerical or risk-based standards required or permitted by Environmental Laws.
- (b) The Design-Builder will remediate by removal any Contamination of any lands in the vicinity of the Project Site resulting from Hazardous Substances brought onto, used at or Released at or from the Project Site or by the Design-Builder or any person for whom the Design-Builder is responsible.
- (c) Upon encountering any Contamination or potential Contamination on the Project Site, the Design-Builder will prepare and submit to the Province's Representative pursuant to the Consent Procedure a plan for the remediation, removal or management of such Contamination, if such remediation, removal or management is required in accordance with this Agreement and, following the acceptance of such plan by the Province, or sooner if

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required by Environmental Laws, the Design-Builder will commence and complete any required remedial, removal or management work in accordance with such plan and all Environmental Laws to the extent applicable, provide the Province's Representative with full information with respect to any such remedial, removal or management work, and comply with the reasonable requirements of the Province with respect to any such remedial, removal or management work.

3.7 Hazardous Substances Brought onto Project Site

Notwithstanding any Laws or any other provision in this Agreement to the contrary, all Hazardous Substances and materials, goods or other items containing Hazardous Substances brought onto and used at or Released at or from the Project Site by the Design-Builder or any person for whom the Design-Builder is in law responsible will be and remain the sole and exclusive property of the Design-Builder and will not become the property of the Province or BCTFA, notwithstanding their incorporation into or affixation to the Project Site or the Project Work and notwithstanding any termination or expiration of the Term.

PART 4 ARCHAEOLOGICAL AND HERITAGE OBJECTS

4.1 Property

All fossils, remains, coins, articles of value or antiquity and other objects having archaeological, artistic, historic or monetary interest or value, including all heritage objects (as defined in the *Heritage Conservation Act* (British Columbia)), that may be found on, at or in the Project Site or otherwise during the carrying out of the Project Work are and will be, as between the Design-Builder and any Subcontractor on the one hand, and the Province on the other, the sole and absolute property of the Province.

4.2 Archaeological Chance Finds

- (a) Upon the discovery of any object referred to in Section 4.1 [Property] of this Schedule on, at or in the Project Site or otherwise during the carrying out of the Project Work, the Design-Builder will:
 - (i) immediately inform the Province's Representative;
 - (ii) take all steps not to disturb the object and, if necessary, cease any Project Work in so far as performing such Project Work would or is reasonably likely to endanger the object or prevent or impede its excavation;
 - (iii) take all necessary steps to preserve the object in the same position and condition in which it was found; and
 - (iv) comply with all Laws and requirements of Governmental Authorities with respect to the discovery of such item, including pursuant to the *Heritage Conservation Act* (British Columbia),

and the discovery of such object and compliance by the Design-Builder with its obligations under this Section 4.2(a) will constitute a Compensation Event and the provisions of Part 8 [Supervening Events] of this Agreement will apply.

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- (b) If the Province wishes the Design-Builder to perform procedures which are in addition to those required pursuant to Section 4.2(a) of this Schedule in respect of any object referred to in Section 4.1 [Property] of this Schedule, then the Province will request a Province Change pursuant to Section 7.1 [Province Changes and Value Added Engineering Proposals] in respect of such additional procedures.

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DESIGN-BUILD AGREEMENT
SCHEDULE 6: ENVIRONMENTAL OBLIGATIONS

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APPENDIX 6A
TABLE OF COMMITMENTS AND PERFORMANCE INDEX

1. All commitments identified in this Table of Commitments and Performance Index will be interpreted to mean that the Design-Builder will be obliged to perform and carry out the works and activities and comply with the matters described in the relevant condition in their entirety.
2. The designation of “Major”, or “Severe” in the column entitled “Performance Mechanism Index” in this Appendix 6A indicates, in respect of the condition corresponding to such designation in this Appendix 6A, the basis on which NCE Points and Default Points will be assigned in accordance with Part 2 [NCE Points and Default Points] of Schedule 9 to this Agreement. NCE Points may be assigned in accordance with Section 6.1 [Nonconformity Reporting Process] of Schedule 7 for any other performance measures set out in this Appendix 6A.
3. All defined terms used in the Table of Commitments and Performance Index will have the meanings given in Schedule 1 [Definitions and Interpretation] to this Agreement.

Ref	Commitment	Performance Mechanism Index
1.0	RESPONSIBLE ENVIRONMENTAL MANAGEMENT	
1.1	Develop and submit in accordance with the Consent Procedure a Construction Environmental Management Plan for the Project prior to the start of site preparation or ground-disturbing Project Work or 45 days from the Effective Date, whichever is sooner. Implement, maintain and comply with the Construction Environmental Management Plan as the primary document for protection of the environment during the Project Work, including during seasonal shut-downs in accordance with Section 2.7 of Schedule 6. The Construction Environmental Management Plan will include each of the following sub-plans as set out in Section 2.6(d) of Schedule 6 (and with any resulting NCE Points assigned separately in respect of each sub-plan): 1. Air Quality and Dust Control Plan; 2. Clearing and Grubbing Plan; 3. Construction and Hazardous Waste Management and Disposal Plan; 4. Construction Water Management Plan; 5. Environmental Awareness and Education Plan; 6. Environmental Incident Reporting Plan; 7. Environmental Monitoring Plan; 8. Environmental Procedures Plan; 9. Erosion and Sediment Control Plan; 10. Soil and Water Management Plan; 11. Spill Management and Emergency Response Plan; 12. Vegetation and Invasive Plant Management and Site Restoration Plan; and 13. Wildlife and Habitat Management Plan.	1. Major 2. Major 3. 4. Severe 5. Major 6. Severe 7. Major 8. Severe 9. Severe 10. Major 11. Severe 12. 13. Major

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Appendix 6A: Table of Commitments and Performance Index

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Ref	Commitment	Performance Mechanism Index
1.2	In addition to the requirements of Section 2.1(c) of Schedule 6, the Design-Builder's Environmental Manager will be responsible for, in each case in accordance with all applicable requirements of this Agreement: 1. Providing compliance oversight of the Construction Environmental Monitoring Plan, Environmental Procedures, and the Design-Builder's Environmental Obligations of the Project requirements, in accordance with DBSS 165; 2. Managing all environmental issues associated with the Project on a day-to-day basis, including overseeing the environmental monitoring program; 3. Being available at all times during the Term of the contract to respond to environmental issues (within 24 hours of notification of an environmental issue); 4. Providing direction to the design and implementation of any mitigation that may be required as a condition of the environmental permits received or with plans and Environmental Procedures and providing internal environmental review of Designs, including development of mitigation and compensation proposals; 5. Facilitating and recording environmental management meetings to provide regular (no less than monthly) updates for Ministry staff; 6. Managing the restoration and revegetation of those portions of the existing highway that have been disturbed as a result of the Project that will be discontinued for road purposes; 7. Developing and implementing a wood-waste management system to recycle non-merchantable vegetation materials for use as: a. a compost medium for revegetation planting; and b. Indigenous ceremonial or other purposes. 8. Monitoring, responding to and reporting environmental and non-compliance issues during Construction (including Release of Hazardous Substances to ground or water) and preparing Environmental Incident Reports for the Province's Representative review and notifying Environmental Authorities, if required by Environmental Laws; 9. Monitoring and mitigating potential wildlife impacts (including injury or mortality of individuals) during construction in accordance with the Wildlife and Habitat Management Plan; 10. Monitoring and mitigating potential invasive species impacts during Construction; and 11. Participating in stakeholder and community meetings at the request of the Ministry in accordance with Schedule 9 [Communications and Engagement].	1. Severe 2. Severe 3. Major 4. Major 5. 6. Severe 7. 8. Severe 9. Severe 10. 11.
1.3	Create and submit Environmental Procedures 30 days prior to commencement of activity for which the Environmental Procedure is required.	Major
1.4	Within one hour after becoming aware or when the Design-Builder ought to have become aware of such violation, notify the Province's Representative of the violation of any terms or conditions of any Permits which are required under Environmental Laws in connection with the Project and the Project Work.	Major

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Ref	Commitment	Performance Mechanism Index
2.0	WATER QUALITY	
2.1	Comply with the <i>Water Sustainability Act</i> (British Columbia) for protection of licensed water and provide equal or better access (compared to baseline) to the licensed water supply for TAMS following Construction..	Major
2.2	Sample water from potentially impacted licensed water sources to assess potential adverse effects on drinking water quality prior to and annually during Project Work or as specified by the Province's Representative. Provide sampling water quality data to the Province's Representative within 1 month of sampling events.	
3.0	SOIL	
3.1	Comply with all applicable Laws, Permits and Reference Documents for charactering, testing, handling, and management of excavated soil, as specified in the Soil and Water Management Plan.	Severe
4.0	ARCHAEOLOGY	
4.1	Ensure compliance with the Archaeological Chance Find Procedure described in DBSS 165.20 and ensure that the Province's Representative has current contact information for identified personnel.	Severe
4.2	In the event of a chance find, support the Province in assisting with the participation of Indigenous groups in specified archaeological work that is to occur in the Project Site within their respective asserted traditional territories.	Severe

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QUALITY MANAGEMENT**

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**PART 1
QUALITY MANAGEMENT SYSTEM**

1.1 Quality Management System

The Design-Builder will develop and implement a Quality Management System in accordance with the requirements of the DBSS and this Schedule. The Design-Builder acknowledges and agrees that the Design-Builder is solely responsible for the quality of the Project Work and that the effective implementation of a comprehensive Quality Management System is a critical component of the proper and timely completion of the Project Work.

1.2 Design-Builder Responsibilities

The Design-Builder is responsible for all quality assurance and quality control activities required to manage its own processes as well as those of its Subcontractors throughout the Term. The Design-Builder will ensure that all aspects of the Project are the subject of a Quality Management System that complies with the provisions of this Schedule, and will comply with and cause each of its Subcontractors and the employees of Subcontractors to comply with the requirements of such Quality Management System. For greater certainty, and without limiting the Design-Builder's ability to contractually assign matching responsibilities and obligations to the Subcontractors in accordance with this Agreement, the Design-Builder will not be relieved of any of the Design-Builder's responsibilities or obligations set out in this Schedule by the assignment of such responsibilities or obligations to its Subcontractors.

1.3 Quality Management System Requirements

- (a) The Quality Management System will address all aspects of the Project Work for all phases of the Project, including Design and Construction. The Quality Management System will be integrated into all Project Work, including environmental management, traffic management, safety management and communications activities. The Quality Management System will include all quality control and quality assurance activities for all aspects of the Project Work for all phases of the Project.
- (b) The Quality Management System will, at a minimum, include the Quality Documentation described in Part 5 [Quality Documentation] of this Schedule and will comply with:
 - (i) the requirements and principles of the ISO 9001:2015 Standard and any other applicable standards specified in this Schedule;
 - (ii) the Project Requirements;
 - (iii) Good Industry Practice; and
 - (iv) all other requirements set out in this Schedule and this Agreement.

1.4 Compliance

- (a) The Quality Management System must be compliant with the ISO 9001:2015 Standard in accordance with Section 1.3(a) of this Schedule.
- (b) The Design-Builder will update its Quality Management System and all Quality Documentation as required to ensure that the Quality Management System and all Quality

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Documentation is and at all times remains in full compliance with the ISO 9001:2015 Standard and the requirements of this Schedule and this Agreement.

1.5 Documentation Deliverables

1.5.1 Design-Builder Quality Management Plans

- (a) Without limiting the generality of Section 1.3 [Quality Management System Requirements] of this Schedule, the Design-Builder will prepare and submit to the Province's Representative, by the dates shown in Table 1.5.1, each of the following:

Table 1.5.1 Schedule of Plans and Reports (Response Time Measures)

Deliverable Name	Due Date	Schedule Reference	Review Procedure or Consent Procedure
Quality Manual	Submitted prior to performing any Design or Construction, subject to Section 1.5.1(c) of this Schedule, and with allowance for at least 20 Business Days for review by the Province's Representative under the Consent Procedure	Appendix 7A	Consent Procedure
Design Quality Management Plan	Submitted prior to performing any Design or Construction, subject to Section 1.5.1(c) of this Schedule, and with allowance for at least 20 Business Days for review by the Province's Representative under the Consent Procedure	Appendix 7B	Consent Procedure
Construction Quality Management Plan	Submitted prior to performing any Construction, and with allowance for at least 20 Business Days for review by the Province's Representative under the Consent Procedure	Appendix 7C	Consent Procedure
Other Quality Management Plans (see below)	Submitted prior to performing any other relevant Project activities (such as off-site steel fabrication), and with allowance for at least 20 Business Days for review by the Province's Representative under the Consent Procedure.	1.5.2	Review Procedure

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Deliverable Name	Due Date	Schedule Reference	Review Procedure or Consent Procedure
Quality Audit Plans	Submitted within 90 days after submittal of the Quality Manual, and with allowance for at least 20 Business Days for review by the Province's Representative under the Consent Procedure	4.1.1	Consent Procedure
Quality Audit Plan Updates	At twelve monthly intervals after the applicable Quality Audit Plan was approved under the Consent Procedure	4.1.1	Review Procedure
Monthly Quality Management System reports	Within 15 Business Days of the start of the month following the Effective Date, and for each month after that until the Total Completion Date	5.9.1	N/A
Quality Audit Reports	Within 14 days of Quality Audit completion	4.2.2	N/A
Final Quality Report	Within 30 Business Days of Substantial Completion	4.2.2	Consent Procedure
Traffic Management Auditing reports	Within two Business Days following any audit with a Site Condition Rating other than "Acceptable"	4.8(f)	N/A

- (b) The documents above that are indicated to be subjected to the Consent Procedure or the Review Procedure will be submitted to the Province's Representative in accordance with the Consent Procedure or the Review Procedure, as the case may be, pursuant to Schedule 2 [Review Procedure and Consent Procedure]. All other documents will be submitted to the Province's Representative for information only.
- (c) Notwithstanding the requirements of Table 1.5.1, and subject to any objection by the Province (acting reasonably), the Design-Builder may only proceed with Design components of the Project Work after submitting the Quality Manual and the Design Quality Management Plan under the Consent Procedure but prior to the completion of the Consent Procedure in accordance with Section 2.1 [Consent Procedure] of Schedule 2, provided that:
 - (i) concurrent with its submission of the Quality Manual or Design Quality Management Plan (as the case may be) under the Consent Procedure, the Design-Builder provides the Province's Representative with notice of the Design

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components it is proceeding with prior to the completion of the Consent Procedure;
and

- (ii) in all cases any such action will be taken at the Design-Builder's sole risk and expense and the Design-Builder will in any event remain responsible for complying with the Quality Manual and the Design Quality Management Plan once they have been accepted under the Consent Procedure, including making any and all reconstructions, alterations, modifications or other remedial work to the Design components of the Project Work already completed as may be necessary to comply with the accepted Quality Manual and the accepted Design Quality Management Plan.

1.5.2 Other Quality Management Plans

The Design-Builder will prepare and submit a Quality Management Plan for any other person contracting with the Design-Builder or any Subcontractor for the purposes of undertaking any material and substantial aspect of the Project Work (but excluding legal and financial advisors) in each case for undertaking the activities covered by that party's contract with the Design-Builder or such Subcontractor (as the case may be) and meeting the requirements of the Quality Manual.

1.6 Timing of Implementation

1.6.1 Performance Measures

The Design-Builder will fully implement the Quality Manual and each of the Quality Management Plans on or before the date that is 150 days after the Effective Date.

1.6.2 Specific Requirements

The Design-Builder will not commence or permit the commencement of any aspect of the Project Work before those parts of the Quality Documentation that concern such aspect of the Project Work have been submitted to the Province's Representative in accordance with this Schedule under the Consent Procedure or the Review Procedure, as the case may be.

1.7 Compliance with Quality Management System

The Design-Builder will ensure that:

- (a) the Design-Builder complies with the Quality Management System detailed in the Quality Manual and any other Quality Documentation in connection with its management activities and any other Project Work carried out by the Design-Builder;
- (b) the Designer complies with the Design Quality Management Plan and any other Quality Documentation in connection with its design and construction-related activities;
- (c) any other person contracting with the Design-Builder or any Subcontractor complies with the relevant Quality Management Plan prepared and implemented pursuant to Section 1.5.2 [Other Quality Management Plans] of this Schedule in connection with the activities covered by that party's contract with the Design-Builder or such Subcontractor (as the case may be); and

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- (d) any person who performs any portion of the Project Work will comply with the Quality Management System as it relates to that portion of the Project Work.

The means by which the above requirements are communicated, understood and verified will be documented in the Quality Records.

1.8 Continual Improvement

- (a) The Design-Builder will implement a program and will have mechanisms in place, such as management reviews and Quality Audit programs, to allow all identified Opportunities for Improvement to be recorded, tracked and implemented, and closed out.
- (b) The Design-Builder will use the program described in Section 1.8(a) of this Schedule to continually improve the effectiveness and efficiency of the Design-Builder's Quality Management System.
- (c) The Design-Builder will ensure that all of the Design-Builder's employees and Subcontractors are aware of the importance of continual improvement and are actively engaged in its implementation in connection with the performance of the Project Work.

PART 2 QUALITY PERSONNEL

2.1 Quality Director

- (a) At all times until the Total Completion Date, the Design-Builder will employ a Quality Director who will:
 - (i) have defined authority for ensuring the establishment and maintenance of the Quality Management System and auditing and reporting on the performance of the Quality Management System; and
 - (ii) be required to report directly to the Design-Builder's Representative.
- (b) The Quality Director will have experience in a similar quality management representative role for a successful project of similar scope and complexity and will have successfully completed an ISO 9001 Lead Auditor Course.
- (c) The identity of the Quality Director (and any replacement) and the Quality Director's job specification and responsibilities will be subject to the approval of the Province (such approval not to be unreasonably withheld or delayed), and the Quality Director will be a Key Individual subject to the requirements of Section 3.3 [Key Individuals] of this Agreement.
- (d) Without limiting the generality of the foregoing, the job specification and responsibilities of the Quality Director will include the following:
 - (i) determining, integrating and implementing the actions required to ensure the Quality Management System will achieve its intended results (including

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addressing any risks and identifying and implementing opportunities for improvement);

- (ii) developing, implementing and maintaining, and ensuring the effective operation of, the Quality Management System;
- (iii) verifying that all Quality Documentation conforms to applicable Project Requirements prior to submission to the Province;
- (iv) coordinating with quality managers, safety advisors and other quality and safety personnel to ensure integration of the Quality Management System and the Health and Safety Program with and between all Project disciplines;
- (v) initiating management reviews not less frequently than annually, and taking other actions necessary to ensure the effective operation and continual improvement of the Quality Management System;
- (vi) approving and signing off on all Quality Management System documents, including all revisions;
- (vii) scheduling and coordinating Independent Quality Audits with the Independent Quality Auditor;
- (viii) preparing Quality Audit Plans and managing (including scheduling and coordinating) Internal Quality Audits and External Quality Audits of all key processes with the Design-Builder's personnel and with the Subcontractors (including the Designer);
- (ix) ensuring that all Quality Audits required under Section 4.2 [Design-Builder's Quality Audits] of this Schedule and under the Quality Documentation are conducted, and reporting the findings of such audits to the Province's Representative;
- (x) having the authority to immediately stop any work or activity which is not being performed or carried out in accordance with the Quality Documentation or the Health and Safety Program, as applicable thereto;
- (xi) liaising with the Province's Representative and acting as the primary representative for the Design-Builder on all matters relating to quality management;
- (xii) preparing and submitting to the Province's Representative monthly Quality Management System reports;
- (xiii) ensuring that relevant Records are maintained and retained in accordance with this Agreement, the Quality Management System and the Records Management Protocol;
- (xiv) developing and implementing a program for Correction, and where applicable, Corrective Action in respect of Nonconformities;

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- (xv) developing and implementing a program for Opportunities for Improvement in respect of potential Nonconformities or continual improvement initiatives;
- (xvi) approving and signing off on the action taken in close out of Nonconformity Reports in accordance with Section 6.1 [Nonconformity Reporting Process] of this Schedule; and
- (xvii) carrying out any other matters which, in accordance with this Agreement, are the responsibility of the Quality Director.

2.2 Quality Managers

The Design-Builder will:

- (a) not permit any quality management personnel (including the Quality Director) who will perform quality control for the Design or Construction to perform any other role in the Design or Construction;
- (b) ensure that the quality management personnel (including the Quality Director) are not required to, and do not, report to leads or managers responsible for the Design or Construction (though such personnel may be employed or retained by a Subcontractor); and
- (c) ensure that each quality manager for each Quality Management Plan will:
 - (i) have expertise in a similar role on a similar successful project and successful completion of an ISO 9001 Lead Auditor Course; and
 - (ii) report directly to the Quality Director.

PART 3 TESTING

3.1 Testing Requirements

Where the Design-Builder is required by this Agreement, any of the Project Requirements, the Design and Certification Procedure or any Quality Documentation to carry out any inspection, calibration, sample, test or trial, such inspection, calibration, sample, test or trial will be carried out in accordance with the following provisions of this Part 3 and the provisions of the relevant Quality Documentation.

3.2 Accreditation Standards

- (a) All calibrations, samples, tests and trials, whether performed on the Project Site or off the Project Site, will be carried out by laboratories that are duly accredited for the carrying out of such calibrations, samples, tests and trials.
- (b) Laboratory accreditation will be in accordance with ISO/IEC 17025, as amended, updated or replaced from time to time, provided that, for specific activities, the Province may, in accordance with the Consent Procedure, accept other industry-recognized accreditation in lieu of ISO/IEC 17025, including:

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- (i) concrete and concrete materials: CSA A283, “Qualification Code for Concrete Testing Laboratories”, to the appropriate category for the tests being done;
 - (ii) structural steel and welding: CSA W178.1, “Certification of Welding Inspection Organizations”, to the level appropriate for the inspection being carried out;
 - (iii) aggregates, bituminous paving mixtures: “Canadian Council of Independent Laboratories”, as appropriate to the work being carried out; and
 - (iv) protective coatings: “National Association of Corrosion Engineers”, as appropriate to the work being carried out.
- (c) The Design-Builder may request the approval of the Province to use other industry-recognized accreditations, which approval will not be unreasonably withheld or delayed if such other accreditation is applicable to the Project Work for which it is proposed and meets the intent of ISO/IEC 17025.

3.3 Material Verification Testing

For all materials incorporated into the Project Work, the Design-Builder will have a laboratory, registered as a corporation in Canada and accredited in accordance with this Agreement, carry out verification of the materials as follows:

- (a) test and verify that the material meets the requirements of the design;
- (b) perform verification testing on, but not limited to, materials such as structural steel, miscellaneous steelwork, cement, aggregates, supplementary cementing materials, additives, reinforcing steel, fasteners, bolts, anchor rods, and welding consumables;
- (c) verify that the mill certificates for the material and any other material certifications are valid;
- (d) perform verification testing of steel for boron content; and
- (e) stamp the mill certificates and any other material certifications with the name of the laboratory, the laboratory’s authorized officer, and the names and signatures of the inspectors and testers.

3.4 Structural Component Inspection and Testing

- (a) For manufacturing and fabrication of components incorporated into a Structure, including structural steel, fabricated steel elements, steel piles, steel strands, stay cables and pre-cast concrete (the “**Structural Components**”), the Design-Builder will, as a minimum, employ independent testing and inspection companies registered as corporations in Canada and certified by organizations accredited by the Standards Council of Canada to provide the following:
 - (i) full time quality inspection and testing at the mills and fabrication facilities, under the direction of a Professional Engineer (or its designated representative), who will be present on-site at the mills and fabrication facilities on a full time basis or in

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accordance with a schedule of site visits set out in the Construction Quality Management Plan accepted pursuant to the Consent Procedure, while the manufacture and fabrication of the Structural Components are in process. If the Province's Representative accepts a schedule of site visits (provided in the Construction Quality Management Plan) under the Consent Procedure, the Province retains the right to require the Design-Builder to have additional site visits by the Professional Engineer if quality issues arise;

- (ii) quality reports and assurances produced under the direction of the Professional Engineer identified in Section 3.4(a)(i) of this Schedule:

- (A) at the following milestones:

- (1) upon supply of raw materials to the fabricator; and

- (2) at 25%, 50%, 75% and 100% fabrication completion stages; and

- (B) which will include a record of the fabrication activities and testing and inspections to date including Nonconformities, Corrections and Corrective Actions;

- (iii) monthly status reports, signed and sealed by the Professional Engineer identified in Section 3.4(a)(i) of this Schedule, which include a status of the stages of the manufacture and fabrication process carried out to the date of the report and a record of the quality reports and assurances identified in Section 3.4(a)(ii) of this Schedule carried out to the date of the report; and

- (iv) a full and final report, signed and sealed by the Professional Engineer identified in Section 3.4(a)(i) of this Schedule, following the completion of any manufacture and fabrication process including a summary of all stages of the manufacture and fabrication process and a record of the quality reports and assurances identified in Section 3.4(a)(ii) of this Schedule,

and provide each of the reports identified in this Section 3.4, except reports for Corrective Actions, to the Province's Representative for information only at the times and the milestones identified in this Section. Quality reports and assurances which record Corrective Actions, as required under this Section 3.4, will be submitted to the Province's Representative in accordance with the Consent Procedure.

- (b) The Design-Builder will notify the Province's Representative no later than 60 days prior to shipping the Structural Components to the Project Site.
 - (c) The Design-Builder will cause the responsible Professional Engineer identified in Section 3.4(a)(i) of this Schedule to provide a signed and sealed declaration that "by utilizing the standards of care, skill and diligence in accordance with the standards of the profession, the [insert name/description of the relevant Structural Components] have been manufactured and/or fabricated to meet the requirements of the specifications as attached [insert list of all relevant specifications]".

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- (d) The Design-Builder will cause a principal of the Designer, as required by Part 2 [Design and Certification Procedure] of Schedule 4, to provide a signed and sealed declaration that "by utilizing the standards of care, skill and diligence in accordance with the standards of the profession, the [insert name/description of the relevant Structural Components] have been manufactured and/or fabricated to meet the requirements of the relevant Design Data and the provisions of the Agreement".
- (e) The Design-Builder will submit the declarations referred to in Sections 3.4(c) and 3.4(d) of this Schedule to the Province's Representative in accordance with the Review Procedure five Business Days prior to any Structural Components leaving the place of manufacture or fabrication.

3.5 Re-Inspection and Re-Testing of Steel Structural Components

- (a) For steel structural components manufactured or fabricated outside of Canada or the United States (the "**Applicable Steel Structural Components**"), the Design-Builder will, prior to incorporation into the Project Infrastructure, re-inspect and re-test, at a location in Canada, 10% of each such Applicable Steel Structural Component by a company certified by the Canadian Welding Bureau in accordance with CSA W47.1 to Division 1 and by the Canadian Institute of Steel Construction in the category of steel bridges.
- (b) For each Applicable Steel Structural Component, the Design-Builder will ensure that:
 - (i) such Applicable Steel Structural Component will be in a configuration and location that facilitates all re-inspection and re-testing requirements;
 - (ii) the re-inspection and re-testing of such Applicable Steel Structural Component will be completed in accordance with the testing and inspection requirements of DBSS 421 Structural Steelwork and to ensure that such Applicable Steel Structural Component was not damaged during transportation and that the shop assembly is in accordance with DBSS 421 Structural Steelwork; and
 - (iii) the re-inspection of the welding of such Applicable Steel Structural Component is carried out by a CSA W178.2 Level III certified welding inspector accredited with CSA W47.1/W59 to inspect Applicable Steel Structural Components.
- (c) The Design-Builder will provide to the Province's Representative the results of all re-inspection and re-testing of Applicable Steel Structural Components in accordance with this Section 3.5.

3.6 Remedial Work

The Design-Builder will be responsible at its own expense for any remedial work required as a result of any failure to pass any calibration, sample, inspection, test or trial required in accordance with this Agreement, any of the Project Requirements, the Design and Certification Procedure or any Quality Documentation or as a result of any laboratory not being duly accredited as required by this Agreement. The Design-Builder will retain and preserve all test pieces and samples which represent rejected material until Substantial Completion, unless otherwise permitted by the Province in its discretion, at which time the Design-Builder will transfer all such test pieces and samples which represent rejected material to the Province or otherwise dispose of or remove such materials as determined by the Province.

3.7 Test Records and Reports

The Design-Builder will:

- (a) document all inspections and tests;
- (b) maintain all test records and reports as Quality Records in accordance with Section 5.8 [Quality Records] of this Schedule, and ensure they are readily accessible for the audits required by Section 4.2 [Design-Builder's Quality Audits] of this Schedule;
- (c) permit the Province to attend all tests, retests and inspections and provide the Province with all related records and reports for its review;
- (d) provide the Province, on its request, with calibration certificates and records for testing equipment used by the Design-Builder; and
- (e) include the following in connection with all test records and reports:
 - (i) traceability to the item tested;
 - (ii) traceability of the test equipment used;
 - (iii) specific identification of the relevant work and components if unrelated work is on the reports;
 - (iv) actual test results;
 - (v) remarks regarding conformance with this Agreement;
 - (vi) name and position of the person who actually performed the measurements;
 - (vii) name, position, signature and contact details of the person who verified and approved the test measurement; and
 - (viii) contact information of the Subcontractor doing the testing on the test report/letterhead.

PART 4 QUALITY AUDITS AND MONITORING

4.1 Quality Audit Plans

4.1.1 Performance Measures

- (a) The Design-Builder will provide the Quality Audit Plans to the Province's Representative in accordance with Table 1.5.1.
- (b) The Design-Builder will provide updated Quality Audit Plans at twelve month intervals thereafter under the Review Procedure. At the same time as providing the updated Quality Audit Plan, the Design-Builder will provide an annual summary outlining whether the planned audit schedule was met and whether the Quality Objectives were achieved.

4.1.2 Specific Requirements

Quality Audit Plans will detail the Internal Quality Audits and the External Quality Audits that will be conducted by the Design-Builder on its own processes and those of its Subcontractors, and the planned dates of such Quality Audits.

4.2 Design-Builder's Quality Audits

4.2.1 General

The Design-Builder will conduct Internal Quality Audits and External Quality Audits of its own processes and those of its Subcontractors (including the Designer) and in accordance with the requirements of ISO 19011:2018 and this Schedule, the Quality Documentation and the Quality Audit Plans referred to therein. The purpose of the Design-Builder's quality auditing process is to confirm that all activities comprising the Project Work are in compliance with those documented in the Quality Management System (including the Quality Manual and Quality Management Plans), to identify all Nonconformities, necessary Corrective Actions and Opportunities for Improvement, and to facilitate continual improvement.

4.2.2 Performance Measures

- (a) The Quality Director will schedule Internal Quality Audits (at least every six months) and External Quality Audits (at least annually) to ensure that all key processes are assessed regularly. The Quality Director will ensure that each Internal Quality Audit and each External Quality Audit will include an audit of the Health and Safety Program, unless otherwise determined by the Province in its discretion.
- (b) The Design-Builder will prepare a Quality Audit Plan for each Quality Audit describing the activities, arrangements, scope and criteria for the Quality Audit, and will provide the Quality Audit Plan to the party being audited (whether the Design-Builder or a Subcontractor) in advance to confirm the scope and schedule of the audit.
- (c) Quality Audits will be scheduled taking into account the duration of the work to ensure that each Subcontractor is subject to at least one Quality Audit.
- (d) Within 14 days of completion of any Quality Audit, the Design-Builder will document, or cause to be documented, the results of such Quality Audit in an audit report and make such report available to the Province's Representative.
- (e) The Design-Builder will, not later than 30 Business Days after Substantial Completion, submit to the Province the Final Quality Report, which meets the requirements specified in Section 4.10 [Final Quality Report] of this Schedule, to provide objective evidence that the quality of the Project Work satisfies the requirements of this Agreement.

4.2.3 Specific Requirements

- (a) Internal Quality Audits and External Quality Audits will be scheduled taking into account the Quality Objectives, feedback from the Province, the importance of the processes being audited, risks and opportunities, organizational changes affecting the Design-Builder as well as the results of previous audits.

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- (b) Internal Quality Audits and External Quality Audits will be carried out by personnel who have the education, work experience, auditor training and audit experience required to perform the audit, and who demonstrate an ability to successfully apply these attributes to the auditing role. Such auditors will be objective and impartial toward the area(s) being audited.
- (c) Where necessary, follow-up audits will be scheduled to ensure that identified Corrections, Corrective Actions and Opportunities for Improvement are carried out in a timely fashion.

4.3 Province's Quality Audits

4.3.1 General

The Province will, pursuant to the submission of the Quality Documentation in accordance with this Schedule, review the Quality Documentation to identify the critical activities and processes identified in the Quality Manual and Quality Management Plans on which the Province's auditing efforts and resources should be directed. The Province will determine the frequency of auditing through regular and ongoing review of the Design-Builder's performance and management systems. Work procedures and activities that show good audit performance may have the frequency of auditing decreased, while those that show poor performance or increased risk may have the frequency of auditing increased. The Province may delegate, to any independent auditor or inspection and testing agency, its rights to audit the Project Work. The Design-Builder will provide and will ensure its Subcontractors (including the Designer) provide the Province's auditors with all documentation, records, access, facilities and assistance for the safety and convenience of the Province.

4.3.2 Types of Quality Audits

Without limiting any other rights of the Province (including audit rights) provided in this Agreement, the following two types of Quality Audits may be conducted by, or on behalf of, the Province in its discretion:

- (a) Surveillance Quality Audits – Scheduled or unscheduled field audits conducted on a random basis or on specific areas of interest. The objective of these surveillance audits is to monitor the Design-Builder's activities involving the Project Work, including work practices, workmanship, performance measures and general quality of materials and completed components; and
- (b) Quality Management System Audits – Scheduled audits conducted at specific times to assess the performance of and compliance with the Quality Management System.

4.3.3 Audit Observations and Findings

- (a) The Province may, at any time and in its discretion, provide its observations and findings, including deficiencies, procedural or performance nonconformities, to the Design-Builder in an audit report.
- (b) Where the Province initiates a Nonconformity Report, the Design-Builder will investigate, address and track the Nonconformity in accordance with Part 6 [Nonconformities] of this Schedule.

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- (c) All other observations and findings identified by the Province and provided to the Design-Builder in an audit report, will be reviewed and evaluated by the Design-Builder for Opportunities for Improvement.

4.4 Province Monitoring

In addition to carrying out any scheduled and unscheduled Quality Audits as provided in Section 4.3 [Province's Quality Audits] of this Schedule, the Province may, at its discretion, monitor and verify the operation of the Quality Management System including by carrying out spot checks and making independent inspections and tests of the Project Site or the infrastructure, equipment, material, tools, supplies or other items provided in connection with the Project Work, including any of the foregoing which fails any test or is suspected by the Province of not complying with the requirements of this Agreement.

4.5 Deficient Quality Audits

If either:

- (a) the Province reasonably believes that the Design-Builder is failing to conduct Quality Audits of its Quality Management System as required by this Agreement in any material respect or if such Quality Audits are not conducted in accordance with the ISO 9001:2015 Standard or the ISO 19011:2018 Standard by personnel competent to conduct such Quality Audits; or
- (b) any auditing, monitoring or spot checks of the Quality Management Systems reveal material deficiencies in the Quality Management System or the implementation thereof,

the Province may carry out increased levels of External Quality Audits (whether in number, duration or detail) of all or any aspect of the Quality Management System until such time as the Province is reasonably satisfied that none of the circumstances described in this Section 4.5 continue to exist.

4.6 Costs of Audits

If the Province carries out any audit pursuant to Section 4.3 [Province's Quality Audits], Section 4.4 [Province Monitoring] or Section 4.5 [Deficient Quality Audits] of this Schedule, and the results of such audit shows any material Nonconformity in respect of the Project Work, then without limiting any other rights and remedies of the Province, the Design-Builder will compensate the Province for all costs incurred in carrying out such audit (including the relevant administrative expenses of the Province, including an appropriate sum in respect of general staff costs and overheads). All other audits carried out by the Province pursuant to Section 4.3 [Province's Quality Audits], Section 4.4 [Province Monitoring] or Section 4.5 [Deficient Quality Audits] of this Schedule will be at the Province's cost.

4.7 Independent Quality Audits

- (a) In addition to Internal Quality Audits and External Quality Audits, the Design-Builder will cause independent quality audits (each, an "**Independent Quality Audit**") to be undertaken during the Project Work. A full Independent Quality Audit on the QMS, including all Quality Management Plans, will be completed within one year after the Effective Date and thereafter at least once per year until the Total Completion Date.

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- (b) Each Independent Quality Audit will be conducted by an independent quality auditor (an **“Independent Quality Auditor”**) acceptable to the Province and the Design-Builder and certified by an accredited auditors’ registration body, such as the International Register for Certified Auditors or Registrar Accreditation Board, who is qualified to audit the full scope of the QMS.
- (c) Each Independent Quality Audit will, at a minimum, ensure that all input requirements as required by this Agreement are included in the QMS and adhered to in the performance of the Project Work.
- (d) The Design-Builder will cause the Independent Quality Auditor to prepare a report (the **“Independent Quality Audit Report”**) that addresses all quality audit findings identified from the Independent Quality Audit, and to submit the Independent Quality Audit Report to the Province’s Representative at the same time as the Independent Quality Audit Report is submitted to the Design-Builder.
- (e) All corrective measures addressed in an Independent Quality Audit Report will be implemented by the Design-Builder and reported to the Province’s Representative promptly after the corrective measure is taken or performed, as applicable.

4.8 Traffic Management Auditing

- (a) If any Design-Builder or Province Traffic Management audit identifies any traffic management or safety Nonconformity, or if a traffic management or safety Nonconformity is reported to or brought to the attention of the Design-Builder via any source, then the Design-Builder will rectify such Nonconformity immediately.
- (b) For complex temporary traffic control set-ups as detailed in Sections 13.5 [Temporary Traffic Control (Design) Road Safety Audit] and 13.6 [Temporary Traffic Control (On-Site) Road Safety Audit] of Part 1 of Schedule 4, the Road Safety Audit process will be implemented in accordance with Article 13 [Road Safety Audit] of Part 1 of Schedule 4.
- (c) For the purpose of facilitating the conduct of Internal Quality Audits and External Quality Audits relating to the performance of traffic management (**“Traffic Management Auditing”**) in an active or inactive work zone with a traffic control set-up, the Design-Builder will develop and implement a Site Condition Rating checklist acceptable to the Province, for use by each of the Design-Builder and the Province.
- (d) The Site Condition Rating checklist will be submitted, concurrent with the Traffic Management Plan, to the Province’s Representative in accordance with the Consent Procedure. Submissions of subsequent updates to the checklist will be in accordance with Section 5.6 [Changes to Quality Documentation] of this Schedule.
- (e) The Site Condition Rating checklist will provide the framework for auditing the safety and overall management of traffic at a Traffic Site against the requirements contained in the traffic plans set out in Part 3 [Traffic Management] of Schedule 4 (which includes the Traffic Management Plan and the applicable Traffic Control Plans) and the Traffic Management Manual (collectively, the **“Traffic Management Criteria”**).
- (f) The Site Condition Rating checklist, at a minimum, will include the following information:

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- (i) Traffic Management Plan and applicable Traffic Control Plan – in relation to the approved site specific plan;
- (ii) General Traffic Requirements – in relation to Article 1 [General Traffic Management Requirements] of Part 3 of Schedule 4, including:
 - Storage of materials
 - Traffic control devices
 - Roadside barriers
 - Drop-offs
 - Clear zones
 - Temporary Pavement Markings
- (iii) Traffic Management Manual – in relation to all relevant requirements.

A sample Site Condition Rating checklist is set out in Appendix 7D [Traffic Management Site Condition Rating Checklist - Sample] to this Schedule. For clarity, the sample checklist is not an exhaustive checklist and will be considered a minimum, and the Design-Builder will submit a checklist as set out in this Schedule based on specific work zone hazards and risks.

- (g) Each item in the checklist will be assigned a number of Site Condition Rating points (“**SCR Points**”) that reflects its relative importance in relation to the other listed items. SCR Points will be assigned to the Design-Builder for each occurrence of non-compliance with Traffic Management Criteria that is identified at the time of the relevant audit (performed by the Design-Builder or the Province) at the Traffic Site that is the subject of such audit. The aggregate of such assigned SCR Points will indicate the applicable site condition rating (the “**Site Condition Rating**”) for the subject Traffic Site as at the time of the relevant audit. SCR Points will be allotted for a particular Traffic Site in accordance with the Site Condition Rating checklist.
- (h) The following table sets out the Site Condition Ratings, the number of SCR Points that will result in assignment of a particular Site Condition Rating, the action required of the Design-Builder following assignment of a particular Site Condition Rating and the response time within which such action must be taken, and the Design-Builder will develop and implement a system which details the required action the Design-Builder will take to rectify each non-compliance with the Traffic Management Criteria.

Table 4.8 Site Condition Ratings

Site Condition Rating category	SCR Points	Required Action on Site	Response Time
Acceptable	1 – 10	Undertake remedial action to bring the subject site up to an "Acceptable" standard.	4 hours (if applicable)
Marginal	11 - 20	Undertake remedial action to bring the subject site up to an "Acceptable" standard.	2 hours
Needs Improvement	21 - 30	Undertake remedial action to bring the subject site up to an "Acceptable" standard.	1 hour
Unacceptable	31+	Immediately cease all work on the subject site and undertake remedial action to bring the subject site up to an "Acceptable" standard.	Immediate

- (i) If the Design-Builder does not respond with the required action within the required response time, as provided in Table 4.8 [Site Condition Ratings], a new non-compliance will be deemed to occur at the end of such response time and the applicable SCR Points will be doubled for the new non-compliance. The provisions of this Section 4.8(i) will apply and will continue to apply until the Design- Builder rectifies the non-compliance. This may result in a change to the Site Condition Rating and, if applicable, the assignment of NCE Points in accordance with Section 4.8(k) of this Schedule.
- (j) At a minimum, Traffic Management Auditing will be carried out weekly by the Design-Builder and on a specifically-selected temporary traffic control set-up. Traffic Management Auditing will be planned taking into consideration the status, importance and level of risk of each traffic control set-up, and generally rotate through the traffic control set-ups implemented for the Project at that time.
- (k) Where a Traffic Site, which is subject to a traffic audit, receives an "Unacceptable" Site Condition Rating, as identified in Table 4.8 [Site Condition Ratings], one NCE Point will be assigned for every 31 SCR Points allocated to the particular Traffic Site, in accordance with Appendix 9A [Assignment of NCE Points] of Schedule 9 to this Agreement. For example, if a particular Traffic Site receives 31 SCR Points, one NCE Point will be awarded, and if a particular Traffic Site receives 62 SCR Points, two NCE Points will be awarded.
- (l) The Design-Builder will provide copies of all Traffic Management Auditing reports with a Site Condition Rating other than "Acceptable" to the Province within two Business Days following the audit.
- (m) The requirements of this Section 4.8 are in addition to, and do not limit, the Design-Builder's other obligations under this Schedule, including the Design-Builder's obligations in Part 6 [Nonconformities] of this Schedule.

4.9 Health and Safety Reviews or Auditing

- (a) If any Design-Builder or Province audit in accordance with this Agreement identifies any health or safety Nonconformity, or if a health or safety Nonconformity is reported to or brought to the attention of the Design-Builder via any source, then the Design-Builder will rectify such Nonconformity immediately.
- (b) In addition to any other review and audit requirements set out in this Agreement or as otherwise required by any Health and Safety Laws, the Design-Builder will perform, at a minimum:
 - (i) weekly safety inspections of the ongoing Construction activities; and
 - (ii) (ii) monthly workplace safety inspections of the parts of the Project Site where the Design-Builder is the Prime Contractor.

4.10 Final Quality Report

The Design-Builder will submit a Final Quality Report that includes the following:

- (a) a year-by-year summary, up to the Substantial Completion Date, of the Internal Quality Audits and External Quality Audits performed in each calendar year, the scope of such audits, and the number of Nonconformities discovered by such audits in that the applicable calendar year; and
- (b) confirmation that:
 - (i) all scheduled and unscheduled Internal Quality Audits and External Quality Audits have been performed; and
 - (ii) all remedial work, Corrections, and Corrective Actions (if applicable) have been completed.

**PART 5
QUALITY DOCUMENTATION**

5.1 Principles

The minimum requirements and principles which apply to the Quality Documentation are set out in Appendices A to C inclusive to this Schedule. The Design-Builder's Quality Management System will also comply with the requirements and principles of the ISO 9001:2015 Standard, this Schedule, and the principles of the ISO 9004:2018 Standard, including:

- (a) customer focus;
- (b) leadership;
- (c) engagement of people;
- (d) process approach;

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- (e) improvement;
- (f) evidence-based decision making; and
- (g) relationship management.

5.2 ISO Reference Documents

Without limiting the requirement of the Quality Management System to comply with the ISO 9001:2015 Standard, the Design-Builder's Quality Management System will also incorporate the requirements of the following:

- (a) ISO 9001:2015 Standard;
- (b) ISO 9004:2018 Standard;
- (c) ISO 9000:2015 Standard;
- (d) ISO 19011:2018 Standard;
- (e) ISO 14001:2015 Standard;
- (f) ISO/IEC 17025:2017 Standard;
- (g) ISO 10005:2018 Standard; and
- (h) ISO 45001: 2018 Standard.

5.3 Quality Documentation Requirements

The minimum documentation requirements for the Quality Management System are:

- (a) the documents required by ISO 9001:2015;
- (b) the Quality Manual as required pursuant to Section 1.5 [Documentation Deliverables] of this Schedule;
- (c) Quality Management Plans for all aspects of the Project Work as required pursuant to Section 1.5 [Documentation Deliverables] of this Schedule;
- (d) that the following are included in each Quality Management Plan:
 - (i) quality system procedures and process flow charts documenting who does the work, what they do, and what evidence will be generated that they have done the work correctly; and
 - (ii) the Quality Audit Plans required pursuant to Section 4.1 [Quality Audit Plans] of this Schedule;
- (e) Work Method Statements, as applicable;

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- (f) Inspection and Testing Plans, as applicable;
- (g) geotechnical and environmental monitoring plans, as applicable; and
- (h) the Records required pursuant to Section 5.8 [Quality Records] of this Schedule.

5.4 Submission of Quality Documentation

- (a) The Design-Builder will prepare and submit all required Quality Documentation to the Province's Representative for review in accordance with the Consent Procedure or the Review Procedure, as the case may be, in accordance with Section 1.5 [Documentation Deliverables] of this Schedule.
- (b) If any Quality Documentation relies on or incorporates any quality manual, plan, procedure or like document then such quality manual, plan, procedure or other document or the relevant parts thereof will (unless the Province otherwise agrees) be submitted to the Province's Representative at the time that the relevant Quality Documentation or part thereof or change, addition or revision to the Quality Documentation is submitted in accordance with the Consent Procedure or the Review Procedure, as the case may be, and the contents of such quality manual, plan, procedure or other document will be taken into account in the consideration of the relevant Quality Documentation or part thereof or change, addition or revision to the Quality Documentation in accordance with the Consent Procedure or the Review Procedure, as the case may be. The Province may require the amendment of any such quality manual, plan, procedure or other document to the extent necessary to enable the relevant Quality Documentation to satisfy the requirements of this Schedule.

5.5 Design-Builder Obligation to Update

The Design-Builder will be responsible for proactively updating its Quality Management System and all Quality Documentation from time to time, in accordance with the procedures set forth in this Agreement, to ensure that the Quality Management System and all Quality Documentation are, and at all times remain, relevant and in full compliance with the ISO 9001:2015 Standard and the requirements of this Agreement.

5.6 Changes to Quality Documentation

- (a) The Design-Builder may submit to the Province's Representative in accordance with the Review Procedure any proposed changes or additions to or revisions of any of the Quality Documentation.
- (b) Without limiting the generality of Section 5.6(a) of this Schedule, the Design-Builder will from time to time submit to the Province's Representative in accordance with the Review Procedure any changes to any of the Quality Documentation required for such Quality Documentation to continue to reflect and comply with the requirements set out in this Schedule.
- (c) If the Design-Builder does not propose any change required pursuant to Section 5.6(b) of this Schedule, then the Province may propose such change and it will be dealt with in accordance with the Review Procedure as though it had been proposed by the Design-

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Builder and will not therefore be treated as a Province Change. Any dispute between the parties in respect of any such change will be resolved in accordance with the Dispute Resolution Procedure.

5.7 Amendment of Quality Documentation

If there is no unresolved objection by the Province under the Consent Procedure or the Review Procedure, as the case may be, to a part of the Quality Documentation pursuant to Section 5.4 [Submission of Quality Documentation] of this Schedule or to a change, addition or revision proposed pursuant to Section 5.6 [Changes to Quality Documentation] of this Schedule, then the Quality Documentation will be amended to incorporate such part, change, addition or revision.

5.8 Quality Records

- (a) The Design-Builder will establish and maintain complete and accurate quality management records (the “**Quality Records**”), which will form part of the Records.
- (b) The Quality Records will provide objective evidence of conformance with all requirements of this Agreement, compliance with the ISO 9001:2015 Standard and the effective operation of the Quality Management System.

5.9 Quality Management System Reports

5.9.1 Performance Measures

For each month from the Effective Date until the Total Completion Date, the Design-Builder will prepare, and submit to the Province’s Representative within five Business Days of the start of the following month, a comprehensive Quality Management System report.

5.9.2 Specific Requirements

- (a) The monthly Quality Management System report will address all quality management activities under the Quality Manual and each of the Quality Management Plans for that month and any outstanding quality issues from prior months.
- (b) The monthly Quality Management System reports will, as a minimum, include the following information separately identified for the Quality Manual and for each Quality Management Plan:
 - (i) a Nonconformity Report log summarizing the Nonconformity Tracking System and providing the following in respect of each Nonconformity Report: “date open”, “date closed”, “status” (open, pending, closed) and “description of Correction” (Repair, Rework, Reject, Use As Is);
 - (ii) a Corrective Action log providing details of the Corrective Actions performed to date and their close-out status;
 - (iii) an Opportunities for Improvement log summarizing the Opportunities for Improvement raised to date, including the following information: reference

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numbers, “date open”, “status” (open, pending, closed), “date closed”, and description of how it was closed;

- (iv) a list of all inspection and testing activities conducted during the month and a four-month look-ahead schedule for planned inspection and testing activities;
- (v) environmental, geotechnical, traffic, safety and other applicable monitoring reports;
- (vi) Internal Quality Audits and External Quality Audits, including any third party Quality Audits performed during the month and a four month look-ahead schedule for planned future Quality Audits;
- (vii) any other information required to be included in the monthly Quality Management System reports pursuant to any of the Appendices to this Schedule or the terms of the relevant Quality Management Plan;
- (viii) any changes made to the Quality Management System or the Quality Documentation in compliance with the provisions of this Agreement; and
- (ix) progress report photos.

5.10 Additional Information

- (a) The Corrective Action log and Opportunities for Improvement log as described in Sections 5.9.2(b)(ii) and (iii) of this Schedule will be:
 - (i) maintained and updated until the Total Completion Date; and
 - (ii) made easily accessible to the Province.
- (b) Notwithstanding any other provision of this Schedule, the Design-Builder will provide the Province’s Representative with such information as the Province may request from time to time to demonstrate compliance with this Agreement, including this Schedule.

PART 6 NONCONFORMITIES

6.1 Nonconformity Reporting Process

The Nonconformity reporting process, from initial creation through to closeout, will follow the process outlined below:

- (a) If the Design-Builder or the Province discovers a Nonconformity, it will initiate a Nonconformity Report in accordance with the ISO 9001:2015 Standard, and as follows:
 - (i) Design-Builder initiated Nonconformity Reports - Upon discovery of a Nonconformity, the Design-Builder will, within two Business Days of discovering the Nonconformity, issue a Nonconformity Report identifying the problem and

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provide a copy of the Nonconformity Report to the Quality Director and the Province's Representative; or

- (ii) Province initiated Nonconformity Reports - If at any time the Province is notified, or otherwise becomes aware (pursuant to the Province's right to review, audit or inspect the Project Work as permitted in this Agreement, including in accordance with Section 4.3 [Province's Quality Audits] of this Schedule), that there is any Nonconformity relating to the Project Work, the Province may issue a Nonconformity Report to the Quality Director and the Design-Builder's Representative, without prejudice to any other right or remedy available to the Province and BCTFA, including the assignment of NCE Points and/or Default Points pursuant to Schedule 9 [Performance Mechanism].
- (b) The issuance of a Nonconformity Report to the Quality Director under Section 6.1(a) of this Schedule will start the Nonconformity reporting process. The date the Nonconformity Report is issued will start the time period for which the Nonconformity Report has an 'open' status and will be recorded in the Nonconformity Tracking System.
- (c) The Quality Director will respond to all Nonconformity Reports by reviewing and analyzing the Nonconformity Report, investigating the Nonconformity and the cause(s) of the Nonconformity, and determining if similar Nonconformities exist or could potentially occur.
- (d) The Quality Director will deliver a response to the Nonconformity Report through the Nonconformity Tracking System as soon as possible, but no later than five Business Days after the Nonconformity Report is received. Such response will describe:
 - (i) a Correction of the Nonconformity and, if applicable, a Corrective Action in accordance with the ISO 9001:2015 Standard; and
 - (ii) the date by which the Correction (and Corrective Action, if applicable) will be completed and subject to verification by the Quality Director in accordance with Section 6.1(i) of this Schedule (the "**Correction Target Date**").

The Province may require that the Correction, Corrective Action (if applicable), and the Correction Target Date be revised if the Province, acting reasonably, determines that the Nonconformity could be addressed in a quicker, more efficient, or different manner, in which case the Quality Director will update its response to include the revised Correction, Corrective Action, and Correction Target Date required by the Province to the extent applicable.

- (e) If the Quality Director does not respond to the Nonconformity Report within the timeline provided in Section 6.1(d) of this Schedule, the Province may assign one NCE Point. The Province may assign two additional NCE Points for every two days after the expiry of such timeline, until the Quality Director delivers a response to the Nonconformity Report in accordance with Section 6.1(d) of this Schedule. Once the Quality Director has delivered a response to the Nonconformity Report in accordance with Section 6.1(d) of this Schedule the NCE Points assigned pursuant to this Section 6.1(e) will be deducted from the NCE Points Balance in accordance with Section 2.2(a)(i) of Schedule 9 [Performance Mechanism] to this Agreement.

- (f) Acceptable responses are set out in Table 6.1 for various scenarios.

Table 6.1 Acceptable Responses to Nonconformity Reports

Status of Nonconformity	Correction	Corrective Action (if applicable)
Correction has been undertaken	Describe nature of the Correction (Rework, Repair, Reject, Use As Is). Provide confirmation that the Correction has remedied (if applicable) the Nonconformity and accepted by the Designer if applicable.	Describe any improvements to process to prevent reoccurrence. Provide a plan committing to scope and timing of the Corrective Action.
Correction is proposed	Describe nature of the Correction (Rework, Repair, Reject, Use As Is). Provide a plan committing to scope and timing of Correction.	Describe any improvements to process to prevent reoccurrence. Provide a plan committing to scope and timing of the Corrective Action.
Objection to NCR and no Correction is proposed	N/A	N/A

- (g) The Quality Director will change the status of the Nonconformity Report to 'pending' once a Correction, a Correction Target Date and, if applicable, a Corrective Action have been documented for the Nonconformity in accordance with Section 6.1(d) of this Schedule.
- (h) The Design-Builder will rectify each Nonconformity in accordance with the Correction and, if applicable, the Corrective Action described in the Nonconformity Report. If any Nonconformity arises in respect of a document or course of action that was previously "accepted" pursuant to the Consent Procedure or "received", "received with comments" or deemed "received" pursuant to the Review Procedure, and rectification of the Nonconformity requires a change or amendment to such document or course of action, then the Design-Builder will re-submit the document or course of action to the Province's Representative under the Review Procedure or the Consent Procedure, as applicable.
- (i) Once the Correction (and if applicable, the Corrective Action) for the Nonconformity has been implemented, the Design-Builder will provide the Quality Director and the Province's Representative with written notice that the Correction is ready for verification. The Quality Director will verify the Correction (and, if applicable, the Corrective Action) to ensure it conforms to the requirements of the Nonconformity Report and this Agreement. If the Quality Director verifies that the Nonconformity has been corrected, the Quality Director will then change the Nonconformity Report status to 'closed', and will provide a copy of the Nonconformity Report, together with supporting documents which reflect that the Nonconformity has been corrected, to the Province within two Business Days thereafter. The Province may, within the one month period after receipt of the 'closed' Nonconformity Report, review and provide comments on the Nonconformity Report. If the Province, acting reasonably, determines that the Nonconformity has not been resolved, that the Correction (or Corrective Action, if applicable) does not conform to the requirements of the Nonconformity Report and the Agreement, or that the Design-Builder has not provided

sufficient documentation to confirm that the Nonconformity has been corrected, the Province may provide written notice to the Design-Builder and the Quality Director, upon which the Design-Builder and the Quality Director will have up to five Business Days, or such other reasonable time as may be agreed to by the Province, to rectify the Nonconformity. If the Design-Builder and the Quality Director are unable to rectify the Nonconformity in this time, the Quality Director will change the status of the applicable Nonconformity Report to 'pending', and the NCE Points assigned in connection with the applicable Nonconformity will be reassigned by the Province in accordance with Section 2.2(a)(iv)(A) of Schedule 9 [Performance Mechanism] to this Agreement, with additional points being assigned in accordance with Section 6.1(k) of this Schedule.

- (j) If the Quality Director changes the status of a Nonconformity Report to 'pending' in accordance with Section 6.1(i) of this Schedule, it will not be updated to 'closed' until the Design-Builder submits an updated Nonconformity Report (with an updated Correction and/or Corrective Action, as applicable) to the Quality Director and the Province's Representative, and the Province's Representative has verified that the Nonconformity has been corrected.

- (k) If:

- (i) the status of the Nonconformity Report is not changed to 'closed' in accordance with Section 6.1(i) of this Schedule by the Correction Target Date; or
 - (ii) the status of the Nonconformity Report is changed to 'pending' in accordance with Section 6.1(i) of this Schedule,

the Province may assign one NCE Point. The Province may assign two additional NCE Points for every two days after the Correction Target Date or the date the status of the Nonconformity Report is changed to 'pending' (as applicable), until the status of the Nonconformity Report is changed to 'closed' in accordance with Section 6.1(i) or Section 6.1(j) of this Schedule (as applicable). Once the status of the Nonconformity Report is changed to 'closed', the NCE Points assigned in connection with the applicable Nonconformity Report will be deducted from the NCE Points Balance.

- (l) The Quality Director may not revise the Correction, Corrective Action, or the Correction Target Date delivered in its response to the Nonconformity Report (provided in accordance with Section 6.1(d) of this Schedule, without obtaining the prior written approval of the Province, such approval to be given or withheld in the Province's sole discretion.
- (m) Nothing in this Section 6.1, including a Nonconformity Report being marked 'closed' and the Province's review of any Nonconformity Report, will limit the rights of the Province to conduct follow up reviews, inspections and audits in accordance with this Agreement (including in accordance with Section 4.3 [Province's Quality Audits] of this Schedule) to determine if the Design-Builder's Correction (and Corrective Action, if, applicable), submitted in accordance with this Section 6.1, has been implemented and completed.
- (n) The Design-Builder may object to the issuance of any Nonconformity Report by the Province. If such objection has not been resolved by mutual agreement between the Province and the Design-Builder within five Business Days of delivery by the Design-Builder to the Province's Representative of notice of the objection, then either the Design-

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Builder or the Province may refer the matter to the Dispute Resolution Procedure for determination.

- (o) If the Design-Builder fails to object to a Nonconformity Report issued by the Province within five Business Days of issuance, the Design-Builder is deemed to have accepted that Nonconformity Report and waived its right to object to the Nonconformity Report issued by the Province. If, in accordance with Section 6.1(i) of this Schedule, the Province determines that a Nonconformity has not been resolved, that a Correction (or Corrective Action, if applicable) does not conform to the requirements of the Nonconformity Report and the Agreement, or that the Design-Builder has not provided sufficient documentation to confirm that the Nonconformity has been corrected, and if the Design-Builder fails to object to the Province's determination within five Business Days of the Province making its determination, the Design-Builder is deemed to have accepted the Province's determination in accordance with Section 6.1(i) of this Schedule, and waived its right to object to the Province's determination.

6.2 Nonconformity Tracking System

- (a) The Design-Builder will implement and maintain a live, electronic, internet-based Nonconformity Tracking System to monitor the status of all Nonconformity Reports initiated by the Province. In developing the Nonconformity Tracking System, the Design-Builder will work with the Province, including obtaining the Province's feedback, to ensure the Nonconformity Tracking System meets the requirements in this Agreement.
- (b) The Design-Builder will submit a fully operating Nonconformity Tracking System under the Consent Procedure within 90 days from the Effective Date, which will meet the following minimum requirements:
 - (i) comprise a single repository containing both the Design-Builder and Province initiated Nonconformity Reports;
 - (ii) include the Nonconformity records described in Section 6.4 [Nonconformity Records] of this Schedule;
 - (iii) have the ability to attach supporting material such as photos and documents to Nonconformity Reports;
 - (iv) provide live access to the current status of any Nonconformity Report issued in connection with the Project;
 - (v) automatically apply NCE Points (including reassigned NCE Points) to each Nonconformity in accordance with this Schedule and Schedule 9 [Performance Mechanism];
 - (vi) allow for the application of additional NCE Points to individual Nonconformity Reports in accordance with this Schedule and Schedule 9 [Performance Mechanism];
 - (vii) output the total daily and monthly NCE Point total; and

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- (viii) produce monthly summary Reports for delivery to the Province's Representative of outstanding Nonconformity Reports, NCE Points and Default Points accrued within each performance threshold category in any given month, and the total NCE Points and Default Points accrued across all performance threshold categories in any given month.
- (c) The Design-Builder will give the Province full access to the Nonconformity Tracking System, which will allow the Province to review, but not edit, the Nonconformity Tracking System and the Nonconformity Reports therein, other than Nonconformity Reports issued by the Province in accordance with Section 6.1(a)(ii) of this Schedule, which the Province will be able to issue or edit, as applicable.
- (d) Once the Nonconformity Tracking System has been endorsed "accepted" under the Consent Procedure, the Design-Builder will hold seminars to train Province personnel on the use of the Nonconformity Tracking System.

6.3 Unremedied Nonconformity

The Province may issue further Nonconformity Reports if a Nonconformity identified in a Nonconformity Report continues unremedied, and may assign Default Points in respect of such unremedied Nonconformity pursuant to Section 2.4 [Assignment of Default Points] of Schedule 9.

6.4 Nonconformity Records

In addition to the maintenance of the Nonconformity Tracking System under Section 6.2 [Nonconformity Tracking System] of this Schedule, the Design-Builder will maintain records of:

- (a) each Nonconformity;
- (b) the reference numbers of all Nonconformity Reports;
- (c) a description of all Nonconformity Reports;
- (d) the Quality Director's response to the applicable Nonconformity Report;
- (e) the proposed actions by the Design-Builder to rectify each Nonconformity;
- (f) the date and time at which Nonconformities were identified;
- (g) the date and time at which the status of Nonconformity Report is changed to "pending" in accordance with Section 6.1(g) of this Schedule; and
- (h) the date and time at which a Nonconformity specified in a Nonconformity Report was rectified.

**APPENDIX 7A
QUALITY MANUAL**

1.0 QUALITY MANUAL

- 1.1 The Design-Builder will provide a comprehensive Quality Manual that describes the Quality Management System for all aspects of the Project Work including the Design and Construction phases of the Project, in accordance with the ISO 9001:2015 Standard. The Quality Manual will establish the Quality Policy and Quality Objectives for all aspects of the Project Work and will describe the processes that will be established, implemented, controlled, and continually improved to achieve the established Quality Objectives.
- 1.2 The Quality Objectives will be measurable, consistent with the Quality Policy and linked to meeting the needs and performance expectations of the Province with respect to all aspects of the Project Work, including the Design and Construction phases of the Project. The Quality Management System described in the Quality Manual will include all the activities required to achieve these Quality Objectives, including project controls such as scope, cost, schedule, actions to address risks and opportunities, document control, and general management activities. All of these activities will be subject to Internal Quality Audits and External Quality Audits.
- 1.3 The Quality Manual will describe the nature of the Design-Builder's organization involved in performing the Project Work and how key management activities (such as project controls; Design; Construction; Traffic Management; communications, and environmental management) will interface with each other. The Quality Manual will also provide the organization chart, authority and responsibilities of all key personnel. The Quality Manual will also show how the various levels of Quality Management System documentation, including other relevant documentation such as any plan, procedure or like document detailed elsewhere in this Agreement, are linked together.
- 1.4 The Quality Manual will clearly define the reporting function and authority of the Design-Builder's Quality Director who will liaise with the Province's Representative and act as the single point representative of the Design-Builder for all matters relating to quality management.

APPENDIX 7B
DESIGN QUALITY MANAGEMENT PLAN

1.0 DESIGN QUALITY MANAGEMENT PLAN

- 1.1 The Design-Builder will provide a comprehensive Design Quality Management Plan that describes how it intends to manage the design processes for the Project in accordance with the ISO 9001:2015 Standard, the Quality Management System requirements stated in its Quality Manual and the provisions of this Agreement.
- 1.2 The Design Quality Management Plan will contain an organizational chart identifying key design management personnel and their relationship with the Quality Director for the overall Quality Management System as documented in the Quality Manual. It will also contain a description of the responsibilities, qualifications, and authority of the above personnel, as well as Subcontractors, and the organizational interfaces, reporting and communication among the above personnel, and with other engineering groups, environmental management, and construction disciplines, Subcontractors, external stakeholders and others involved in the Project Work.
- 1.3 The Design Quality Management Plan will, at a minimum, include or reference detailed quality system procedures and process flow charts for the following processes:
- (a) design input and output review;
 - (b) design verification to ensure that design input requirements have been met;
 - (c) design validation to ensure that the final product is capable of meeting its intended use;
 - (d) compliance with the Design and Certification Procedure;
 - (e) design changes;
 - (f) design subcontractor quality assessment and procurement;
 - (g) field reviews;
 - (h) interface with Construction, including the development and review of inspection and testing plans by the Designer prior to and during Construction, and ongoing designer review of records during Construction;
 - (i) External Quality Audits of design subcontractor(s);
 - (j) Internal Quality Audits;
 - (k) control of nonconforming activities and/or product and re-submission of documents and courses of action under the Review Procedure and Consent Procedure in accordance with Section 6.1(h) of this Schedule;
 - (l) Corrective Actions;
 - (m) Opportunities for Improvement;

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DESIGN-BUILD AGREEMENT
SCHEDULE 7: QUALITY MANAGEMENT
Appendix 7B: Design Quality Management Plan

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- (n) document management;
- (o) control of Records; and
- (p) management of equipment and human resources, including the assessment of competence and training needs.

The above procedures and flow charts will document the practices, resources, and sequence of activities to be used to ensure that quality standards, materials, and processes are maintained and verified, including documentation of who does the work, what they do, and what evidence is generated that they have done the work correctly.

- 1.4 When any of the above processes are addressed as part of other Quality Documentation, such as the Quality Manual or another Quality Management Plan, these processes will still be provided with their own section heading in the Design Quality Management Plan, but the details of such processes in the applicable section of the Design Quality Management Plan may be limited to a reference to the section or paragraph of the other applicable Quality Documentation where the relevant details are provided, provided that such referenced section or paragraph of such other Quality Documentation includes specific requirements to the applicable process as it relates to design quality management. Notwithstanding the foregoing, processes that fall within the specific requirements for Design must include detailed quality system procedures and process flow charts under the Design Quality Management Plan.

**APPENDIX 7C
CONSTRUCTION QUALITY MANAGEMENT PLAN**

1.0 CONSTRUCTION QUALITY MANAGEMENT PLAN

- 1.1 The Design-Builder will provide a comprehensive Construction Quality Management Plan that describes how it intends to manage the Construction processes in connection with the Project in accordance with the ISO 9001:2015 Standard, the Quality Management System requirements stated in its Quality Manual and the provisions of this Agreement.
- 1.2 The Construction Quality Management Plan will contain an organizational chart identifying key Construction management personnel and their relationship with the Quality Director for the overall Quality Management System as documented in the Quality Manual. It will also contain a description of the responsibilities, qualifications, and authority of the above personnel and the organizational interfaces with design and other disciplines such as communications, environmental management and Traffic Management, Subcontractors, external stakeholders and others involved in the Project Work.
- 1.3 The Construction Quality Management Plan will, at a minimum, include or reference detailed quality system procedures and process flow charts for the following processes:
- (a) Construction safety audits;
 - (b) inspection, testing and monitoring;
 - (c) materials identification and traceability;
 - (d) chain of custody for sampling and testing;
 - (e) receiving inspections;
 - (f) Subcontractors' quality assessment and procurement;
 - (g) management of equipment and human resources, including the assessment of competence and training needs;
 - (h) interface with design and other disciplines for work activities including the development and review of inspection and testing plans prior to and during Construction, and coordination of field reviews during Construction;
 - (i) External Quality Audits of Subcontractors;
 - (j) Internal Quality Audits;
 - (k) control of nonconforming activities and/or product;
 - (l) Corrective Actions;
 - (m) Opportunities for Improvement;
 - (n) document management;

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- (o) control of Records; and
- (p) any other processes and procedures that are mandatory under the ISO 9001:2015 Standard.

The above procedures and flow charts will document the practices, resources, and sequence of activities to be used to ensure that quality standards, materials, and processes are maintained and verified, including documentation of who does the work, what they do, and what evidence is generated that they have done the work correctly.

- 1.4 When any of the above processes are addressed as part of other Quality Documentation, such as the Quality Manual or another Quality Management Plan, these processes will still be provided with their own section heading in the Construction Quality Management Plan, but the details of such processes in the applicable section of the Construction Quality Management Plan may be limited to a reference to the section or paragraph of the other applicable Quality Documentation where the relevant details are provided, provided that such referenced section or paragraph of such other Quality Documentation includes specific requirements to the applicable process as it relates to construction quality management. Notwithstanding the foregoing, processes that fall within the specific requirements for Construction must include detailed quality system procedures and process flow charts under the Construction Quality Management Plan.
- 1.5 The Construction Quality Management Plan will include or reference an Inspection and Testing Plan detailing all on and off Project Site inspection and testing activities for work performed by the Design-Builder and that of its Subcontractors and suppliers of any tier. The Inspection and Testing Plan will, at a minimum, include:
 - (a) description of the inspection, test and monitoring activity;
 - (b) frequency of inspections, tests and monitoring;
 - (c) calibration and certification program that describes the plan and standards applied to the calibration and certification, all measuring equipment and tools to be used in the performance of the Project Work and the implementation of the Quality Management System;
 - (d) reference to standards, codes, specifications, and acceptance criteria;
 - (e) reports, documents, certificates and checklists required;
 - (f) personnel responsible for inspection, testing and monitoring activity;
 - (g) quality assurance review, witness and hold points; and
 - (h) description and frequency of geotechnical instrumentation monitoring and adherence to acceptance criteria.
- 1.6 The Construction Quality Management Plan will also identify all major work activities requiring detailed Work Method Statements. Work Method Statements will describe the processes and methodologies required to deliver the Project Work. Work Method Statements will be developed and in place prior to the commencement of the relevant work activity.

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SCHEDULE 7: QUALITY MANAGEMENT

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APPENDIX 7D
TRAFFIC MANAGEMENT SITE CONDITION RATING CHECKLIST– SAMPLE

Contractor		Location	
Auditor		Direction	
Date & Time		TCP #	
Weather		Activity	

A. Advanced Warning Area

- Signage
- Visibility
- Placement
- Condition

B. Transition Area, Buffer Space, Work Area, Termination Area

- **Signage**
- Visibility
- Placement
- Condition
- **Delineation**
- Placement
- Condition
- Spaced Correctly

C. Other issues

- Excavations
- Pedestrians from work
- Pedestrians from traffic
- Cyclists from work
- Cyclists from traffic
- Advance Warning area
- Transition area
- Buffer Space
- Work Area
- Warning lights
- Vehicles operating with traffic flow
- Vehicles parked with traffic flow
- Vehicles outside zone
- Entering/leaving with traffic flow
- Workers safety
- Traffic Control Plan available on site
- TCP or TCP Supervisor on site

D. General Observations

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SCHEDULE 7: QUALITY MANAGEMENT

Appendix 7D: Traffic Management Site Condition Rating Checklist - Sample

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SITE CONDITION RATING

Category & Item		SCR Points	Tally box	Total
Regulatory Signs (excluding parking Signs)	Sign missing	31		
	Incorrect Sign	31		
	Sign not located as per TCP	15		
	Sign in poor condition (faded/damaged)	5		
	Sign misaligned/not visible	31		
	Contradictory signs not covered/removed	31		
	Unapproved sign layout/material	15		
	Sign too low	15		
	Sign obscured	31		
	Sign obstructs Traffic	31		
Parking Signs	Sign missing	5		
	Incorrect Sign	5		
	Sign not located as per TCP	5		
	Sign in poor condition (faded/damaged)	5		
	Sign misaligned/not visible	5		
	Contradictory signs not covered/removed	5		
	Unapproved sign layout/material	5		
	Sign too low	5		
	Sign obscured	5		
	Sign obstructs Traffic	15		
Pavement Markings	Missing Pavement Markings	15		
	Incorrect Pavement Markings	15		
	Pavement Markings not located as per TCP	15		
	Pavement Markings in poor condition (faded)	5		
	Contradictory Pavement Markings not adequately eradicated	31		
Warning Signs	Sign missing	15		
	Incorrect Sign	2		
	Sign not located as per TCP	2		
	Sign in poor condition (faded/damaged)	2		
	Sign misaligned/not visible	2		
	Contradictory Signs not covered/removed	15		
	Unapproved Sign layout/material	2		
	Sign too low	2		
	Sign obscured	2		
	Sign obstructs Traffic	15		
	Flashing arrow board (FAB) missing/not functioning	31		
	Flashing arrow board (FAB) not located as per TCP	15		
	Warning Signs not adequate	15		
Traffic Advisory Signs, PDMSs and Information Signs	Incorrect messaging	5		
	Sign not located as per TCP	5		
	Messaging not current/valid	5		
	Contradictory messaging	5		
	Sign obstructs Traffic	5		

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SCHEDULE 7: QUALITY MANAGEMENT

Appendix 7D: Traffic Management Site Condition Rating Checklist - Sample

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Category & Item		SCR Points	Tally box	Total
Delineation Devices	Guidance	Device not provided as per TCP	5	
		Device in poor condition (damaged/faded)	5	
		Device misaligned or missing	5	
	Safety	Pedestrians	31	
		Workers	31	
		Cyclists	31	
Protective Works	Barriers/fencing not located as per TCP	31		
	Excavation not adequately protected	31		
	Workers not adequately protected	31		
	Barriers/fencing incorrectly located	31		
	Barriers installed with inadequate tapers	15		
	Barriers/fencing misaligned	15		
	Barriers/fencing damaged	15		
	Barriers have exposed ends facing Traffic	31		
Miscellaneous	Change to illumination resulting in unsafe Traffic conditions or working conditions	15		
	Workers working in live lanes	31		
	PPE not worn by workers	31		
	PPE in poor condition	15		
	Construction equipment materials obstruct Traffic, pedestrians or cyclists	31		
SCR POINT TOTAL				

**Audit Result (Site
Condition Rating)**

*Acceptable
(0-10)*

*Marginal
(11-20)*

*Needs Improvement
(21-30)*

*Unacceptable
(31+)*

Actions taken

**SCHEDULE 8
LANDS**

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PART 1
GENERAL TERMS

1.1 Access to and Responsibility for Project Site

- (a) For the duration of the Access Period in respect of each part of the Project Site:
 - (i) subject to and in accordance with the terms and conditions of this Agreement, including the provisions of this Schedule and the Conditions of Access, the Province and BCTFA agree to make such part available to the Design-Builder, on a non-exclusive basis in common with all persons identified in this Agreement, including Part 11 [Province's Monitoring and Step-In Rights] of this Agreement and Part 10 [Use, Access and Uncovering Work] of Schedule 3 as having the right to access, for the Design-Builder, the Subcontractors, and any other person engaged or involved in the performance of the Project Work, and their respective representatives, agents, employees and contractors, and any other persons for whom the Design-Builder is in law responsible engaged or involved in the performance of the Project Work to enter upon and use such part and the Infrastructure located on such part as may be reasonably required from time to time to permit the Design-Builder to carry out the Project Work; and
 - (ii) the Design-Builder will assume all risk and responsibility for, and custody and control of, such part, save to the extent expressly provided otherwise in this Agreement.
- (b) Without prejudice to any rights of the Province or BCTFA that may have accrued during, or may accrue in respect of, the Access Period in respect of any part of the Project Site as a result of or in connection with the Design-Builder's obligations under this Agreement (including under Section 1.1(a)(ii) of this Schedule), on the date of expiry or termination of the Access Period in respect of such part, the Design-Builder's risk and responsibility for, and custody and control of, such part will cease, provided that such cessation will not relieve the Design-Builder of any obligations that relate to the Project Site or the performance of Project Work on the Project Site (or the part thereof that was subject to such cessation) that are, notwithstanding such cessation, applicable to the performance of Project Work thereon by the Design-Builder at such times as it has access thereto pursuant to Section 1.1(c) of this Schedule.
- (c) To the extent permitted by, and subject to and in accordance with the Conditions of Access, after the date of expiry or termination of the Access Period in respect of any part of the Project Site, the Province and BCTFA will, on terms and conditions determined by the Province and BCTFA, acting reasonably, provide access to such former part of the Project Site to the Design-Builder and the persons for whom the Design-Builder is in law responsible engaged or involved in the performance of the Project Work, to the extent necessary to enable the Design-Builder to perform any of its obligations under this Agreement after such date that are required to be carried out after such date.

1.2 Limited Use

- (a) During the Term, and without prejudice to any access rights of any such person as a member of the general travelling public, the Design-Builder will not make any use of, or

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allow or authorize the Subcontractors, or any other person engaged or involved in the performance of the Project Work, or their respective representatives, agents, employees or contractors, to make any use of, the Project Site or the Project Infrastructure or any part thereof, except for the purposes of carrying out the Project Work in accordance with this Agreement and the other Project Documents.

- (b) Without limiting the generality of the foregoing, except as permitted by or pursuant to Section 2.5(a) of this Agreement, the Design-Builder will not use or occupy or allow or authorize any person to use or occupy, for any commercial purpose, all or any part of the Project Site or the Project Infrastructure.

1.3 Location of Project Facilities

The Design-Builder covenants and agrees that no part of the New Project Infrastructure will be constructed or located on any lands that are not Project Lands.

1.4 No Registration

Subject to the Design-Builder's rights pursuant to the *Builders Lien Act* (British Columbia), the Design-Builder will not register or attempt to register in any land title office this Agreement or any rights under this Agreement or any instrument, claim or notice in respect thereof.

PART 2 TERMS AFFECTING PROJECT SITE ACCESS

2.1 Project Site Access Subject to Other Rights

Without limiting any other provision of this Agreement, the Design-Builder's rights of access to, entry upon and use of the Project Site are subject to the following (collectively, the “**Conditions of Access**”):

- (a) in the case of any part of the Project Site that is Crown land, all rights over Crown land;
- (b) in the case of any part of the Project Site which is subject to the *Land Title Act* (British Columbia), any applicable exceptions to indefeasible title set out in section 23(2) thereof;
- (c) any Compulsory Acquisition Orders and any Land Rights in respect of any part or parts of the Project Site;
- (d) the Utility Agreements affecting the Project Site;
- (e) Indigenous Requirements; and
- (f) the Requirements of Interested Parties.

2.2 Project Lands Not Yet Acquired

The Design-Builder acknowledges that, as at the Effective Date, the Province may not have acquired all Project Lands and Land Rights in respect of all such Project Lands.

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2.3 Commencement of Access to Project Site

The Province will make each part of the Project Site available for access by the Design-Builder in accordance with Section 1.1(a)(i) of this Schedule on or before the Specified Access Date.

2.4 Design-Builder to Provide Assistance

The Design-Builder will provide such information and documentation and such assistance as may be reasonably requested by the Province and as the Design-Builder may be able to provide, to assist the Province in completing the acquisition in respect of any Project Lands or Land Rights.

2.5 Termination of Project Site Access

Subject to Section 1.1(c) of this Schedule, the Design-Builder's access to each part of the Project Site pursuant to Section 1.1(a)(i) of this Schedule will terminate and expire on the earlier to occur of:

- (a) the Substantial Completion Date;
- (b) the Access Period Expiry Date;
- (c) the date on which the Province's rights of access to such part of the Project Site terminate as a result of any act or omission of, or breach in the performance or observance of the Design-Builder's obligations under this Agreement by the Design-Builder or any person for whom the Design-Builder is in law responsible; and
- (d) the Termination Date.

PART 3 PROJECT LANDS AND OTHER LANDS

3.1 Postponement of Specified Access Date

The Province may, by notice to the Design-Builder, postpone any Specified Access Date, from time to time, with respect to any parcel of Project Lands or Land Rights, and any such postponement will be treated as a Compensation Event..

3.2 Early Specified Access Date

The Province, in its discretion and at any time on 20 Business Days' notice to the Design-Builder, may make available to the Design-Builder any part of the Project Lands pursuant to Section 1.1(a)(i) of this Schedule which has not yet been made available to the Design-Builder and the date so specified in the notice will thereafter be the Specified Access Date for the purposes of this Agreement.

3.3 Other Lands

- (a) It is the Design-Builder's obligation, at its sole cost and expense, to acquire any access to or use of, or any Land Rights in respect of, any Other Lands, desired by the Design-Builder, or required, to enable the Design-Builder to perform its obligations under this Agreement.

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- (b) The Design-Builder will bear and be responsible for all costs, charges and expenses, and all other Losses and Claims, arising from or in connection with the use or occupation of any Other Land or Land Rights in respect of Other Lands acquired or used for the purposes of performing the obligations of the Design-Builder under this Agreement.
- (c) The Design-Builder will indemnify and hold harmless the Province and the Province Indemnified Persons, and each of them, from and against all Claims and Direct Losses arising as a result of or in connection with the acquisition, use or occupation of any Other Land or Land Rights in respect of Other Lands acquired or used for the purposes of performing the obligations of the Design-Builder under this Agreement.
- (d) Before acquiring any access to or use of, or any Land Rights in respect of, any Other Lands, for the purposes of performing the obligations of the Design-Builder under this Agreement, and before using or allowing the use of any Other Lands for such purposes, the Design-Builder will provide to the Province Representative:
 - (i) evidence satisfactory to the Province that such acquisition and use for such purposes will not result in material adverse changes to the environmental or archaeological effects of the Project; and
 - (ii) a draft of the lease or other agreement pursuant to which the Design-Builder proposes to acquire any access to or use of, or any Land Rights in respect of, such Other Lands, the terms of which lease or other agreement will be subject to the approval of the Province acting reasonably.
- (e) At the Province's direction, the Design-Builder will ensure that, if this Agreement is terminated prior to the Substantial Completion Date, any Other Lands or Land Rights in respect of Other Lands acquired by (or on behalf of) the Design-Builder or any person for whom the Design-Builder is in law responsible are made available to the Province for its occupation and use until the completion of the Project by the Province or, if applicable, until such earlier date on which the Design-Builder's rights over such land would have otherwise expired for the purposes of the Project (or such earlier date as determined by the Province, in its discretion) upon such terms as the Province may in its discretion require, subject to payment by the Province of a reasonable rental charge, and if the Province exercises its rights under this Section 3.3(e), the Design-Builder will indemnify the Province and the Province Indemnified Persons, and each of them, from and against any Claims and Direct Losses at any time suffered or incurred by, or brought or made against, the Province and the Province Indemnified Persons that arise directly or indirectly as a result of or in connection with:
 - (i) any failure by any person for whom the Design-Builder is in law responsible failing to comply or fulfill any obligation in any lease or other agreement which permits use and occupation of such Other Lands or Land Rights in respect of Other Lands; or
 - (ii) the use and occupation of the relevant Other Lands or Land Rights in respect of Other Lands during the period prior to occupation and use thereof by the Province,and the provisions of this Section 3.3(e) will survive the termination of this Agreement.

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3.4 Design-Builder Not to Acquire Project Lands

For greater certainty, neither the Design-Builder, nor any Subcontractor, nor any Affiliate of the Design-Builder or of a Subcontractor will acquire Project Lands or Land Rights in Project Lands (including for certainty any rights to the airspace above or the surface or subsurface of any such lands), without the prior written consent of the Province in its discretion.

3.5 Acquisition of Additional Project Lands by the Province

The Design-Builder may submit a Value Engineering Proposal in accordance with Part 2 [Value Engineering Proposals] of Schedule 11 requesting the Province and/or BCTFA to acquire Land Rights in, over or relating to lands that do not currently form part of the Project Lands, if the Design-Builder considers that it would be beneficial to construct or install Project Infrastructure on such lands.

PART 4 LAND RIGHTS AND ENCUMBRANCES

4.1 Performance of Agreements

Without limiting or derogating from any other obligation of the Design-Builder pursuant to this Agreement, the Design-Builder will:

- (a) observe, comply with and perform, and cause the Subcontractors and any other person for whom the Design-Builder is in law responsible to observe, comply with and perform, all Site Requirements and any Compulsory Acquisition Orders, Utility Agreements, Indigenous Requirements, Requirements of Interested Parties and Permits; and
- (b) not do or omit to do, and not cause or permit to be done or omitted by any Subcontractor, or any other person for whom the Design-Builder is in law responsible, anything that would constitute or result in non-compliance with any of the Site Requirements or any Compulsory Acquisition Orders, Indigenous Requirements, Requirements of Interested Parties and Permits.

4.2 Exceptions to Design-Builder Responsibilities for Project Lands

With respect to Project Lands, the Design-Builder will not have any obligation to pay any rent, land user fees, property taxes (if any) or occupancy costs that are or become payable by the Province in respect thereof or to indemnify third parties in respect of the non-payment thereof, except for any rent, land user fees, property taxes or occupancy costs that become payable as a direct result of a failure by the Design-Builder to observe, comply with or perform:

- (a) any of the Site Requirements; or
- (b) any obligations of the Design-Builder under this Agreement.

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4.3 Project Work to Comply

The Design-Builder will perform the Project Work such that:

- (a) the Design-Builder observes, complies with and performs all Site Requirements, Compulsory Acquisition Orders, Utility Agreements, Indigenous Requirements, Requirements of Interested Parties and Permits;
- (b) all Project Work is performed in a manner that does not breach any of the Site Requirements, Compulsory Acquisition Orders, Utility Agreements, Indigenous Requirements, Requirements of Interested Parties and Permits; and
- (c) there will be no act or omission to act by the Design-Builder, any Subcontractor or any other person for whom the Design-Builder is in law responsible, that gives rise to a right for any person to obtain any Land Rights or creates an Encumbrance on the Project Site, the Project Infrastructure or the Plant or any part thereof.

4.4 Additional Agreements

- (a) The Province may from time to time obtain, enter into, assume or grant, additional or amended agreements that create new Site Requirements or amend existing Site Requirements and all obligations of the Design-Builder under this Agreement will apply with respect to such new or amended Site Requirements, including those resulting from Compulsory Acquisition Orders.
- (b) If the Province obtains, enters into, assumes or grants any such additional or amended agreements after the Financial Submittal Date, including the entering into of the license with CPKC for the Project Lands described in Table 8A in Appendix 8A [Project Lands], or otherwise amends any of the Site Requirements after the Financial Submittal Date, the Province will issue a request for a Province Change and the provisions of Part 7 [Changes] of this Agreement will apply accordingly unless:
 - (i) such additional or amended agreement, or other amendment, is formalizing an arrangement between the relevant parties substantially on the same terms as, or formalizing the terms which, have been disclosed in the Disclosed Data prior to the Financial Submittal Date; or
 - (ii) such additional or amended agreement, or other amendment, is on terms:
 - (A) disclosed in the Disclosed Data prior to the Financial Submittal Date;
 - (B) substantially the same as those disclosed in the Disclosed Data prior to the Financial Submittal Date; or
 - (C) which have no material adverse impact upon the Design-Builder,

and, in the cases of Sections 4.4(b)(i) and 4.4(b)(ii) of this Schedule, the Province will give the Design-Builder prompt notice of having entered into the additional or amended agreement.

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4.5 No Encumbrances by Design-Builder

- (a) The Design-Builder will not:
 - (i) grant, create, incur or cause any Encumbrance upon, affecting or against all or any part of the Project Site, the Project Infrastructure or any Plant title to which has passed to the Province in accordance with Section 2.7 [Transfer of Title] of this Agreement; nor
 - (ii) do or omit to do, or cause, suffer or permit to be done or omitted by any Subcontractor or any other person for whom the Design-Builder is in law responsible, anything that results or could result in any Encumbrance upon, against or affecting all or any part of the Project Site or the Project Infrastructure or any Plant title to which has passed to the Province in accordance with Section 2.7 [Transfer of Title] of this Agreement.
- (b) If all or any part of the Project Site or the Project Infrastructure or any Plant becomes subject to any Encumbrance as a result of a breach of Section 4.5(a) of this Schedule, the Design-Builder will immediately take all necessary steps to remove such Encumbrance. Subject to Section 4.7 [Removal of Liens] of this Schedule, if the Design-Builder fails to remove any such Encumbrance within 15 days (or such longer period as may reasonably be required in the circumstances, provided the Design-Builder is proceeding with all due diligence to remove the same) of its coming into existence, then either the Province may, but without any obligation to do so, remove or cause to be removed the Encumbrance at the Design-Builder's cost.
- (c) The Design-Builder will indemnify and hold harmless the Province and the Province Indemnified Persons, and each of them, from and against any and all Claims and Direct Losses at any time suffered or incurred by, or brought or made against, the Province and the Province Indemnified Persons, or any of them, that arise directly or indirectly out of, in the course of, in connection with or as a result of the Design-Builder's breach of this Section 4.5.

4.6 Notice of Liens

The Design-Builder will notify the Province's Representative of all builders' liens and other liens and claims of lien for labour, services or materials furnished or alleged to have been furnished with respect to the Project Work that are filed against or otherwise affect or relate to the Project Site or the Project Infrastructure or any part thereof, promptly after the Design-Builder becomes aware thereof.

4.7 Removal of Liens

- (a) Without limiting the generality of Section 4.5 [No Encumbrances by Design-Builder] of this Schedule or any of the Design-Builder's other obligations under this Agreement, the Design-Builder will cause all builders' liens and other liens and claims of lien for labour, services or materials furnished or alleged to have been furnished with respect to the Project Work (collectively, "**Adverse Claims**") that are filed against or otherwise affect or relate to the Project Site or the Project Infrastructure or any part thereof to be either:
 - (i) paid, satisfied, released and vacated and, if filed, to be cancelled from title; or

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- (ii) removed or cancelled from title following the procedures set out in the *Builders Lien Act* (British Columbia),

within 15 Business Days (or such longer period as may reasonably be required in the circumstances (including where the Design-Builder is disputing any such Adverse Claim in good faith and is in compliance with its obligations under Section 4.7(b) of this Schedule, provided that the Design-Builder is proceeding with all due diligence) following the date on which the Design-Builder becomes aware thereof and, if the Design-Builder fails to do so, the Province may, but without any obligation to do so, pay, satisfy and discharge the Adverse Claim or cause it to be removed or cancelled from title by paying money into or posting security with the Court. The Design-Builder will, on demand, reimburse the Province (as the case may be) all amounts so paid or attributable to or drawn under the security so posted together with all related costs (including legal costs) and the provisions of Section 1.4 [Province's Right of Set-Off] of Schedule 10 will apply to all such amounts, costs and expenses.

- (b) If the Design-Builder, in good faith, disputes any Adverse Claim, the Design-Builder will be entitled to defend against the Adverse Claim in any proceedings if the Design-Builder first:
 - (i) pays into Court an amount of money equal to, or posts with the Court sufficient security for, the amount claimed and costs as the Court may direct, and obtains a Court order for the removal or cancellation of such Adverse Claim as an Adverse Claim filed against or otherwise affecting or pertaining to the Project Site or Project Infrastructure or any part thereof, and registers any such order in the Land Title Office to remove or cancel any such Adverse Claim from title to the Project Site or any part thereof; or
 - (ii) provides to the Province's Representative such other security or remedies in favour of the Province in respect of such Adverse Claim as are acceptable to the Province, acting reasonably.

4.8 Compliance with *Builders Lien Act* and Payments to Subcontractors

- (a) The Design-Builder will comply with and cause all of its Subcontractors of any tier to comply with any applicable provisions of the *Builders Lien Act* (British Columbia) with respect to Project Work carried out on and materials supplied to or in respect of the Project Site and the Project Infrastructure and will provide evidence of such compliance to the Province upon request.
- (b) Without limiting any of its other rights or obligations under this Agreement or any Laws, the Design-Builder will pay or provide for the payment when due, and will ensure that all of the Subcontractors pay or provide for the payment when due, of all accounts in connection with the performance of the Project Work (including all accounts for the supply of labour, materials and services in connection with any works carried out in the course of the Project Work).

**APPENDIX 8A
PROJECT LANDS**

1. Each parcel of Project Lands is or will be held by the Province or BCTFA in fee simple or as a highway, except where a Land Interest other than a fee simple interest or highway is specified for that parcel in Table 8A.
2. Each parcel of Project Lands has, as its Specified Access Date, the Effective Date, except where another Specified Access Date is specified for that parcel in Table 8A.

Table 8A – Project Lands Exceptions

JUMPING CREEK TO MACDONALD SNOWSHED PROJECT
DESIGN-BUILD AGREEMENT
SCHEDULE 8: LANDS
Appendix 8A: Project Lands

Commercial in Confidence
Execution

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APPENDIX 8B
CERTAIN PROJECT SITE ENCUMBRANCES

1. Environmental Constraints Drawings
2. The tenures listed in Table 8B below:

Table 8B Crown Tenures

Tenure Type	Tenure Number / Location	Tenure Owner / Expiry Date
Reserve/Notation (Quarrying – Sand and Gravel)	0243948	Ministry of Transportation and Infrastructure
Mineral Claim - Jumbotron	1079527	Daniel Harold Kobi (forfeiture recorded 2022-11-09)
Reserve/Notation (Fish and Wildlife Management)	4404314	Ministry of Land Water and Resource Stewardship
Reserve/Notation (roadway)	4405621	Ministry of Transportation and Infrastructure (expires 2025-12-07)
Reserve/Notation (Science Measurement/ Research)	4405979	Ministry of Transportation and Infrastructure (expires 2049-05-03)
Licence (Commercial Recreation Heli skiing)	4496113	Selkirk Tangiers Helicopter Skiing LLP (expires 2036-12-01)
Forestry Licence to Cut	A96219	Begbie Shingles Ltd. (expiry date 2021-01-01)
Cut Block	A97616 1	Misty Ridges Contracting Ltd. (expiry date 2021-06-25)
Forestry Licence to Cut	A97616	Mistry Ridges Contracting Ltd. (expiry date 2021-06-25) (same as above)
Occupant Licence To Cut	L50972	Ministry of Transportation and Infrastructure (expiry 2022-12-31)
Cut Block	L51057 1	Ministry of Transportation and Infrastructure (expiry date 2027-05-31)
Occupant Licence To Cut	L51057	Ministry of Transportation and Infrastructure (expiry date 2027-05-31)
Occupant Licence To Cut (replacement of expired OLTC)	L51122	Selkirk Tangiers Helicoptert Skiing LLP (expiry 2023-12-31)
Trapline	TR0433T010	No registered holder
Trapline	TR0438T002	No registered holder

3. Lease dated for reference January 1, 1988 between Canadian Pacific Limited as Landlord and Her Majesty the Queen in right of the Province of British Columbia as represented by the honourable the Minister of Forests as Tenant, as amended by amending agreement dated for reference March 2, 1993, and as assigned by assignment of lease agreement dated December 1, 1997 from Her Majesty the Queen in right of the Province of British Columbia as represented by the honourable the Minister of Forests to Her Majesty the Queen in right of the Province of British Columbia as represented by the Minister of Transportation and Highways.

**APPENDIX 8C
PROJECT LANDS DRAWINGS**

See attached.

**SCHEDULE 9
PERFORMANCE MECHANISM**

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**PART 1
CALCULATION OF PERFORMANCE INCENTIVE PAYMENTS**

1.1 Calculation of Performance Incentive Payments

The Performance Incentive Payment in respect of Payment Period p (or part of Payment Period p , as the case may be) in Contract Year n during the period described in Section 5.1(a) of Schedule 10 [Payment] will be determined in accordance with the following formula:

$$PIP_{pn} = TMP_{pn} + NCEP_{pn}$$

where:

PIP_{pn} = the Performance Incentive Payment in respect of Payment Period p (or part of Payment Period p , as the case may be) in Contract Year n during the period described in Section 5.1(a) of Schedule 10 [Payment]

TMP_{pn} = the Traffic Management Payment payable in respect of Payment Period p (or part of Payment Period p , as the case may be) in Contract Year n during the period described in Section 5.1(a) of Schedule 10 [Payment], determined in accordance with Section 1.2 [Calculation of Traffic Management Payments] of this Schedule

$NCEP_{pn}$ = the Non-Compliance Event Payment payable in respect of Payment Period p (or part of Payment Period p , as the case may be) in Contract Year n during the period described in Section 5.1(a) of Schedule 10 [Payment], determined in accordance with Section 1.3 [Calculation of Non-Compliance Event Payments] of this Schedule

1.2 Calculation of Traffic Management Payments

- (a) Subject to Sections 1.2(d), 1.2(e), 1.2(f), 1.2(g) and 1.2(h) of this Schedule, the amount of the Traffic Management Payment payable in respect of each Payment Period p (or part of Payment Period p , as the case may be) in Contract Year n in respect of which a Performance Incentive Payment is payable in accordance with Section 5.1 [Obligation to make Performance Incentive Payments] of Schedule 10 will be determined in accordance with the following formula:

$$TMP_{pn} = \sum_{i=1}^I \text{Traffic Management Amount}_i$$

where:

I = the number of Non-Permitted Traffic Disruption Events occurring in Payment Period p (or part of Payment Period p , as the case may be) in Contract Year n during the period described in Section 5.1(a) of Schedule 10 [Payment]

$\text{Traffic Management Amount}_i$ = the Traffic Management Amount in respect of Non-Permitted Traffic Disruption Event i , calculated in accordance with Section 1.2(b) of this Schedule

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- (b) The Traffic Management Amount in respect of Non-Permitted Traffic Disruption Event i will be determined in accordance with the following formula:

$$\text{TrafficManagementAmount}_i = LTDE_i \cdot DTDE_i \cdot [TDECC_i]$$

where:

$LTDE_i$ = the aggregate number of lanes closed by Non-Permitted Traffic Disruption Event i

$DTDE_i$ = the duration (in minutes, rounded up to the nearest minute) of Non-Permitted Traffic Disruption Event i

$TDECC_i$ = the Traffic Disruption Event Charge in respect of Non-Permitted Traffic Disruption Event i , determined in accordance with Section 1.2(c) of this Schedule

- (c) The Traffic Disruption Event Charge for any Non-Permitted Traffic Disruption Event i will be calculated with reference to the Traffic Disruption Event Charge Lookup Table below:

Traffic Disruption Event Charge Lookup Table (TDEC _i)	
Duration of Non-Permitted Traffic Disruption Event i	Traffic Disruption Event Charge (per minute, per lane)
First 15 minutes	
After the first 15 minutes	

- (d) If a Non-Permitted Traffic Disruption Event referenced in Section 1.2(c) of this Schedule affects more than one lane, and the duration of the Non-Permitted Traffic Disruption Event in respect of each such lane is different, the Traffic Management Amount in respect of the Non-Permitted Traffic Disruption Event will be calculated separately for each such lane pursuant to Section 1.2(b) of this Schedule
- (e) If the occurrence of a Non-Permitted Traffic Disruption Event is first identified and reported by the Province and the Province, acting reasonably, considers that the Design-Builder ought to have identified and reported the occurrence of the Non-Permitted Traffic Disruption Event before the Province did so, then the Traffic Management Amount in respect of that Non-Permitted Traffic Disruption Event will be multiplied by two.
- (f) No Traffic Management Amount, or part thereof, is payable in respect of a Non-Permitted Traffic Disruption Event that is the direct result of:
- (i) an Excluded Event;
 - (ii) a Relief Event; or
 - (iii) a Force Majeure Event.
- (g) A Non-Permitted Traffic Disruption Event the occurrence of which spans portions of two or more Payment Periods will be treated as a new Non-Permitted Traffic Disruption Event

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for each successive Payment Period or period, as the case may be, that commences while the Non-Permitted Traffic Disruption Event is continuing.

- (h) Despite anything else in this Section 1.2, and without limiting the generality of Section 17.7 [Waiver] of this Agreement, the Province expressly reserves the right to waive, reduce or defer the obligation to pay, any Traffic Management Amount otherwise payable pursuant to Section 1.2(a) of this Schedule in respect of a Non-Permitted Traffic Disruption Event, as such Traffic Management Amount is calculated in accordance with Section 1.2(b) of this Schedule, and the Province may do so in its discretion and without prejudice to any of its rights and remedies (whether pursuant to this Schedule or otherwise) in respect of any other Non-Permitted Traffic Disruption Event. Any such waiver, reduction or deferral by the Province of any Traffic Management Amount will only be effective if in writing signed by the Province, and will not excuse the Design-Builder from performing, nor otherwise affect the Design-Builder's obligation to perform, all of its obligations under this Agreement. For certainty, no interest will be payable by the Design-Builder in respect of any Traffic Management Amount that is deferred by the Province under this Section 1.2(h).

1.3 Calculation of Non-Compliance Event Payments

- (a) Subject to Sections 1.3(c), 1.3(d), 1.3(e) and 1.3(f) of this Schedule, at all times during the period described in Section 5.1(a) of Schedule 10 [Payment], the amount of the Non-Compliance Event Payment payable by the Design-Builder in respect of each Payment Period p (or portion thereof, as the case may) in Contract Year n in respect of which a Performance Incentive Payment is payable in accordance with Section 5.1 [Obligation to make Performance Incentive Payments] of Schedule 10 will be determined in accordance with the following formula:

$$NCEP_{pn} = \sum_{d=1}^D NCEPP_d + \sum_{d=1}^D NCECP_d$$

where:

$NCEPP_d$ = the NCE (Points) Payment in respect of day d of Payment Period p (or part of Payment Period p , as the case may be) in Contract Year n , calculated as follows:

$$\times [\text{the greater of (i) } (NCE \text{ Points}_d - 15) \text{ and (ii) } 0]$$

where:

$NCE \text{ Points}_d$ = the NCE Points Balance on day d

$NCECP_d$ = the NCE (Cash) Payment in respect of day d of Payment Period p (or part of Payment Period p , as the case may be) in Contract Year n , determined in accordance with Section 1.3(b) of this Schedule

D = the number of days in Payment Period m (or part of Payment Period m , as the case may be) in Contract Year n

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- (b) The NCE (Cash) Payments will be calculated in accordance with Table 1.3:

Table 1.3 – NCE (Cash) Payment Amounts

Non-Compliance Event	Payment*
Failure to meet the Minimum Indigenous Contracts Requirement as required by Section 1.1(a) of Schedule 12 [Indigenous Requirements]	See Section 1.5(c)(ii) of Schedule 12 [Indigenous Requirements]

- (c) If the occurrence of a Non-Compliance Event listed in Table 1.3 is first identified and reported by the Province and the Province, acting reasonably, considers that the Design-Builder ought to have identified and reported the occurrence of the Non-Compliance Event before the Province did so, then the payment in respect of that Non-Compliance Event will be multiplied by two.
- (d) A Non-Compliance Event listed in Table 1.3, the occurrence of which spans portions of two or more Payment Periods will be treated as a new Non-Compliance Event for each successive Payment Period or period, as the case may be, that commences while the Non-Compliance Event is continuing.
- (e) No NCE (Cash) Payment, or part thereof, is payable in respect of a Non-Compliance Event listed in Table 1.3 that is the direct result of:
- (i) an Excluded Event;
 - (ii) a Relief Event; or
 - (iii) a Force Majeure Event.
- (f) Despite anything else in this Section 1.3, and without limiting the generality of Section 17.7 [Waiver] of this Agreement, the Province expressly reserves the right to waive, reduce or defer the obligation to pay, all or any portion of any Non-Compliance Event Payment otherwise payable pursuant to Section 1.3(a) of this Schedule in respect of any Non-Compliance Event(s), as such Non-Compliance Event Payment (or portion thereof, as the case may be) is calculated in accordance with Section 1.3(a) of this Schedule, and the Province may do so in its discretion and without prejudice to any of its rights and remedies (whether pursuant to this Schedule or otherwise) in respect of any other Non-Compliance Event. Any such waiver, reduction or deferral by the Province of any Non-Compliance Event Payment (or portion thereof, as the case may be) will only be effective if in writing signed by the Province, and will not excuse the Design-Builder from performing, nor otherwise affect the Design-Builder's obligation to perform, all of its obligations under this Agreement. For certainty, no interest will be payable by the Design-Builder in respect of any Non-Compliance Event Payment that is deferred by the Province under this Section 1.3(f).

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**PART 2
NCE POINTS AND DEFAULT POINTS**

2.1 Assignment of NCE Points

- (a) Upon any occurrence of a Non-Compliance Event, whether such occurrence is first identified and reported to the other party by the Design-Builder or the Province, NCE Points will be assigned by the Province on the basis set out in Appendix 9A [Assignment of NCE Points] to this Schedule, Part 6 [Nonconformities] of Schedule 7 and in accordance with this Section 2.1. NCE Points will be reassigned, and further NCE Points will be assigned, in accordance with Section 2.2 [Calculation of NCE Points Balance] of this Schedule.
- (b) If the occurrence of a Non-Compliance Event is first identified and reported by the Province and the Province, acting reasonably, considers that the Design-Builder ought to have identified and reported the occurrence of the Non-Compliance Event before the Province did so, the Province may assign one additional NCE Point in respect of that Non-Compliance Event.
- (c) If the Province first discovers a Nonconformity (other than a Non-Compliance Event) and issues a Nonconformity Report in respect thereof in accordance with Section 6.1 [Nonconformity Reporting Process] of Schedule 7, and the Province, acting reasonably, considers that the Design-Builder ought to have discovered and issued a Nonconformity Report in respect of the Nonconformity before the Province did so, then, if pursuant to the provisions of this Part, the Nonconformity:
 - (i) has, or would have but for its rectification, become a Non-Compliance Event, then the Province may assign one additional NCE Point in respect thereof; or
 - (ii) has not, or would not have become a Non-Compliance Event, then the Province may assign one NCE Point in respect thereof.
- (d) If a Nonconformity is discovered through a Nonconformity Report, or a Quality Audit of the Quality Management System, and that Nonconformity relates to a requirement in respect of which a Nonconformity has occurred previously (a “**Repeat Nonconformity**”), the Province may assign up to three NCE Points for the occurrence of a Repeat Nonconformity.
- (e) No NCE Points will be assigned by the Province in respect of a Non-Compliance Event that is the direct result of a Province Non-Excusable Event.
- (f) No NCE Points will be assigned by the Province in respect of the occurrence of a Non-Compliance Event that results in a NCE (Cash) Payment.
- (g) If, after the date of occurrence of a Nonconformity (other than a Nonconformity that has been identified as a result of a traffic management audit process conducted pursuant to Section 4.8 [Traffic Management Auditing] of Schedule 7), such Nonconformity subsists for a period of 28 calendar days, then (in addition to any NCE Points assigned upon the initial occurrence of the Nonconformity) the applicable number of NCE Points will thereupon again be assigned by the Province in respect of that Nonconformity.

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For each successive 28 calendar day period that such Nonconformity subsists, the applicable number of NCE Points will again be assigned by the Province in respect of that Nonconformity, so that the aggregate number of NCE Points outstanding in respect of that Nonconformity at any time will be determined by application of the following formula:

***NCE Points outstanding
in respect of any subsisting
Nonconformity*** = ***Points · (1 + Compounding Periods)***

where:

Points = the number of NCE Points applicable to the Nonconformity as assigned (or reassigned) by the Province on the basis set out in Appendix 9A [Assignment of NCE Points] to this Schedule, Part 6 [Nonconformities] of Schedule 7 and in accordance with this Section 2.1 and Section 2.2 of this Schedule (including in accordance with Sections 2.1(b), 2.1(c) and 2.1(d) of this Schedule).

Compounding Periods = the total number of successive 28 calendar day periods having elapsed since the date of initial occurrence of the Nonconformity, as at the date of determination of the number of NCE Points outstanding.

- (h) Despite anything else in this Section 2.1, and without limiting the generality of Section 17.7 [Waiver] of this Agreement, the Province expressly reserves the right to refrain from assigning (or reassigning) all or any portion of the NCE Points set out in Part 6 [Nonconformities] of Schedule 7, this Section 2.1, Section 2.2 [Calculation of NCE Points Balance] and Appendix 9A [Assignment of NCE Points] to this Schedule in respect of any Non-Compliance Event, Nonconformity or Nonconformity Report and the Province may do so in its discretion and without prejudice to any of its other available rights and remedies in respect of that Non-Compliance Event, Nonconformity or Nonconformity Report and without prejudice to its right to assign (or reassign) NCE Points, and to exercise any of its other available rights and remedies, in respect of any other Non-Compliance Event, Nonconformity or Nonconformity Report. Any such refraining from assigning (or reassigning) any NCE Points by the Province will not excuse the Design-Builder from performing, nor otherwise affect the Design-Builder's obligation to perform, all of its obligations under this Agreement.
- (i) The Province will notify the Design-Builder of the assignment by the Province of any NCE Points pursuant to this Section 2.1, or the reassignment or assignment of any NCE Points pursuant to Section 2.2 [Calculation of NCE Points Balance] of this Schedule, promptly after such assignment or reassignment as applicable.
- (j) The Design-Builder will be entitled to dispute the assignment or reassignment of any NCE Points only if:
 - (i) subject to Section 2.1(j)(iii) of this Schedule (to the extent applicable), the number of such NCE Points assigned by the Province pursuant to Sections 2.1(a) and 2.1(d) of this Schedule in respect of a Non-Compliance Event or Nonconformity is greater than the number of NCE Points identified by the Design-Builder in the relevant monthly report delivered under Part 6 [Periodic Reports and Payment]

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Applications] of Schedule 10 as being assignable in respect of that Non-Compliance Event or Nonconformity; or

- (ii) it is disputing the reasonableness of the Province's determination pursuant to Sections 2.1(b) or 2.1(c) of this Schedule; or
 - (iii) where the Province assigns NCE Points in accordance with Section 6.1(k) of Schedule 7 [Quality Management] or reassigns NCE Points in accordance with Section 2.2(a)(iv) of this Schedule, and the Design-Builder asserts that the status of the Nonconformity Report was 'closed' prior to the Correction Target Date, and therefore NCE Points should not have been assigned or reassigned as applicable; and
 - (iv) the Design-Builder refers any such dispute referred to in Sections 2.1(j)(i), 2.1(j)(ii) or 2.1(j)(iii) of this Schedule to the Dispute Resolution Procedure within 14 days after its receipt from the Province of notice of such assignment (or reassignment) If the Design-Builder does not refer the Dispute to the Dispute Resolution Procedure within such 14-day period, the Design-Builder will be deemed to have accepted the Province's assignment (or reassignment, if applicable) of the relevant NCE Points.
- (k) The assignment and reassignment of NCE Points as contemplated by this Section 2.1 and in Section 2.2 [Calculation of NCE Points Balance] of this Schedule is in addition to and not in substitution for or to the exclusion of any other rights and remedies available to the Province under this Agreement or any of the other Project Documents or at law or in equity, and the Province may have recourse to any one or more of all of such rights and remedies, concurrently or successively, as it will see fit, without prejudice to any of its other available rights and remedies.

2.2 Calculation of NCE Points Balance

- (a) For purposes of Section 1.3 [Calculation of Non-Compliance Event Payments] of this Schedule:
 - (i) subject to Section 2.2(a)(iv) of this Schedule, NCE Points that have been assigned pursuant to Section 2.1 [Assignment of NCE Points] of this Schedule (other than as a result of a traffic management audit process conducted pursuant to Section 4.8 [Traffic Management Auditing] of Schedule 7) will subsist for the duration of the period from the date of occurrence of the Nonconformity in respect of which such NCE Points have been assigned until such NCE Points may be deducted in accordance with Sections 6.1(e) and 6.1(k) of Schedule 7 [Quality Management] as applicable (which period will not, in any event, be less than one calendar day), whereupon such NCE Points will be deducted from the then current NCE Points Balance;
 - (ii) NCE Points that have been assigned pursuant to Section 2.1 [Assignment of NCE Points] of this Schedule as a result of a traffic management audit process conducted pursuant to Section 4.8 [Traffic Management Auditing] of Schedule 7 will:

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- (A) subsist until 11:59 pm on the date of occurrence of the Nonconformity in respect of which such NCE Points have been assigned (and will be included in the calculation of the NCE Points Balance as at any time on that date after their assignment), whereupon such NCE Points will be deducted from the then current NCE Points Balance, provided that the deficiencies identified in the traffic management audit have been rectified by 11:59 pm on the date the Nonconformity occurs; or
 - (B) subsist until 11:59 pm on the date the deficiencies identified in the traffic management audit have been rectified (and for each day the traffic management-related Nonconformity subsists, the applicable number of traffic management-related NCE Points assigned will be doubled and included in the calculation of the NCE Points Balance as at any time on each date since their assignment), whereupon such NCE Points will be deducted from the then current NCE Points Balance;
- (iii) for certainty, any NCE Points assigned or reassigned as contemplated in Section 2.1 [Assignment of NCE Points] and this Section 2.2 will be included in the calculation of the NCE Points Balance as at any time on the date of their assignment or reassignment and in the calculation of the NCE Points Balance as at any time on each day thereafter during the applicable period until (and including) the date of their deduction from the NCE Points Balance in accordance with Section 2.2(a) of this Schedule; and
- (iv) if NCE Points are deducted from the NCE Points Balance in accordance with Section 6.1(k) of Schedule 7 [Quality Management], in addition to any NCE Points assigned in accordance with Section 6.1(k) of Schedule 7 [Quality Management], then the greater of:
- (A) the NCE Points originally assigned in respect of the Nonconformity will be reassigned; and
 - (B) if the number of NCE points reassigned pursuant to Section 2.2(a)(iv)(A) of this Schedule is less than five, then additional NCE Points will be assigned to bring the total number of NCE Points reassigned and assigned in accordance with this Section 2.2(a)(iv) to five,

and such NCE Points will be included in the NCE Points Balance in accordance with Section 2.2(a)(iii) of this Schedule. The NCE Points reassigned and assigned in accordance with this Section 2.2(a)(iv) will subsist in the NCE Points Balance from the day after the Correction Target Date until (and including) the date on which the Quality Director changes the status of the Nonconformity Report, in respect of the Nonconformity, to "closed" in accordance with Sections 6.1(i) or 6.1(j) of Schedule 7 [Quality Management] (as applicable), whereupon such NCE Points will be deducted from the NCE Points Balance.

- (b) Where NCE Points are assigned or reassigned in accordance with Section 2.2(a)(iv) of this Schedule, Sections 2.1(g) and 2.1(i) of this Schedule will apply to such assigned and reassigned NCE Points, as applicable.

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- (c) At all times during the period from the Effective Date until the Total Completion Date, each of the Province and the Design-Builder will respectively maintain a record of:
 - (i) the aggregate number of NCE Points assigned and reassigned pursuant to Section 2.1 [Assignment of NCE Points] of this Schedule and this Section 2.2 at any time during the period from the Effective Date until such time; and
 - (ii) the aggregate number of NCE Points assigned and reassigned pursuant to Section 2.1 [Assignment of NCE Points] of this Schedule and this Section 2.2 at any time during the period from the Effective Date until such time, which NCE Points are still outstanding as at such time as determined pursuant to Section 2.2(a) of this Schedule (the “**NCE Points Balance**”).

2.3 Calculation of NCE Points (Default) Balance

- (a) For purposes of Section 2.4 [Assignment of Default Points] of this Schedule, NCE Points that have been assigned pursuant to Section 2.1 [Assignment of NCE Points] and Section 2.2 [Calculation of NCE Points Balance] of this Schedule will subsist for the duration of the period from the date of occurrence of the Non-Compliance Event or Nonconformity in respect of which such NCE Points have been assigned until the earlier of:
 - (i) the date on which the Province assigns one or more Default Points in respect of such NCE Points pursuant to Section 2.4(a) of this Schedule; and
 - (ii) the end of the Contract Year in which such NCE Points were assigned,whereupon such NCE Points will be deducted from the then current NCE Points (Default) Balance. NCE Points that have been reassigned in accordance with Section 2.2(a)(iv) of this Schedule will not count towards the NCE Points (Default) Balance.
- (b) At all times during the period from the Effective Date until the Total Completion Date, the Province will maintain a record of the aggregate number of NCE Points assigned pursuant to Section 2.1 [Assignment of NCE Points] and Section 2.2 [Calculation of NCE Points Balance] of this Schedule at any time during the period from the commencement of the then current Contract Year until the end of such Contract Year, and such record will reflect the NCE Points that are still outstanding as at the relevant date in such Contract Year, as determined pursuant to Section 2.3(a) of this Schedule (the “**NCE Points (Default) Balance**”).

2.4 Assignment of Default Points

Default Points will be assigned to the Design-Builder on the basis set out in this Section 2.4.

- (a) For each 120 NCE Points assigned to the Design-Builder the Province will assign to the Design-Builder one Default Point. Upon any such assignment of a Default Point, the then current NCE Points (Default) Balance will be reduced by 120 NCE Points.
- (b) If the Design-Builder fails to perform or observe any of its material obligations under this Agreement (other than its obligations referred to in Section 2.4(c) of this Schedule, but

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including Indigenous Requirements) then the Province may, in its discretion, assign to the Design-Builder up to a maximum of 5 Default Points for each such failure.

(c) If there occurs:

- (i) a Nonconformity that continues unremedied (as contemplated in Section 6.3 [Unremedied Nonconformity] of Schedule 7);
- (ii) a Nonconformity in respect of a Quality Audit of the Quality Management System, and such Nonconformity is not remedied within the required time set out in the relevant Nonconformity Report;
- (iii) a failure by the Design-Builder to comply with Section 3.4 [Notification to Province] of Schedule 6;
- (iv) a failure by the Design-Builder to comply with Section 3.5 [Notification to Environmental Authorities] of Schedule 6; or
- (v) any failure by the Design-Builder to comply with Section 1.3(i) of Part 3 [Traffic Management] of Schedule 4,

then the Province may, in its discretion, assign to the Design-Builder up to a maximum of 3 Default Points for each such Nonconformity, Repeat Nonconformity or failure to comply, as the case may be.

- (d) Once assigned pursuant to this Section 2.4, Default Points will subsist until the Total Completion Date (but, for the purposes of Section 2.4(e)(ii) of this Schedule, will be in effect only for the period of three years from the date of their assignment).
- (e) At all times during the period from the Effective Date until the Total Completion Date, the Province will maintain a record of:
 - (i) the aggregate number of Default Points assigned pursuant to this Section 2.4 at any time during the period from the Effective Date until such time; and
 - (ii) the aggregate number of Default Points assigned pursuant to this Section 2.4 at any time during the period from (but excluding) the date that is three years prior to such time until such time (the “**Default Points Balance**”).
- (f) The Province will notify the Design-Builder of the assignment of any Default Points pursuant to this Section 2.4 promptly after such assignment.
- (g) The Design-Builder will be entitled to dispute the assignment of any Default Point only if:
 - (i) the number of such Default Points assigned by the Province in respect of any month is greater than the number of Default Points identified by the Design-Builder in the relevant monthly report delivered under Part 6 [Periodic Reports and Payment Applications] of Schedule 10 as being assignable in respect of that month; and

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- (ii) the Design-Builder refers such dispute to the Dispute Resolution Procedure within 14 days after its receipt from the Province of notice of such assignment. If the Design-Builder does not refer the dispute to the Dispute Resolution Procedure within such 14-day period, the Design-Builder will be deemed to have accepted the Province's assignment of the relevant Default Points.
- (h) The Province's right to assign Default Points as contemplated by this Section 2.4 is in addition to and not in substitution for or to the exclusion of any other rights and remedies available to the Province under this Agreement or any of the other Project Documents or at law or in equity, and the Province may have recourse to any one or more or all of such rights and remedies, concurrently or successively, as it will see fit, without prejudice to any of its other available rights and remedies.

**JUMPING CREEK TO MACDONALD SNOWSHED PROJECT
DESIGN-BUILD AGREEMENT
SCHEDULE 9: PERFORMANCE MECHANISM**

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**APPENDIX 9A
ASSIGNMENT OF NCE POINTS**

Performance Requirement	Performance Category	Basis of Assessment	NCE Points Assigned
Design-Build Agreement and All Schedules			
Submittals relating to the management, implementation or remediation of the Project Work provided to the Province under the Review Procedure or the Consent Procedure, including those submittals included in the Cost Items	Implementation	Where the Design-Builder fails to implement any submittal it is required to provide the Province under this Agreement in accordance with the provisions of such submittal, and such failure: (a) has had or might reasonably be expected to have a material adverse effect on the Project; (b) is a breach of Section 5.1 [Design-Builder to Carry Out Project Work] of this Agreement; or (c) has caused or might reasonably be expected to cause an Emergency.	
Schedule 3 : Design and Construction General Requirements			
Performance Measures	Design and Construction	As designated as “Major” in Part 4 [CPKC Interface]	
		As designated as “Severe” in Part 4 [CPKC Interface]	
Schedule 4 : Design and Construction Technical Requirements			
Performance Measures	Design and Construction	As designated as “Major” in Part 3, Article 3 [Traffic Management Communications]	
		As designated as “Severe” in Part 3, Article 3 [Traffic Management Communications]	
Schedule 6 : Environmental Obligations			
Environmental conditions	Implementation	As designated as “Major” in Appendix 6A [Table of Commitments and Performance Index]	
		As designated as “Severe” in Appendix 6A [Table of Commitments and Performance Index]	
Schedule 7 : Quality Management			
Failure to respond to Nonconformity Report	Implementation	Where the Quality Director does not respond to the Nonconformity Report within the timeline provided in Section 6.1(d) of Schedule 7	

JUMPING CREEK TO MACDONALD SNOWSHED PROJECT
DESIGN-BUILD AGREEMENT
SCHEDULE 9: PERFORMANCE MECHANISM
Appendix 9A: Assignment of NCE Points

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Performance Requirement	Performance Category	Basis of Assessment	NCE Points Assigned
Unresolved Nonconformity	Implementation	Where: (a) the status of the Nonconformity Report is not changed to 'closed' in accordance with Section 6.1(i) of Schedule 7 by the Correction Target Date; or (b) the status of the Nonconformity Report is changed to 'pending' in accordance with Section 6.1(i) of Schedule 7	
Traffic Management	Implementation of Traffic Management requirements in respect of Schedule 7	Where a Site Condition Rating of "Unacceptable" is assigned in accordance with Section 4.8 [Traffic Management Auditing] of Schedule 7	
Nonconformity Tracking System	Implementation	Where the Design-Builder fails to submit a fully operating Nonconformity Tracking System within the timeline provided in Section 6.2(b) of Schedule 7	
Schedule 15 : Communication and Engagement			
Performance Measures	Communication and Engagement	As designated as "Major" in Schedule 15	
		As designated as "Severe" in Schedule 15	

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PART 1
CONTRACT PRICE AND PAYMENT

1.1 Contract Price and Payments

- (a) The Design-Builder will perform its obligations under this Agreement for the contract price of \$107,971,778 (the “**Contract Price**”). The Contract Price is not subject to change or adjustment except in accordance with Section 1.2 [Additional Payments] of this Schedule. The Design-Builder agrees to accept the Contract Price as full payment and reimbursement to the Design-Builder for performing the Project Work, including all labour, services, materials, equipment and overhead required to perform the Project Work and all profit.
- (b) Subject to the Design-Builder meeting the requirements for payment set out in this Agreement, the Province will pay the Design-Builder the amounts expressly provided for in this Agreement in accordance with the provisions of this Agreement.
- (c) The obligations of the Design-Builder to make payments under this Agreement are cumulative and in addition to, and not in substitution for or to the exclusion of, each or any other payment obligation of the Design-Builder hereunder.
- (d) No payment of or on account of any amount by the Province to the Design-Builder in accordance with this Agreement, including the release by the Province of any holdback amounts hereunder, or partial or entire use or occupancy of the Project Infrastructure, the Project Site or any part or parts thereof by the Province or any other person, and no approval of any invoice, report or application submitted by the Design-Builder to the Province for any such payment, will constitute or be construed as constituting a final evaluation or an acceptance by the Province of any Project Work as being in accordance or compliance with this Agreement.
- (e) Notwithstanding any payment by the Province to the Design-Builder in accordance with this Agreement, including the release by the Province of any holdback amounts hereunder, and notwithstanding any review, inspection, enquiry, discussions or negotiations in respect of an invoice, report or application submitted by the Design-Builder to the Province for any such payment, the Design-Builder is and at all times will remain responsible for providing, performing and carrying out the Project Work in accordance and compliance with this Agreement.

1.2 Additional Payments

If it is agreed or determined in accordance with this Agreement that a party is entitled to payment from another party, including in respect of any of:

- (a) a Province Change or Value Engineering Proposal under Part 7 [Changes] of this Agreement, subject to Section 2.7 [Change Certificate] of Schedule 11;
- (b) a Compensation Event (other than in the circumstances described in Section 8.3(b)(ii)) under Part 8 [Supervening Events] of this Agreement;

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- (c) a Force Majeure Event (which, for greater certainty, will only be in the circumstances described in Section 8.6(a)(ii) of this Agreement) under Part 8 [Supervening Events] of this Agreement; and
- (d) any of the events described in Section 8.10 [Sharing of Increased Recoverable Expenditures in Specified Circumstances] or Section 8.10A [Landslides] of this Agreement,

then the affected party may make written demand for such payment from time to time following such agreement or determination and, in respect of any Direct Losses, after such Direct Losses have been incurred, and such payment will be due and payable within 30 days of delivery of written demand supported with all relevant information required in accordance with this Agreement.

1.3 Province Rights to Audit

Without limiting any other rights of the Province to audit any other aspect of the Project Work in accordance with this Agreement, the Design-Builder will, before, during and at any time after the payment of any lump sum contemplated in Section 1.2 [Additional Payments] of this Schedule, ensure that the Province has unrestricted rights of audit over all documentation (including any aspect of the calculation of any such lump sum) used in connection with, or relevant to, the calculation of any such lump sum.

1.4 Province's Right of Set-Off

Subject to Section 3.3 [Rights of Set-Off] of Schedule 14, and without prejudice to and without limiting or derogating from any statutory right of the Province to withhold any sum of money due or becoming due to the Design-Builder, the Province and BCTFA may set off any liquidated amounts owing by the Design-Builder to the Province or BCTFA under this Agreement, including Delay Liquidated Damages (which, without limiting any other provision of the Agreement, will be deemed to include the amount of any payment made by the Province to any person which is the responsibility of the Design-Builder under this Agreement) against any payments due from the Province or BCTFA to the Design-Builder under this Agreement.

1.5 Payments in Canadian Dollars

All payments under this Agreement will be made in Canadian Dollars for value on or before the due date to the bank account of the recipient (located in the City of Vancouver or the City of Victoria, British Columbia) as specified by the recipient from time to time with reference to this Section 1.5.

1.6 Due Date for Payments

- (a) If no date is specified for the making of any payment by a party under this Agreement, such party will make such payment on or before the date that is 30 days after the receipt by such party of the demand, invoice or Report to which such payment relates, or the final determination of the amount of such payment by the parties in accordance with this Agreement, as the case may be.
- (b) If the date for making any payment under this Agreement falls on a day that is not a Business Day, the date for making such payment will be extended to the next Business Day.

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1.7 Payment of Disputed Amounts

- (a) A party will have the right to dispute, in good faith, any amount specified as payable from one party to another in any demand, invoice or Report.
- (b) Except as otherwise expressly provided in this Agreement, a party will pay any undisputed portion of any amount that is the subject of a dispute to the other party in accordance with this Agreement, but any disputed portion or amount will not be payable until the dispute is resolved in accordance with this Agreement.
- (c) If payment of any amount payable under this Agreement is delayed while the matter is in dispute in accordance with Section 1.7(a) of this Schedule, upon resolution of such dispute a party will pay any amount agreed or determined to be due by such party within 10 Business Days following such resolution, together with interest on such amount calculated at an interest rate that is 1% per annum over the Prime Rate at that time, compounded monthly from the time such amount originally became payable (but for such dispute) under this Agreement until the earlier of:
 - (i) the date of such payment in accordance with this Section 1.7(c); and
 - (ii) the due date for such payment under this Section 1.7(c).

For greater certainty, Section 1.9 [Interest on Overdue Amounts] of this Schedule will apply to any amount payable pursuant to this Section 1.7(c) that is not paid within such 10 Business Days.

1.8 Inaccuracies in Payments

Subject to Section 3.4 [Full and Final Settlement] of Schedule 14, if there is any inaccuracy in any demand, invoice or Report issued by a party pursuant to this Agreement providing for the payment of an amount from one party to the other, whether determined upon an examination by the Province pursuant to Section 1.6 [Province Access to Records] of Schedule 17 or otherwise:

- (a) the necessary adjustments in such demand, invoice or Report and resulting payment will be made by the applicable party within 10 Business Days after the date such inaccuracy is established by agreement or pursuant to the Dispute Resolution Procedure; and
- (b) if such inaccuracy results in an underpayment or overpayment being made by one party to another party (as against the sum that would have been paid but for such inaccuracy), then, if the paying party or the receiving party, as the case may be, issued the demand, invoice or Report containing such inaccuracy, the paying party or the receiving party will, in addition to paying such underpayment or re-paying such overpayment, as the case may be, to such other party, pay interest thereon at a rate per annum equal to the Default Rate from the date of payment by the relevant party to such other party pursuant to the original demand, invoice or Report to the date of payment of such underpayment by the paying party or the date of repayment of such overpayment by the receiving party, as the case may be.

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1.9 Interest on Overdue Amounts

If payment of any amount payable under this Agreement is not made when due (including payments payable pursuant to Schedule 14 [Compensation on Termination] and any payments required pursuant to Section 10.2(g) of this Agreement and Sections 1.7(c) and 1.8(a) of this Schedule), interest will, unless another interest rate is indicated in this Agreement, be payable on such amount at the Default Rate and will be calculated from the date due under this Agreement until paid, compounded monthly.

1.10 Interest without Prejudice

The right of a party to receive interest in respect of the late payment of any amount due under this Agreement is without prejudice to any other rights that party may have under this Agreement.

1.11 Payment of Interest by Province

Notwithstanding any other term of this Agreement, the payment of interest by the Province pursuant to this Agreement is subject to the provisions of the *Financial Administration Act* (British Columbia).

**PART 2
PAYMENT OBLIGATIONS OF PROVINCE**

2.1 Obligation to make Progress Payments

- (a) Subject to the provisions of this Schedule, the Province will make payments (the “**Progress Payments**”), in arrears, to the Design-Builder on account of the Contract Price in the amounts determined in accordance with Part 3 [Calculation of Progress Payments] of this Schedule and the procedure set out in Part 11 [Payments] of this Agreement and Part 1 [Contract Price and Payment] of this Schedule.
- (b) Subject to the provisions of Part 11 [Payments] of this Agreement and Part 1 [Contract Price and Payment] of this Schedule, each such Progress Payment will be calculated in accordance with Part 3 [Calculation of Progress Payments] of this Schedule.
- (c) Without prejudice to Section 1.7 [Payment of Disputed Amounts] of this Schedule, the Province will, after withholding:
 - (i) any amount to be retained in respect of the Progress Payment Holdback in accordance with Section 3.1(a)(iv) of this Schedule;
 - (ii) any amount to be retained in respect of the Deficiency Holdback in accordance with Section 3.1(a)(v) of this Schedule; and
 - (iii) any amount to be retained in respect of the Warranty Holdback in accordance with Section 3.1(a)(vi) of this Schedule,

make payment to the Design-Builder of the net amount approved in respect of a Draw Request pursuant to Section 6.1(l) of this Schedule by not later than the fifth Business Day following approval in respect of the Draw Request pursuant to Section 6.1(l) of this Schedule.

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- (d) The Province will have no obligation to pay or be responsible in any way for payments to Subcontractors.

2.2 Obligation to pay Indigenous Contracts Incentive Payment

- (a) Subject to the provisions of this Schedule and Section 1.6 [Indigenous Contracts Incentive Payment] of Schedule 12, the Province will pay to the Design-Builder, in accordance with the procedure set out in this Section, the Indigenous Contracts Incentive Payment.
- (b) At any time after issuance of the Certificate of Total Completion, where the Indigenous Contracts Incentive Payment is payable in accordance with Section 1.6 [Indigenous Contracts Incentive Payment] of Schedule 12, the Design-Builder may submit to the Province's Representative a Payment Application in the applicable form set out in Appendix 10C [Forms] to this Schedule and accompanied by the documentation specified therein, requesting payment of the Indigenous Contracts Incentive Payment, and arrange with the Province's Representative a reasonable opportunity for the Province's Representative to meet with the Design-Builder's Representative to review the draft Payment Application and review such documentation as the Province's Representative may request.
- (c) If the Province's Representative identifies any deficiencies or inaccuracies in the Payment Application, the Province's Representative will notify the Design-Builder of such deficiencies or inaccuracies within five Business Days of the draft Payment Application being delivered pursuant to Section 2.2(b) of this Schedule.
- (d) The Design-Builder will cooperate with the Province's Representative to reach agreement on the finalized Payment Application on or before the fifth Business Day following delivery of the Payment Application to the Province's Representative pursuant to Section 2.2(b) of this Schedule.
- (e) The Province's Representative will approve the Payment Application as to the applicable Indigenous Contracts Incentive Payment within five Business Days of the Payment Application being agreed upon pursuant to Section 2.2(d) of this Schedule.
- (f) Without prejudice to Section 1.7 [Payment of Disputed Amounts] of this Schedule, by not later than the tenth Business Day following approval of the Payment Application pursuant to Section 2.2(e) of this Schedule, the Province will make payment to the Design-Builder of the Indigenous Contracts Incentive Payment approved pursuant to Section 2.2(e) of this Schedule.

PART 3 CALCULATION OF PROGRESS PAYMENTS

3.1 Calculation of Progress Payments

- (a) Subject to Section 3.1(c) of this Schedule, the Progress Payment for each Payment Period will be an amount equal to the total of the amounts described in Sections 3.1(a)(i), 3.1(a)(ii) and 3.1(a)(iii) below:

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- (i) the amount (the “**Progress Amount**”) that is the aggregate of all the Cost Item Progress Amounts (other than a Cost Item Progress Amount payable in respect of a Specified Cost Item) each of which is determined in accordance with Section 3.1(b) of this Schedule for Payment Period p ;
- (ii) the aggregate of all the Cost Item Progress Amounts in respect of Specified Cost Items, each of which is determined in accordance with Section 3.1(b) of this Schedule to be payable in respect of Payment Period p ; and
- (iii) for the Payment Period in which the Substantial Completion Date occurs, the total amount of the Progress Payment Holdback previously retained by the Province in accordance with Section 3.1(a)(iv) of this Schedule, without interest,

less the amounts, if any, described in Sections 3.1(a)(iv), 3.1(a)(v) and 3.1(a)(vi) of this Schedule:

- (iv) for each Payment Period prior to the Payment Period in which the Substantial Completion Date occurs, an amount (the “**Progress Payment Holdback**”) equal to of the total of the amounts described in Sections 3.1(a)(i) and 3.1(a)(ii) of this Schedule;
 - (v) for the Payment Period in which the Substantial Completion Date occurs, the Deficiency Holdback; and
 - (vi) for the Payment Period in which the Substantial Completion Date occurs, the Warranty Holdback.
- (b) Each Cost Item Progress Amount for Payment Period p will be determined in accordance with the following formula:

$$CIPA_p = CIA_{ci} \times RC_p\%$$

where:

$CIPA_p$ = the amount (the “**Cost Item Progress Amount**”) that is determined for Payment Period p for work completed during Payment Period p in respect of a Cost Item identified in the applicable Statement of Progress submitted by the Design-Builder pursuant to Section 6.1 [Draw Requests for Progress Payments] of this Schedule

CIA_{ci} = the Cost Item Amount allocated to that Cost Item in Appendix 10B [Progress Measurement Principles] to this Schedule

$RC_p\%$ = the percentage amount (the “**Relevant Completion Percentage**”) applicable to that Cost Item for Payment Period p , determined as the result obtained by subtracting:

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- (i) the total progress, determined in accordance with Appendix 10B [Progress Measurement Principles] to this Schedule, made by the Design-Builder (expressed as a percentage), during all Payment Periods up to and including the Payment Period that immediately precedes Payment Period *p*, toward completion of that Cost Item;

from:

- (ii) the total progress, determined in accordance with Appendix 10B [Progress Measurement Principles] to this Schedule, made by the Design-Builder (expressed as a percentage), during all Payment Periods up to and including Payment Period *p*, toward completion of that Cost Item;

For certainty, the Relevant Completion Percentage may, in certain circumstances, be a negative amount (including, for example, if the progress toward completion of the applicable Cost Item, as certified by the Independent Engineer, or as determined by the Province in accordance with Section 8.1(c) of this Schedule, for payments made in respect of one or more Payment Periods, is subsequently determined to have been overstated).

- (c) The maximum aggregate amount payable by the Province in respect of Progress Payments pursuant to this Schedule will be an amount equal to the Contract Price.

3.2 Labour Wage Rate Adjustment

- (a) The Contract Price is based on the hourly wage rates provided in the Community Benefits Agreement (or any amended or superseded version thereof) increasing annually by (the “**Assumed Labour Rate Adjustment Percentage**”) for each year commencing May 2026 (the “**Labour Rate Adjustment Period**”).
- (b) If, during the Labour Rate Adjustment Period, the hourly wage rates in the Community Benefits Agreement are increased by a percentage greater than the Assumed Labour Rate Adjustment Percentage (the “**Actual Wage Rate Adjustment**”), the Province will, until the Target Substantial Completion Date, pay directly to BCIB, for and on behalf of the Design-Builder and any Subcontractors, any amounts incurred and owing to BCIB on account of wages payable for performance of the Project Work to the extent such amounts become payable due to the Actual Wage Rate Adjustment exceeding the Assumed Labour Rate Adjustment Percentage.

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**PART 4
HOLDBACKS**

4.1 Deficiency Holdback

- (a) Notwithstanding any other provision of this Agreement, and in addition to any other holdbacks provided for in this Agreement, the Province may, in accordance with Section 3.1(a)(v) of this Schedule, retain out of the Progress Payment in which the Substantial Completion Date occurs, on account of any defects or deficiencies in the Project Work as identified on the Final Deficiency List Deficiency signed by the Owner's Engineer pursuant to Section 11.6(b)(i) of Schedule 3 [Design and Construction General Requirements], an amount (the "**Deficiency Holdback**") equal to 200% of the Deficiency Agreed Remedy Cost.
- (b) Following the end of each complete calendar month (commencing with the first complete calendar month) after the Substantial Completion Date has occurred, the Design-Builder will prepare, and deliver to the Province's Representative, a Payment Application in the applicable form set out in Appendix 10C [Forms] to this Schedule and accompanied by the documentation specified therein, requesting payment of any amounts retained by the Province for the Deficiency Holdback, as the case may be, pursuant to Section 4.1(a) of this Schedule in respect of any Final Deficiency List Deficiency, as the case may be, that have been remedied, to the satisfaction of the Province, acting reasonably, during such month (or, in the case of the first such application, since the date of Substantial Completion).
- (c) By no later than the tenth Business Day following receipt of any Payment Application that complies with Section 4.1(b) of this Schedule, the Province will, subject to Section 4.1(e) of this Schedule, make payment, without interest, to the Design-Builder of the applicable amount(s).
- (d) If the Total Completion Date does not occur on or before the Total Completion Target Date, the Province may, in its discretion, do either of the following for each Final Deficiency List Deficiency that as at the Total Completion Target Date has not been remedied:
 - (i) without prejudice to Section 4.1(b) of this Schedule, and in accordance with Section 11.9(a) of Schedule 3 [Design and Construction General Requirements]:
 - (A) the Province will be entitled irrevocably to retain any amounts not paid to the Design-Builder in accordance with Section 4.1(b) of this Schedule in respect of such Final Deficiency List Deficiency; and
 - (B) in consideration for the making of such retention and/or demand by the Province, the Design-Builder will be released from its obligation to remedy such Final Deficiency List Deficiency; or
 - (ii) require the Design-Builder to continue to remedy such Final Deficiency List Deficiency.

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- (e) If this Agreement is terminated after any amounts have been retained pursuant to Section 4.1(a) of this Schedule but prior to the Total Completion Date, the Province will be entitled irrevocably to retain any such amounts retained pursuant to Section 4.1(a) or Section 4.1(d)(i)(A) of this Schedule and not paid to the Design-Builder in accordance with Section 4.1(b) of this Schedule.

4.2 Warranty Holdback

- (a) Notwithstanding any other provision of this Agreement, and in addition to any other holdbacks provided for in this Agreement, the Province may retain out of the Progress Payments in accordance with Section 3.1(a)(vi) of this Schedule an amount (the “**Warranty Holdback**”) equal to 1% of the Contract Price.
- (b) Following the expiry of the General Project Work Defect Warranty Period, the Design-Builder will prepare, and deliver to the Province’s Representative, a Payment Application in the applicable form set out in Appendix 10C [Forms] to this Schedule requesting payment of the Warranty Holdback (less any amounts applied therefrom by the Province in accordance with Section 7.4(d)(i) or 7.4(f) of Schedule 3 [Design and Construction General Requirements]).
- (c) Subject to Section 7.8(c) of Schedule 3 [Design and Construction General Requirements], by no later than the tenth Business Day following receipt of the Payment Application pursuant to Section 4.2(b) of this Schedule, the Province will make payment, without interest, to the Design-Builder of the Warranty Holdback (less any amounts applied therefrom by the Province in accordance with Section 7.4(d)(i) or 7.4(f) of Schedule 3 [Design and Construction General Requirements]).

PART 5 PAYMENT OBLIGATIONS OF DESIGN-BUILDER

5.1 Obligation to make Performance Incentive Payments

- (a) The Design-Builder will pay to the Province a Performance Incentive Payment in respect of each Payment Period any portion of which occurs during the period commencing on the Effective Date and ending on (and including) the Total Completion Date.
- (b) Subject to the provisions of Part 10 [Payments] of this Agreement and Part 1 [Contract Price and Payment] of this Schedule, each such Performance Incentive Payment will be determined in accordance with Section 1.1 [Calculation of Performance Incentive Payments] of Schedule 9.
- (c) If any report delivered pursuant to Section 6.2 [Reports for Performance Incentive Payments and Delay Liquidated Damages] of this Schedule shows a net amount owing by the Design-Builder to the Province then, without prejudice to Section 1.7 [Payment of Disputed Amounts] of this Schedule, the Design-Builder will pay and remit to the Province such amount not later than the later of:
 - (i) the last day of the Payment Period following the Payment Period (or part thereof, as the case may be) to which the said report relates; and

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- (ii) the tenth Business Day after the Design-Builder has delivered the said report.
- (d) If any report delivered pursuant to Section 6.2 [Reports for Performance Incentive Payments and Delay Liquidated Damages] of this Schedule shows a net amount owing by the Province to the Design-Builder, it will be accompanied by an invoice from the Design-Builder to the Province in respect of such net amount (which invoice will separately identify any applicable taxes included in the calculation of such amount). Without prejudice to Section 1.7 [Payment of Disputed Amounts] of this Schedule, the Province will pay to the Design-Builder the amount of any such invoice issued by the Design-Builder not later than the later of:
 - (i) the last day of the Payment Period following the Payment Period (or part thereof, as the case may be) to which the invoice relates; and
 - (ii) the tenth Business Day after the Province has received both the said invoice and the said report (together with the working papers referred to in Section 6.2(b) of this Schedule) in respect of such Payment Period (or part thereof, as the case may be).

5.2 Obligation to pay Delay Liquidated Damages

- (a) If the Substantial Completion Date does not occur on or before the Substantial Completion Target Date, then, subject to Section 9.3(b) of this Agreement, and except to the extent such delay is directly attributable to a Province Non-Excusable Event, the Design-Builder will pay to the Province liquidated damages (“**Delay Liquidated Damages**”) in an amount equal to _____ for each day (or part thereof; for certainty, without pro-rating) from (but excluding) the Substantial Completion Target Date until (and including) the Substantial Completion Date.
- (b) Delay Liquidated Damages will accrue on a daily basis and be payable by the Design-Builder to the Province in respect of each Payment Period simultaneously with the delivery of the report delivered pursuant to Section 6.2 [Reports for Performance Incentive Payments and Delay Liquidated Damages] of this Schedule for such Payment Period (whether or not the Province has issued an invoice or demand therefor, provided that, if requested by the Design-Builder, the Province will issue an invoice therefor as soon as reasonably practicable after the receipt of such request).
- (c) The Province and the Design-Builder acknowledge and agree that:
 - (i) there will be substantial delays, costs and difficulties in determining the loss suffered by the Province if the Substantial Completion Date does not occur on or before the Substantial Completion Target Date;
 - (ii) the Delay Liquidated Damages provided for in Section 5.2(a) of this Schedule are not intended, nor will they be construed, to be punitive but are a genuine pre-estimate and assessment, by mutual agreement, of the actual loss that will be suffered by the Province if the Substantial Completion Date does not occur on or before the Substantial Completion Target Date, and are payable by the Design-Builder as liquidated damages and not as a penalty; and

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- (iii) the method of calculation of Delay Liquidated Damages in accordance with Section 5.2(a) of this Schedule represents a fair and reasonable pre-estimate of the actual losses that will be suffered by the Province if the Substantial Completion Date does not occur on or before the Substantial Completion Target Date.
- (d) The payment of Delay Liquidated Damages in accordance with this Section 5.2 will be the Province's sole remedy if the Substantial Completion Date does not occur on or before the Substantial Completion Target Date, provided that the payment of such Delay Liquidated Damages will not, and will not be construed to:
 - (i) limit the rights and remedies of the Province, or the liabilities of the Design-Builder, that arise or may arise as a result of the occurrence of the Design-Builder Default referred to in Section 12.1(o) of this Agreement; nor
 - (ii) relieve the Design-Builder from:
 - (A) the obligation to achieve Substantial Completion in accordance with this Agreement; or
 - (B) any liability arising from any failure to comply with the obligation referred to in Section 5.2(d)(ii)(A) of this Schedule, other than any liability that would arise as a result of the Substantial Completion Date not occurring on or before the Substantial Completion Target Date (except for the payment of Delay Liquidated Damages).
- (e) Section 1.4 [Province's Right of Set-Off] of this Schedule will apply to the Design-Builder's obligation to pay Delay Liquidated Damages pursuant to this Section 5.2.

PART 6

PERIODIC REPORTS AND PAYMENT APPLICATIONS

6.1 Draw Requests for Progress Payments

- (a) On or before two Business Days before the last day of each Payment Period, the Design-Builder will prepare and deliver to the Province's Representative and the Independent Engineer a statement of progress, in Excel format, in respect of the current Payment Period, substantially in the form set out in Appendix 10A [Form of Statement of Progress] to this Schedule, duly completed in accordance with Appendix 10B [Progress Measurement Principles] of this Schedule (a "**Statement of Progress**") and accompanied by working papers clearly setting forth the derivation of all percentages and dollar amounts required by Appendix 10A [Form of Statement of Progress] to be included therein. Prior to delivering a Draw Request to the Province's Representative pursuant to Section 6.1(b) of this Schedule, the Design-Builder will arrange with the Province's Representative and the Independent Engineer a reasonable opportunity for the Province's Representative and the Independent Engineer jointly with the Design-Builder to inspect the Project Work and review the Statement of Progress and to attend at the offices of the Design-Builder to review such documentation as the Province's Representative or the Independent Engineer may request.

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- (b) On or before five Business Days following the last day of each Payment Period, the Design-Builder will prepare and deliver to the Province's Representative a draw request substantially in the applicable form set out in Appendix 10C [Forms] to this Schedule, and a Statement of Progress duly certified by the Independent Engineer and accompanied by working papers clearly setting forth the derivation of the percentages and dollar amounts required by Appendix 10A [Form of Statement of Progress] to be included therein, including any adjustments to finalize the initial Statement of Progress for the applicable Payment Period as provided pursuant to Section 6.1(a) of this Schedule, each of which will be for the Progress Payment for the portion of the Project Work progressed during the Payment Period then most recently ended and accompanied by the documentation specified therein (such draw request and certified Statement of Progress, together being a "**Draw Request**").
- (c) The Draw Request will set out the Design-Builder's calculation of each of the following (each stated separately), without duplication:
 - (i) the Cost Item Progress Amount in respect of each relevant Cost Item in respect of such Payment Period (each such amount as set out in the applicable certified Statement of Progress comprising part of such Draw Request);
 - (ii) the cumulative total progress made by the Design-Builder, during all Payment Periods up to and including such Payment Period, toward completion of each relevant Cost Item, expressed as a percentage (each such percentage amount as set out in the applicable certified Statement of Progress comprising part of such Draw Request);
 - (iii) the cumulative total progress made by the Design-Builder, during all Payment Periods up to but excluding such Payment Period, toward completion of each relevant Cost Item, expressed as a percentage (each such percentage amount as set out in the applicable certified Statement of Progress comprising part of such Draw Request);
 - (iv) the Relevant Completion Percentage applicable to each relevant Cost Item in respect of such Payment Period (each such percentage amount as set out in the applicable certified Statement of Progress comprising part of such Draw Request);
 - (v) the Progress Amount in respect of such Payment Period;
 - (vi) the Cost Item Progress Amount in respect of each Specified Cost Item, which amount is determined in accordance with Section 3.1(b) of this Schedule to be payable in respect of such Payment Period (each such amount as set out in the applicable certified Statement of Progress comprising part of such Draw Request);
 - (vii) the aggregate of all Cost Item Progress Amounts in respect of all Specified Cost Items, each of which is determined in accordance with Section 3.1(b) of this Schedule to be payable in respect of such Payment Period;

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- (viii) the amount of any amount payable for such Payment Period in respect of previous Progress Payment Holdbacks pursuant to Section 3.1(a)(iii) of this Schedule;
- (ix) the amount of any holdback on account of the Progress Payment Holdback to be made for such Payment Period pursuant to Section 3.1(a)(iv) of this Schedule;
- (x) the amount of any holdback on account of the Deficiency Holdback to be made for such Payment Period pursuant to Section 3.1(a)(v) of this Schedule;
- (xi) the amount of any holdback on account of the Warranty Holdback to be made for such Payment Period pursuant to Section 3.1(a)(vi) of this Schedule;
- (xii) the total Progress Payment payable in respect of such Payment Period, determined pursuant to Section 3.1(a) of this Schedule;
- (xiii) the aggregate of all amounts payable in respect of any additional or varied Project Work authorized or approved by a Change Certificate and performed by the Design-Builder during such Payment Period;
- (xiv) any applicable taxes payable in respect of any of the payments referred to above in this Section 6.1(c);
- (xv) any adjustments to reflect over-payments and/or underpayments (each such adjustment stated separately) in respect of Progress Payments made by the Province during the period prior to such Payment Period (for which adjustment has not already been made, including by way of determination of a negative Relevant Completion Percentage applicable to any Cost Item);
- (xvi) any interest payable in respect of any amounts owed; and
- (xvii) the net amount owing by the Province to the Design-Builder or by the Design-Builder to the Province in respect of:
 - (A) the Province's obligation to make Progress Payments pursuant to Section 2.1 [Obligation to make Progress Payments] of this Schedule; and
 - (B) the Province's obligation to make payment for additional or varied Project Work performed by the Design-Builder pursuant to a Change Certificate.
- (d) The Draw Request will be accompanied by working papers clearly setting forth the derivation of the percentages and amounts set out therein in accordance with all applicable calculations specified in this Schedule. Such working papers will include all relevant reports, information and documentation (all in such form and content as is acceptable to the Province's Representative) to support the Design-Builder's application contained in such Draw Request as well as (to the extent applicable) a report which:

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- (i) demonstrates that the Key Individuals have been working on the Project as required in accordance with Section 3.3 [Key Individuals] of the Agreement and Schedule 21 [Key Individuals] for the applicable Payment Period; and
 - (ii) if applicable, identifies if a Key Individual has been, or will be, temporarily unavailable (such as vacation or other reasonable temporary absence) and outlines the coverage the Design-Builder has provided to address the Key Individual's duties during the time such Key Individual is, or will be, temporarily unavailable.
- (e) The Draw Request will be accompanied by a letter from the Workers' Compensation Board which confirms that the Design-Builder is in good standing with the Workers' Compensation Board and that all required remittances and assessments required by the WCA have been made to a date which is no more than three Business Days prior to the date of the Draw Request.
- (f) The Draw Request will be accompanied by a report on the status of the Project, which report will include a description of:
 - (i) the Design-Builder's progress during the Payment Period to which the Draw Request relates; and
 - (ii) the major activities performed by the Design-Builder during the Payment Period.
- (g) To the extent the Design-Builder has requested payment for off-site materials or equipment, and the Province has agreed to provide the payment in advance in accordance with Section 8.1 [Payment for Off-Site Materials and Equipment] of this Schedule, the Draw Request will be accompanied by such Vesting Certificates, Letters of Credit, or other documentation as may be required by the Province in connection with making such payment in advance, in accordance with Section 8.1 [Payment for Off-Site Materials and Equipment] of this Schedule.
- (h) The Draw Request will (subject to any exceptions set out in such Draw Request) constitute a representation and warranty by the Design-Builder to the Province (the truth and accuracy of which representation and warranty will be a condition precedent to the obligation of the Province to make any payment pursuant to the Draw Request, and which representation and warranty may, as to the payment of any Subcontractors as described in Section 6.1(h)(iv) of this Schedule, be made in reliance on one or more statutory declarations of others) that:
 - (i) the Project Work has progressed to the point indicated in the Draw Request;
 - (ii) the Cost Item Progress Amounts identified in the Draw Request have been properly incurred;
 - (iii) the Project Work described in the Draw Request as having been done, has been done in accordance with the Design-Builder's obligations under this Agreement;
 - (iv) all of the Subcontractors have been paid in full up to the last Progress Payment received by the Design-Builder, subject to holdbacks (including for amounts

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disputed in good faith) required or permitted by the Subcontracts and the *Builders Lien Act* (British Columbia), if applicable;

- (v) except to the extent communicated by the Design-Builder to the Province in writing, no Adverse Claim exists with respect to or as a result of or in relation to the Project Work;
 - (vi) the Design-Builder is entitled to payment in the amount requested;
 - (vii) no Design-Builder Default has occurred which has not been either waived in writing by the Province or remedied to the satisfaction of the Province;
 - (viii) there has not been any material adverse change in the Design-Builder's ability to perform its obligations under this Agreement; and
 - (ix) to the best of the Design-Builder's knowledge, there has not been any materially adverse change in any Subcontractor's ability to perform its obligations under the applicable Subcontract.
- (i) The Province's Representative will identify any deficiencies or inaccuracies in the Draw Request and the amount affected thereby within five Business Days of the Draw Request being delivered pursuant to Section 6.1(b) of this Schedule, which amount will be subject to Section 1.7 [Payment of Disputed Amounts] of this Schedule.
 - (j) The Design-Builder will cooperate with the Province's Representative to reach agreement on a Draw Request on or before the fifth Business Day following delivery of the Draw Request to the Province's Representative pursuant to Section 6.1(b) of this Schedule.
 - (k) The Province's Representative will approve the Draw Request as to amounts not in dispute within five Business Days of the Draw Request being delivered pursuant to Section 6.1(b) of this Schedule, and pay to the Design-Builder such amounts not in dispute within the applicable time period specified in Section 2.1(c) of this Schedule.
 - (l) The Draw Request, once agreed upon pursuant to Section 6.1(j) of this Schedule, will not be amended except in writing signed by each of the parties.

6.2 Reports for Performance Incentive Payments and Delay Liquidated Damages

- (a) Not later than 8 Business Days after the last day of each Payment Period (or part thereof, as the case may be) in each Contract Year during the period described in Section 5.1(a) of this Schedule, the Design-Builder will deliver to the Province's Representative a written report setting out the Design-Builder's calculation of the payments payable by it in respect of that Payment Period (or part thereof, as the case may be) in accordance with Section 5.1 [Obligation to make Performance Incentive Payments] and Section 5.2 [Obligation to pay Delay Liquidated Damages] of this Schedule. Specifically, the report will show the Design-Builder's calculation of each of the following (each stated separately):
 - (i) any Performance Incentive Payment payable in respect of that Payment Period (or part thereof, as the case may be), comprising;

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- (A) any Traffic Management Payment payable in respect of that Payment Period (or part thereof, as the case may be); and
 - (B) any Non-Compliance Event Payment payable in respect of that Payment Period (or part thereof, as the case may be);
- (ii) any Delay Liquidated Damages payable in respect of that Payment Period (or part thereof, as the case may be);
- (iii) as related to NCE Points:
 - (A) any NCE Points assigned or assignable to the Design-Builder in respect of each Nonconformity occurring during that Payment Period, or part thereof, as the case may be (which will be the number of NCE Points set out in Part 6 [Nonconformities] of Schedule 7, Sections 2.1 [Assignment of NCE Points] or 2.2 [Calculation of NCE Points Balance] of Schedule 9, or Appendix 9A [Assignment of NCE Points] to Schedule 9, as applicable);
 - (B) the total number of NCE Points assigned to the Design-Builder; and
 - (C) the number of NCE Points which the Design-Builder has disputed (if any) in accordance with Section 2.1(j) of Schedule 9 [Performance Mechanism] and the Design-Builder's reasons for disputing such NCE Points;
- (iv) the NCE Points Balance as at the end of each day of that Payment Period (or part thereof, as the case may be);
- (v) the NCE Points (Default) Balance as at the end of each day of that Payment Period (or part thereof, as the case may be);
- (vi) as related to Default Points:
 - (A) the total number of Default Points assigned or assignable to the Design-Builder during that Payment Period, or part thereof, as the case may be, (which will be assigned or assignable to the Design-Builder in accordance with Section 2.4 [Assignment of Default Points] of Schedule 9); and
 - (B) the number of Default Points which the Design-Builder has disputed (if any) in accordance with Section 2.4(g) of Schedule 9 [Performance Mechanism] and the Design-Builder's reasons for disputing such Default Points;
- (vii) the Default Points Balance as at the end of each day of that Payment Period (or part thereof, as the case may be);

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- (viii) any applicable taxes payable in respect of any of the payments referred to in paragraphs (i) through (iv) above in respect of that Payment Period (or part thereof, as the case may be);
 - (ix) any adjustments to reflect over-payments and/or underpayments (each such adjustment stated separately) in respect of Performance Incentive Payments made by the Design-Builder during the period prior to that Payment Period (for which adjustment has not already been made);
 - (x) any interest payable in respect of any amounts owed; and
 - (xi) the net amount owing by the Design-Builder to the Province or by the Province to the Design-Builder in respect of the Design-Builder's obligation to make Performance Incentive Payments and pay Delay Liquidated Damages pursuant to Sections 5.1 [Obligation to make Performance Incentive Payments] and 5.2 [Obligation to pay Delay Liquidated Damages], respectively, of this Schedule.
- (b) A report delivered pursuant to this Section 6.2 will be accompanied by working papers clearly setting forth the derivation of the amounts set out therein in accordance with all applicable calculations specified in this Schedule. Such working papers will include all relevant reports, information and documentation (all in such form and content as is acceptable to the Province's Representative) to support the Design-Builder's calculation of the relevant Performance Incentive Payment and Delay Liquidated Damages, as applicable.
- (c) The Design-Builder's obligation to deliver a written report pursuant to this Section 6.2 will not affect the Design-Builder's obligation to deliver any other written report pursuant to any other section of this Part 6.

6.3 Province can issue Reports and Invoices

If the Design-Builder fails to deliver any report or invoice within the time period required pursuant to this Schedule, the Province may itself prepare and deliver to the Design-Builder such report or invoice. Any such report or invoice delivered pursuant to this Section 6.3 will be accompanied by working papers clearly setting forth the derivation of the amounts set out therein in accordance with all applicable calculations specified in this Schedule.

6.4 Quarterly Forecast of Progress Payments

On or before the last Business Day of each February, May, August and November during the period from the Effective Date until the Total Completion Date, the Design-Builder will deliver to the Province's Representative a forecast of:

- (a) the cumulative total of all Progress Payments to be paid in respect of the next following Fiscal Quarter;
- (b) the cumulative total of all Progress Payments to be paid in respect of all Fiscal Quarters (or part thereof, as the case may be), if any, remaining in the then-current Fiscal Year after the next following Fiscal Quarter; and

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- (c) the cumulative total of all Progress Payments to be paid in respect of each Fiscal Year (or part thereof) following the then-current Fiscal Year and commencing before the later of (i) the Total Completion Target Date and (ii) the Total Completion Date; and
- (d) confirmation that such quarterly forecast accurately reflects the Works Schedule as of the date of such quarterly forecast.

PART 7

PAYMENTS BY PROVINCE IN EVENT OF NON-PAYMENT UNDER BCIB AGREEMENTS

7.1 Payments by Province in the Event of Non-payment under BCIB-Agreements and Set-off Rights

- (a) If the Province pays any amount that:
 - (i) the Design-Builder has not paid by the applicable date stipulated by the BCIB-Contractor Agreement; or
 - (ii) a Subcontractor has not paid by the applicable date stipulated by the relevant BCIB-Subcontractor Agreement;

then the Province will promptly thereafter deliver to the Design-Build an invoice for:

- (iii) any amount(s) so paid; plus
- (iv) an administrative fee calculated as the amount that is the greater of:
 - (A) of the amount(s) so paid; and
 - (B) dollars.

The requirements of this Section 7.1(a) will not apply to payments made by the Province to BCIB in accordance with Section 3.2(b) of this Schedule.

- (b) Without prejudice to Section 1.7 [Payment of Disputed Amounts] of this Schedule, the Design-Builder will pay and remit to the Province, by not later than ten (10) Business Days after the Province has delivered such an invoice to the Design-Builder, the amount of the invoice. If the Design-Builder has not paid the invoice within ten (10) Business Days after the Province has delivered the same to the Design-Builder, then the Province may, at any time thereafter, except to the extent that the Design-Builder provides evidence satisfactory to the Province, acting reasonably, that the Design-Builder has paid the amounts which are the subject of the invoice, set off against any future payments due from the Province to the Design-Builder under this Agreement the amount of such invoice.

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**PART 8
ADVANCE PAYMENTS**

8.1 Payment for Off-Site Materials and Equipment

- (a) The Design-Builder may request payment for off-site materials or equipment from the Province:
 - (i) prior to such materials or equipment being incorporated into the Project Work or delivered to the Project Site;
 - (ii) where such materials or equipment have a long lead-time for ordering or procurement and therefore require payment prior to the materials or equipment being delivered to the Project Site; or
 - (iii) where the procurement of such materials or equipment involves early design work such as the production of shop drawings.
- (b) Notwithstanding that the Province is under no obligation to pay for any material and equipment that has not been delivered to the Project Site, the Province, in its sole discretion, may agree in writing to the Design-Builder's request and provide payment for materials or equipment which have been delivered to, or are located at, an off-site storage facility or site, or prior to such materials or equipment being produced, in accordance with Section 8.1(a) of this Schedule. As a condition to providing its consent, the Province may require additional information and documentation in connection with providing such payment, which may include:
 - (i) a Vesting Certificate;
 - (ii) an unredacted invoice from the applicable supplier or manufacturer to confirm or validate the amounts claimed on materials or equipment which require a down payment or advance, or which have a long lead time for ordering;
 - (iii) that documents or information applicable to the materials or equipment be subject to the Review Procedure or Consent Procedure, as determined by the Province's Representative in its discretion;
 - (iv) a Letter of Credit provided by the Design-Builder;
 - (v) evidence that title to the relevant materials or equipment has passed from the supplier or manufacturer, as applicable, to the Design-Builder in accordance with the terms of the relevant purchase orders or supply contracts;
 - (vi) a "no interest" letter issued by any lenders under any credit facility established by or for the benefit of the Design-Builder for the purpose of funding the Design-Builder in connection with the Project whereby the lending entity (or lending entities) disclaims any interest (including a security interest) in the off-site materials or equipment for which the Design-Builder is requesting payment in accordance with this Section;

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- (vii) confirmation that:
 - (A) the Design-Builder is the owner of the off-site storage facility or site, and any evidence requested by the Province which confirms that the Design-Builder is the owner; or
 - (B) the Design-Builder leases or is otherwise not the owner of the off-site storage facility or site, in which case the Design-Builder will provide a direct agreement or a waiver (in a form satisfactory to the Province) from the landlord or owner of the off-site storage facility or site disclaiming any right to seize the material or equipment in exercising its distress right (which may include a waiver of detainment);
 - (viii) any other evidence confirming that no other party has a security interest in the relevant materials or equipment (either specifically against such materials and equipment, or generally by claiming a security interest in all present and after-acquired personal property of the Design-Builder); or
 - (ix) all or any combination of the documents described in this Section 8.1(b).
- (c) Any payment made by the Province in accordance with Section 8.1(b) of this Schedule will be made on account of the Contract Price and, where applicable, on account of the applicable Cost Item, and the Design-Builder will not request payment for any such materials or equipment (including any ancillary costs already paid for by the Province pursuant to Section 8.1(b) of this Schedule) when they are incorporated into the Project Work or delivered to the Project Site. Where payments made on account of a Cost Item in accordance with this Section 8.1(c), the Province, and not the Independent Engineer, will determine the progress made on the applicable Cost Item in connection with any payment made by the Province in accordance with Section 8.1(b) of this Schedule.
- (d) When the off-site materials or equipment have been incorporated into the Project Work, the Design-Builder may apply to the Province for the return of any applicable Letter of Credit requested by the Province in accordance with Section 8.1(b) of this Schedule. If the Province, in its discretion, determines that the materials or equipment for which prior payment was made have been sufficiently incorporated into the Project Work, the Province will return the Letter of Credit provided by the Design-Builder in connection with Section 8.1(b) of this Schedule.

JUMPING CREEK TO MACDONALD SNOWSHED PROJECT
DESIGN-BUILD AGREEMENT
SCHEDULE 10: PAYMENT

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APPENDIX 10A
FORM OF STATEMENT OF PROGRESS

Each Relevant Completion Percentage will be calculated to 2 decimal places, and each Cost Item Progress Amount will be calculated to the nearest dollar.

Table A1 – Cost Item Progress Amounts (excluding in relation to Specified Cost Items)

	Cost Item	Cost Item Amount (\$nominal)	cumulative (EXCLUDING this Payment Period)		cumulative (INCLUDING this Payment Period)		this Payment Period	
			total progress (%)	total progress (\$)	Total progress (%)	Total progress (\$)	Relevant Completion Percentage	Cost Item Progress Amount
		A	B	C = A x B	D	E = A x D	F = D – B	G = A x F
1. Project Management and Key Individuals								
1.1	project management							
1.2	Key Individuals							
1.2.1	Design-Builder’s Representative							
1.2.2	Design Manager							
1.2.3	Construction Manager							
1.2.4	Quality Director							
1.2.5	Lead Geotechnical Engineer							
1.2.6	Environmental Manager							
1.2.7	Operations/Traffic Manager							
1.2.8	Indigenous Coordinator							
2. Mobilization								
2.1	mobilization							
2.2	insurance							

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DESIGN-BUILD AGREEMENT
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Appendix 10A: Form of Statement of Progress

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	Cost Item	Cost Item Amount (\$nominal)	cumulative (EXCLUDING this Payment Period)		cumulative (INCLUDING this Payment Period)		this Payment Period	
			total progress (%)	total progress (\$)	Total progress (%)	Total progress (\$)	Relevant Completion Percentage	Cost Item Progress Amount
			A	B	C = A x B	D	E = A x D	F = D - B
2.3	bonding							
3. Design								
3.1	Design development							
3.1.1	Design management							
3.1.2	Interim Design							
3.1.3	Final Design							
4. Construction								
4.1	roadworks – temporary access							
4.2	roadworks – grading, clearing, grubbing and stripping							
4.2.1	roadworks – grading							
4.2.2	roadworks – clearing and grubbing							
4.2.3	roadworks - stripping							
4.3	Traffic Management							
4.4	roadworks – rock excavation and stabilization							
4.4.1	roadworks – rock excavation							
4.4.2	rock slope stabilization							
4.4.3	railroad flagging							

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DESIGN-BUILD AGREEMENT
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	Cost Item	Cost Item Amount (\$nominal)	cumulative (EXCLUDING this Payment Period)		cumulative (INCLUDING this Payment Period)		this Payment Period	
			total progress (%)	total progress (\$)	Total progress (%)	Total progress (\$)	Relevant Completion Percentage	Cost Item Progress Amount
		A	B	C = A x B	D	E = A x D	F = D - B	G = A x F
4.5	roadworks – utilities							
4.6	roadworks – drainage							
4.7	roadworks – paving							
4.7.1	roadworks – paving base lift							
4.7.2	roadworks – paving top lift							
4.8	Structures – Bridge Foundations							
4.8.1	Structures – Bridge Foundations							
4.8.2	Structures – Bridge Foundations - piles							
4.8.3	Structures – Bridge Foundations – pile caps							
4.8.4	Structures – Bridge Foundations – piles delivery							
4.9	Structures – Bridge Substructures							
4.10	Structures – steel Superstructure							
4.10.1	Structures – steel Superstructure							
4.10.2	Structures – supply of steel components							
4.10.3	Structures – steel Superstructure – precast modular concrete deck panels and cast in place concrete decks							

JUMPING CREEK TO MACDONALD SNOWSHED PROJECT
DESIGN-BUILD AGREEMENT
SCHEDULE 10: PAYMENT
Appendix 10A: Form of Statement of Progress

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	Cost Item	Cost Item Amount (\$nominal)	cumulative (EXCLUDING this Payment Period)		cumulative (INCLUDING this Payment Period)		this Payment Period	
			total progress (%)	total progress (\$)	Total progress (%)	Total progress (\$)	Relevant Completion Percentage	Cost Item Progress Amount
		A	B	C = A x B	D	E = A x D	F = D – B	G = A x F
4.11	Structures – concrete Superstructure							
4.11.1	Structures – concrete Superstructure							
4.11.2	Structures – concrete Superstructure – precast concrete girders							
4.11.3	Structures – concrete Superstructure – precast modular concrete deck panels and cast in place concrete decks							
4.12	Structures – retaining walls							
4.12.1	Structures – retaining walls							
4.12.2	Structures – retaining walls - piles							
4.12.3	Structures – retaining walls – pile caps							
4.12.4	Structures – retaining walls – piles delivery							
4.13	restoration and revegetation							
Total				[Sum of Column C]		[Sum of Column E]		[Sum of Column G]

JUMPING CREEK TO MACDONALD SNOWSHED PROJECT
DESIGN-BUILD AGREEMENT
SCHEDULE 10: PAYMENT
Appendix 10A: Form of Statement of Progress

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Table A2 – Specified Cost Items Completion Amounts

	Cost Item	Cost Item Amount (\$nominal)	cumulative (EXCLUDING this Payment Period)		cumulative (INCLUDING this Payment Period)		this Payment Period	
			total progress (%)	total progress (\$)	total progress (%)	total progress (\$)	Relevant Completion Percentage	Cost Item Progress Amount
		A	B	C = A x B	D	E = A x D	F = D – B	G = A x F
5. Specified Cost Items								
5.1	Construction Management Plan							
5.2	Design Management Plan							
5.3	Construction Environmental Management Plan							
5.4	Traffic Management Plan							
5.5	Quality Manual							
5.6	Design Quality Management Plan							
5.7	Construction Quality Management Plan							
5.8	Health and Safety Program							
5.9	Respect in the Workplace Plan							
5.10	Construction Communications and Engagement Plan							
5.11	Indigenous Participation Plan							
5.12	Operation and Maintenance Plan							
5.13	Completion Plan							

JUMPING CREEK TO MACDONALD SNOWSHED PROJECT
DESIGN-BUILD AGREEMENT
SCHEDULE 10: PAYMENT
Appendix 10A: Form of Statement of Progress

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	Cost Item	Cost Item Amount (\$nominal)	cumulative (EXCLUDING this Payment Period)		cumulative (INCLUDING this Payment Period)		this Payment Period	
			total progress (%)	total progress (\$)	total progress (%)	total progress (\$)	Relevant Completion Percentage	Cost Item Progress Amount
		A	B	C = A x B	D	E = A x D	F = D – B	G = A x F
5.14	All deliverables pursuant to Part 1 [Deliverables for Substantial Completion] of Appendix 3C to Schedule 3							
5.15	All deliverables pursuant to Part 2 [Deliverables for Total Completion] of Appendix 3C to Schedule 3							
Total				[Sum of Column C]		[Sum of Column E]		[Sum of Column G]

Total Progress Payment

1. Progress Amount
2. Aggregate of all Cost Item Amounts in respect of Specified Cost Items (total amount of column G of table 2)
3. Total Progress Payments

[Design-Builder's Representative's signature]

Certified Correct:

[Independent Engineer's signature]

APPENDIX 10B
PROGRESS MEASUREMENT PRINCIPLES

A. Cost Items

- All Cost Items other than Specified Cost Items are identified in Column B of Table B-1 as set out below.
- All Specified Cost Items are identified in Column B of Table B-2 as set out below.

B. Descriptions

- Column C of each of Tables B-1 and B-2 set out below provides a summary description of the work included within each Cost Item. It is not intended that such description be a comprehensive and exhaustive statement of the Project Work to be carried out by the Design-Builder nor that such description describes the means or methods to be used by the Design-Builder in undertaking the Project Work or any part thereof.
- For certainty, any element of Project Work not referred to expressly in any such description in Column C of each of Tables B-1 and B-2 set out below, will be deemed to be included in the relevant Cost Item, including provision and execution of all quality management, traffic management and environmental management as required for the work.
- The parties will mutually adjust Tables B-1 and B-2 as required to adjust for the progressive development of the Design.
- If the parties disagree as to which Cost Item includes a particular element of Project Work not referred to expressly in any such Cost Item description, then the determination of the Independent Engineer will be final and binding on the parties.

C. Progress Measurement

- Subject to Section 8.1(c) of this Schedule, Column D of each of Tables B-1 and B-2 set out below sets out the principles that will be used by the Design-Builder, the Province and the Independent Engineer to calculate total progress (calculated as a percentage) made by the Design-Builder toward completion of a Cost Item for the purpose of determining the Relevant Completion Percentage for that Cost Item for each Payment Period. The Statement of Progress included in the Draw Request in respect of each Payment Period, to be submitted by the Design-Builder in accordance with Section 6.1 [Draw Requests for Progress Payments] of Schedule 10, will be completed in accordance with these principles.
- Specified Cost Items will be considered to be 100% complete based on the principles included in Column D of Table B-2. Prior to 100% completion of a Specified Cost Item, the total progress of that Specified Cost Item will be deemed to be 0%.
- If the Province, acting reasonably, determines that any particular progress measurement rule set out in Table B-1 or Table B-2 below for determining the progress made by the Design-Builder toward completion of a Cost Item results in an inaccurate calculation of the Design-Builder's actual progress in that regard, then the Province may revise such progress measurement rule.
- Any partial Payment Period will be considered to be a complete Payment Period when calculating the total number of Payment Periods.

D. Cost Item Amount

- Column E of each of Tables B-1 and B-2 set out below sets out the Cost Item Amount allocated to each Cost Item.
- The aggregate of all Cost Item Amounts will in no event exceed the Contract Price.

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TABLE B-1 COST ITEMS (excluding Specified Cost Items)

	Cost Item	Description	Progress measurement	Cost Item Amount
A	B	C	D	E
1. Project Management and Key Individuals				
1.1	project management	Management, supervision and administration of the Project together with all temporary facilities required to complete the Project Work.	In accordance with the following formula: $TP_{(p-1)} + [(100\% - TP_{(p-1)}) / n]$ Where: - $TP_{(p-1)}$ is the total progress, expressed as a percentage, up to and including the Payment Period that immediately precedes the relevant Payment Period. - n is the number of Payment Periods from (and including) the relevant Payment Period to the Substantial Completion Target Date. If, by the Substantial Completion Date, the Relevant Percent Complete in respect of this Cost Item has not achieved 100%, the Relevant Percentage Complete for this Cost Item will be deemed 100% during the Payment Period during which the Substantial Complete Date occurs.	

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	Cost Item	Description	Progress measurement	Cost Item Amount
A	B	C	D	E
1.2	Key Individuals	The value for each Cost Item represents the value to the Project based on the Key Individual position remaining filled for the required basis set out in the Agreement, and for the Key Individual meeting the requirements provided for the position as set out in the Agreement. This value does not represent an hourly rate or other rate of compensation for the specified Key Individual position.		
1.2.1	Design-Builder's Representative	As defined in Section 1.1 [Definitions and Interpretation] of Schedule 1.	In accordance with the following formula: $TP_{(p-1)} + (K_n / N)$ Where: - $TP_{(p-1)}$ is the total progress, expressed as a percentage, up to and including the Payment Period that immediately precedes the relevant Payment Period. - K_n is the number of calendar days within the Payment Period where the Design-Builder's Representative position is filled. - N is the total number of calendar days from (and including) the Effective Date to the Total Completion Target Date. If, by the Total Completion Date, the Relevant Percent Complete in respect of this Cost Item has not achieved 100%, the Relevant Percentage Complete for this Cost Item will be deemed 100% during the Payment Period during which the Total Complete Date occurs.	

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Cost Item	Description	Progress measurement	Cost Item Amount
A	B	C	D
1.2.2	Design-Manager	As defined in Section 1.1 [Definitions and Interpretation] of Schedule 1.	In accordance with the following formula: $TP_{(p-1)} + (K_n / N)$ Where: - $TP_{(p-1)}$ is the total progress, expressed as a percentage, up to and including the Payment Period that immediately precedes the relevant Payment Period. - K_n is the number of calendar days within the Payment Period where the Design Manager position is filled. - N is the total number of calendar days from (and including) the Effective Date to the Total Completion Target Date. If, by the Total Completion Date, the Relevant Percent Complete in respect of this Cost Item has not achieved 100%, the Relevant Percentage Complete for this Cost Item will be deemed 100% during the Payment Period during which the Total Complete Date occurs.
1.2.3	Construction Manager	As defined in Section 1.1 [Definitions and Interpretation] of Schedule 1.	In accordance with the following formula: $TP_{(p-1)} + (K_n / N)$ Where: - $TP_{(p-1)}$ is the total progress, expressed as a percentage, up to and including the Payment Period that immediately precedes the relevant Payment Period. - K_n is the number of calendar days within the Payment Period where the Construction Manager position is filled. - N is the total number of calendar days from (and including) the Effective Date to the Total Completion Target Date. If, by the Total Completion Date, the Relevant Percent Complete in respect of this Cost Item has not achieved 100%, the Relevant Percentage Complete for this Cost Item will be deemed 100% during the Payment Period during which the Total Complete Date occurs.

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	Cost Item	Description	Progress measurement	Cost Item Amount
A	B	C	D	E
1.2.4	Quality Director	As defined in Section 1.1 [Definitions and Interpretation] of Schedule 1.	In accordance with the following formula: $TP_{(p-1)} + (K_n / N)$ Where: - $TP_{(p-1)}$ is the total progress, expressed as a percentage, up to and including the Payment Period that immediately precedes the relevant Payment Period. - K_n is the number of calendar days within the Payment Period where the Quality Director position is filled. - N is the total number of calendar days from (and including) the Effective Date to the Total Completion Target Date. If, by the Total Completion Date, the Relevant Percent Complete in respect of this Cost Item has not achieved 100%, the Relevant Percentage Complete for this Cost Item will be deemed 100% during the Payment Period during which the Total Complete Date occurs.	

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	Cost Item	Description	Progress measurement	Cost Item Amount
A	B	C	D	E
1.2.5	Lead Geotechnical Engineer	As defined in Section 1.1 [Definitions and Interpretation] of Schedule 1.	In accordance with the following formula: $TP_{(p-1)} + (K_n / N)$ Where: - $TP_{(p-1)}$ is the total progress, expressed as a percentage, up to and including the Payment Period that immediately precedes the relevant Payment Period. - K_n is the number of calendar days within the Payment Period where the Lead Geotechnical Engineer position is filled. - N is the total number of calendar days from (and including) the Effective Date to the Total Completion Target Date. If, by the Total Completion Date, the Relevant Percent Complete in respect of this Cost Item has not achieved 100%, the Relevant Percentage Complete for this Cost Item will be deemed 100% during the Payment Period during which the Total Complete Date occurs.	

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	Cost Item	Description	Progress measurement	Cost Item Amount
A	B	C	D	E
1.2.6	Environmental Manager	As defined in Section 1.1 [Definitions and Interpretation] of Schedule 1.	In accordance with the following formula: $TP_{(p-1)} + (K_n / N)$ Where: - $TP_{(p-1)}$ is the total progress, expressed as a percentage, up to and including the Payment Period that immediately precedes the relevant Payment Period. - K_n is the number of calendar days within the Payment Period where the Environmental Manager position is filled. - N is the total number of calendar days from (and including) the Effective Date to the Total Completion Target Date. If, by the Total Completion Date, the Relevant Percent Complete in respect of this Cost Item has not achieved 100%, the Relevant Percentage Complete for this Cost Item will be deemed 100% during the Payment Period during which the Total Complete Date occurs.	

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	Cost Item	Description	Progress measurement	Cost Item Amount
A	B	C	D	E
1.2.7	Operations/ Traffic Manager	As defined in Section 1.1 [Definitions and Interpretation] of Schedule 1.	In accordance with the following formula: $TP_{(p-1)} + (K_n / N)$ Where: - $TP_{(p-1)}$ is the total progress, expressed as a percentage, up to and including the Payment Period that immediately precedes the relevant Payment Period. - K_n is the number of calendar days within the Payment Period where the Operations/Traffic Manager position is filled. - N is the total number of calendar days from (and including) the Effective Date to the Total Completion Target Date. If, by the Total Completion Date, the Relevant Percent Complete in respect of this Cost Item has not achieved 100%, the Relevant Percentage Complete for this Cost Item will be deemed 100% during the Payment Period during which the Total Complete Date occurs.	

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	Cost Item	Description	Progress measurement	Cost Item Amount
A	B	C	D	E
1.2.8	Indigenous Coordinator	As defined in Section 1.1 [Definitions and Interpretation] of Schedule 1.	In accordance with the following formula: $TP_{(p-1)} + (K_n / N)$ Where: - $TP_{(p-1)}$ is the total progress, expressed as a percentage, up to and including the Payment Period that immediately precedes the relevant Payment Period. - K_n is the number of calendar days within the Payment Period where the Indigenous Coordinator position is filled. - N is the total number of calendar days from (and including) the Effective Date to the Total Completion Target Date. If, by the Total Completion Date, the Relevant Percent Complete in respect of this Cost Item has not achieved 100%, the Relevant Percentage Complete for this Cost Item will be deemed 100% during the Payment Period during which the Total Complete Date occurs.	

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	Cost Item	Description	Progress measurement	Cost Item Amount
A	B	C	D	E
2. Mobilization				
2.1	mobilization	The activities carried out necessary to commence Design and Construction of the Project, including Proposal development.	Total of item 2.1 Mobilization, paid as follows: (a) as to 30%, in the first Payment Period; (b) as to 35%, when all Key Individuals required to be named following the Effective Date in accordance with Section 3.3(b) of this Agreement have been “accepted” by the Province pursuant to the Consent Procedure; and (c) as to 25%, when all of the following have been completed: (i) all of the following have been “accepted” by the Province pursuant to the Consent Procedure: (A) the Geotechnical Investigation Plan; (B) the initial Traffic Management Plan for the first year of Construction activities following the Effective Date; and (C) the Indigenous Participation Plan; and (ii) the revision to the Works Schedule required pursuant to Section 3.3(a)(i) of Schedule 3 has been endorsed “received” by the Province pursuant to the Review Procedure; and (d) as to 10%, when the Province and BCIB Project offices are functional with internet and have been turned over for use by the Province and BCIB, respectively, in accordance with Section 2.6 of Schedule 3. Considered to be <u>100% complete</u> following the Payment Period in which all four payments have been made in accordance with the foregoing.	
2.2	insurance	Insurance premium payments.	Considered 100% complete during the Payment Period where full Project term coverage taken out. To be supported by documentation from insurance providers which states that premiums have been paid.	

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	Cost Item	Description	Progress measurement	Cost Item Amount
A	B	C	D	E
2.3	bonding	Bonding payments to sureties.	Considered 100% complete during the Payment Period where full Project term coverage taken out. To be supported by documentation from sureties where a statement is provided that premiums have been paid.	
3. Design				
3.1	Design development	Work falling within the definition of Design in Section 1.1 [Definitions and Interpretation] of Schedule 1 but excluding Construction Records.		
3.1.1	Design management	Design management costs during Design phase.	10% of total of Item 3 Design paid as equal monthly payments over the scheduled Design period.	
3.1.2	Interim Design	Interim Design Submission – Work falling within the definition of Interim Design in Section 1.1 [Definitions and Interpretation] of Schedule 1.	35% of the total of Item 3 Design, divided into Interim Design sub-packages. Interim Design and submission in accordance with Schedule 4.	
3.1.3	Final Design	Work falling within the definition of Final Design in Section 1.1 [Definitions and Interpretation] of Schedule 1.	55% of the total of Item 3 Design, divided into Design sub-packages. Final Design and submission in accordance with Schedule 4. Design sub-package considered to be <u>100% complete</u> when the Final Design is “received” or “received with comments” pursuant to the Review Procedure. Prior to 100% completion the total progress of each Design sub-package will be 0%.	

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	Cost Item	Description	Progress measurement	Cost Item Amount
A	B	C	D	E
4. Construction				
4.1	roadworks – temporary access	Temporary access will consist of the following work: clearing and grubbing; organic stripping; removals and relocations of existing plant; construction of temporary access roads to foundations and to facilitate rock excavation and stabilization; rock and soil excavation and stabilization for temporary access to foundations; temporary supporting wall construction; disposal of surplus material on site and off site; supply and installation of geotextiles; rock fall prevention for roadways, utilities and railways during construction; monitoring and maintenance of the temporary access; care of water for temporary access.	Area of temporary access completed <u>divided by</u> the total area of temporary access required.	

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	Cost Item	Description	Progress measurement	Cost Item Amount
A	B	C	D	E
4.2	roadworks – grading, clearing, grubbing and stripping			
4.2.1	roadworks – grading	Grading will consist of excavation and disposal, which will consist of the following: roadway and drainage excavation; disposal of unsuitable materials to off-site; disposal of surplus and/or surcharge material on site and off site; and fills, which will consist of the following: supply and installation of geotextiles; embankment construction; production and processing of granular materials, supply placement and compaction of imported rip rap and granular materials.	Lump sum item for all the work involved pro-rated by the percentage completed.	
4.2.2	roadworks – clearing and grubbing	Clearing and grubbing will consist of the removal and disposal of all trees, stumps, roots, logs, shrubs, grass, weeds, fallen timber and other surface litter.	Area of clearing and grubbing paid by the hectare completed <u>divided</u> by the total area of clearing and grubbing required.	
4.2.3	roadworks – stripping	Stripping will consist of the removal and disposal of organic material from areas to be disturbed by excavation and includes planned erosion and sediment control practices.	Amount of stripping completed paid by the square meter <u>divided by</u> the total area of stripping required.	

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	Cost Item	Description	Progress measurement	Cost Item Amount
A	B	C	D	E
4.3	Traffic Management	All Traffic Management and infrastructure maintenance performed within the Project Site including all personnel, equipment, materials, temporary detours and diversions, and other obligations described in Part 4 [Traffic Management] of Schedule 4 [Design and Construction].	In accordance with the following formula: $TP_{(p-1)} + [(100\% - TP_{(p-1)}) / n]$ Where: - $TP_{(p-1)}$ is the total progress, expressed as a percentage, up to and including the Payment Period that immediately precedes the relevant Payment Period. - n is the number of Payment Periods from (and including) the relevant Payment Period to the Substantial Completion Target Date. If, by the Substantial Completion Date, the Relevant Percent Complete in respect of this Cost Item has not achieved 100%, the Relevant Percentage Complete for this Cost Item will be deemed 100% during the Payment Period during which the Substantial Complete Date occurs.	
4.4	roadworks – rock excavation and stabilization			
4.4.1	roadworks – rock excavation	Rock excavation will consist of the following work; removals and relocations of existing plant; care of water; and all other Site preparation required to be done prior to rock excavation and stabilization except temporary access; rock excavation including drilling, blasting and disposal of surplus material; mitigation of potential ARD/ML sources.	Volume of rock excavation completed <u>divided by</u> the total volume of rock excavation required.	

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	Cost Item	Description	Progress measurement	Cost Item Amount
A	B	C	D	E
4.4.2	rock slope stabilization	Rock slope stabilization including rock anchor, dowel installation or shotcrete application to stabilize rock cuts, including rock fall attenuation, if necessary. Not applicable to temporary access roads or other applications that are not components of the permanent work.	Lump sum item for linear meters of rock dowels and anchors installed, square meters of shotcrete application and square meters of rock fall attenuation, pro-rated by percentage completed.	
4.4.3	railroad flagging	Flagging costs for work conducted by CPKC flag people.	Lump sum item for actual costs for the provision of flag people employed by CPKC.	
4.5	roadworks – utilities	Utilities will consist of (but not necessarily be limited to) BC Hydro electrical, Telus conduit, Ministry communications conduit, Ministry electrical, and other third party public/private utility services.	Lump sum item for each utility pro-rated by the percentage completed.	
4.6	roadworks – drainage	Drainage will consist of open ditches, enclosed/piped facilities, pumps/siphons, manholes, catch basins, spillways, inlet/outlet structures, apron erosion control rip rap etc. required to convey run-off water.	Lump sum item for all permanent drainage pro-rated by the percentage completed.	
4.7	roadworks – paving			
4.7.1	roadworks – paving base lift	Final grading of all surfaces to be paved; supply and application of penetrating primer; and tack coat; supply and placement of asphalt pavement leveling course and asphalt pavement base lift; supply and installation of all pavement drainage facilities; supply and installation of pavement markings and delineation; roadside and median barrier supply and placement; installation of signs.	Lane kms of base lift paving completed <u>divided by</u> the total lane kms of base lift paving required.	

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A	Cost Item	Description	Progress measurement	Cost Item Amount
	B	C	D	E
4.7.2	roadworks – paving top lift	Supply and placement of asphalt pavement top lift; final pavement markings and delineation; roadside and median barrier supply and placement; final adjustment of existing signs and supply and installation of new signs.	Paid as follows: (a) as to 50%, when 50% of the total Tonnes of top lift paving required have been completed; and (b) as to the remaining 50%, when top lift paving is complete.	
4.8	Structures – Bridge Foundations			
4.8.1	Structures – Bridge Foundations	A Bridge Foundation structure will consist of one or more footings or piles, caissons, and pile caps. A Bridge Foundation structure will be complete when ready to install a Bridge Substructure.	Number of 4.8.1 Structures – Bridge Foundations groups complete <u>divided by</u> the total number of Bridge Foundations groups. No progress measurement will be made for any Bridge Foundation structure that is not complete and ready to take load of structure.	
4.8.2	Structures – Bridge Foundations – piles	Installation of Structures – Bridge Foundations – piles required for 4.8.1 Structures – Bridge Foundations	Quantity of piles or caissons for all 4.8.2 Structures – Bridge Foundations – piles installed <u>divided by</u> total quantity of piles or caissons to be installed.	
4.8.3	Structures – Bridge Foundations – pile caps	Installation of Structures – Bridge Foundations – pile caps required for 4.8.1 Structures – Bridge Foundations	Lump sum item for all 4.8.3 Structures – Bridge Foundations – pile caps pro-rated by the percentage completed	
4.8.4	Structures – Bridge Foundations – piles delivery	Supply of Structures – Bridge Foundation – piles required for 4.8.1 Structures – Bridge Foundations purchased and F.O.B. B.C. and stored in a bonded yard acceptable to the Province's Representative.	Lump sum item for 4.8.4 Structures – Bridge Foundation – piles purchased and F.O.B. B.C. pro-rated by the percentage of Structures – Bridge Foundation – piles required.	

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	Cost Item	Description	Progress measurement	Cost Item Amount
A	B	C	D	E
4.9	Structures – Bridge Substructures	A Bridge Substructure will consist of a column, group of columns, cap-beams or wall structure that supports the Bridge Superstructure in any one location, including bridge piers, abutments and any associated appurtenances (e.g. bearings, etc.) to complete a Bridge Substructure. A Bridge Substructure will be complete when ready to receive the Bridge Superstructure.	Lump sum item for 4.9 Structures – Bridge Substructures completed pro-rated by the percentage completed.	
4.10	Structures – steel Superstructures			
4.10.1	Structures – steel Superstructure	Steel Superstructure will include all steel Structures (e.g. beams, arches, trusses, etc.) necessary to span between Substructures including but not limited to all structural steel work.	Lump sum item for 4.10.1 Structures – steel Superstructure system completely installed pro-rated by the steel Superstructure of all steel Bridges completely installed.	
4.10.2	Structures – supply of steel components	Supply of Structures – steel components required for 4.10.1 Structures – steel Superstructure purchased, fabricated and F.O.B. B.C. stored in a bonded yard or location acceptable to the Province's Representative.	Lump sum item for 4.10.2 Structures – steel components purchased, fabricated and F.O.B. B.C pro-rated by the percentage of Structures – steel components required.	

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	Cost Item	Description	Progress measurement	Cost Item Amount
A	B	C	D	E
4.10.3	Structures – steel Superstructure – precast modular concrete deck panels and cast in place concrete decks	Structures – precast modular concrete deck panels and cast in place concrete deck required for 4.10.1 Structures – steel Superstructure, including deck reinforcing steel and precast or in-situ concrete, bridge parapets and railings, deck joints, approach slabs.	Lump sum for 4.10.3 Structures – precast modular concrete deck panels and cast in place concrete decks pro-rated by the percentage completed	
4.11	Structures – concrete Superstructures			
4.11.1	Structures – concrete Superstructure	Concrete Superstructure include all concrete Structures (e.g. beams, slabs, boxes, arches, etc.) necessary to span between Substructures.	Lump sum for 4.11.1 Structures – concrete Superstructure system completely installed pro-rated by the total percentage of concrete Superstructure of all concrete bridges completely installed.	
4.11.2	Structures – concrete Superstructure – precast concrete girders	Supply of Structures – concrete Superstructure – precast concrete girders required for 4.11.1 Structures – concrete Superstructure purchased and F.O.B. B.C. stored in a bonded yard or location acceptable to the Province’s Representative.	Lump sum item for 4.11.2 Structures – concrete Superstructure – precast concrete girders purchased and F.O.B. B.C. pro-rated by the percentage of Structures – concrete Superstructure – precast concrete girders required.	

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	Cost Item	Description	Progress measurement	Cost Item Amount
A	B	C	D	E
4.11.3	Structures – concrete Superstructure – precast modular concrete deck panels and cast in place concrete decks	Structures – concrete Superstructure – precast modular concrete deck panels and cast in place concrete decks required for 4.11.1 Structures – concrete Superstructure including deck reinforcing steel and precast or in-situ concrete, bridge parapets and railings, deck joints, approach slabs.	Lump sum item for 4.11.3 Structures – concrete Superstructure – precast modular concrete deck panels and cast in place concrete decks pro-rated by the percentage completed	
4.12	Structures – retaining walls			
4.12.1	Structures – retaining walls	Retaining walls will consist of wall foundations, including drilled anchors and all other components required and not listed below.	Lump sum for 4.12.1 Structures – retaining walls completed pro-rated for retaining walls completed	
4.12.2	Structures – retaining walls – piles	Installation Structures – retaining walls – piles required for 4.12.1 Structures – retaining walls	Lump sum item for all 4.12.2 Structures – retaining walls – piles installations pro-rated by the percentage completed.	
4.12.3	Structures – retaining walls – pile caps	Installation of Structures – retaining walls – pile caps required for 4.12.1 Structures – retaining walls.	Lump sum item for all 4.12.3 Structures – retaining walls – pile caps pro-rated by the percentage completed	
4.12.4	Structures – retaining walls – piles delivery	Structures – retaining walls – piles required for 4.12.1 Structures – retaining walls purchased and F.O.B. B.C. stored in a bonded yard acceptable to the Province's Representative.	Lump sum item for 4.12.4 Structures – retaining walls – piles purchased and F.O.B. B.C. pro-rated by the percentage of Structures – retaining walls – piles required.	

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	Cost Item	Description	Progress measurement	Cost Item Amount
A	B	C	D	E
4.13	restoration and revegetation	Restoration and revegetation includes landscaping, berms, grading, placement of top-soil and hydroseeding, and placement of vegetation/trees/plantings and all other restoration and revegetation requirements described by Schedule 6 of this Agreement.	Lump sum item for restoration and revegetation pro-rated by the percentage completed.	

TABLE B-2 SPECIFIED COST ITEMS

	Cost Item	Description	Progress measurement	Cost Item Amount
A	B	C	D	E
5. Specified Cost Items				
5.1	Construction Management Plan	As defined in Section 1.1 of Schedule 1 [Definitions and Interpretation].	Considered to be <u>100% complete</u> when endorsed “received” by the Province pursuant to the Review Procedure. Prior to 100% completion the total progress will be 0%.	
5.2	Design Management Plan	As defined in Section 1.1 of Schedule 1 [Definitions and Interpretation].	Considered to be <u>100% complete</u> when “accepted” by the Province pursuant to the Consent Procedure. Prior to 100% completion the total progress will be 0%.	
5.3	Construction Environmental Management Plan	As defined in Section 1.1 of Schedule 1 [Definitions and Interpretation].	Considered to be <u>100% complete</u> when “accepted” by the Province pursuant to the Consent Procedure. Prior to 100% completion the total progress will be 0%.	
5.4	Traffic Management Plan	As defined in Section 1.1 of Schedule 1 [Definitions and Interpretation].	Considered to be <u>100% complete</u> when “accepted” by the Province pursuant to the Consent Procedure. Prior to 100% completion the total progress will be 0%.	
5.5	Quality Manual	As defined in Section 1.1 of Schedule 1 [Definitions and Interpretation].	Considered to be <u>100% complete</u> when “accepted” by the Province pursuant to the Consent Procedure. Prior to 100% completion the total progress will be 0%.	

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	Cost Item	Description	Progress measurement	Cost Item Amount
A	B	C	D	E
5.6	Design Quality Management Plan	As defined in Section 1.1 of Schedule 1 [Definitions and Interpretation].	Considered to be <u>100% complete</u> when “accepted” by the Province pursuant to the Consent Procedure. Prior to 100% completion the total progress will be 0%.	
5.7	Construction Quality Management Plan	As defined in Section 1.1 of Schedule 1 [Definitions and Interpretation].	Considered to be <u>100% complete</u> when “accepted” by the Province pursuant to the Consent Procedure. Prior to 100% completion the total progress will be 0%.	
5.8	Health and Safety Program	As defined in Section 1.1 of Schedule 1 [Definitions and Interpretation].	Considered to be <u>100% complete</u> when endorsed “received” by the Province pursuant to the Review Procedure. Prior to 100% completion the total progress will be 0%.	
5.9	Respect in the Workplace Plan	As defined in Section 1.1 of Schedule 1 [Definitions and Interpretation].	Considered to be <u>100% complete</u> when endorsed “received” by the Province pursuant to the Review Procedure. Prior to 100% completion the total progress will be 0%.	
5.10	Construction Communications and Engagement Plan	As defined in Section 1.1 of Schedule 1 [Definitions and Interpretation].	Considered to be <u>100% complete</u> when “accepted” by the Province pursuant to the Consent Procedure. Prior to 100% completion the total progress will be 0%.	
5.11	Indigenous Participation Plan	As defined in Section 1.1 of Schedule 1 [Definitions and Interpretation].	Considered to be <u>100% complete</u> when “accepted” by the Province pursuant to the Consent Procedure. Prior to 100% completion the total progress will be 0%.	
5.12	Operation and Maintenance Plan	As defined in Section 1.1 of Schedule 1 [Definitions and Interpretation].	Considered to be <u>100% complete</u> when endorsed “received” by the Province pursuant to the Review Procedure. Prior to 100% completion the total progress will be 0%.	

JUMPING CREEK TO MACDONALD SNOWSHED PROJECT
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	Cost Item	Description	Progress measurement	Cost Item Amount
A	B	C	D	E
5.13	Completion Plan	As defined in Section 1.1 of Schedule 1 [Definitions and Interpretation].	Considered to be <u>100% complete</u> when endorsed “received” by the Province pursuant to the Review Procedure. Prior to 100% completion the total progress will be 0%.	
5.14	All deliverables pursuant to Part 1 [Deliverables for Substantial Completion] of Appendix 3C to Schedule 3	As set out in Part 1 [Deliverables for Substantial Completion] of Appendix 3C to Schedule 3.	Considered to be <u>100% complete</u> when all such deliverables have been delivered to the Province and, where applicable, endorsed “received” by the Province pursuant to the Review Procedure. Prior to 100% completion the total progress will be 0%.	
5.15	All deliverables pursuant to Part 2 [Deliverables for Total Completion] of Appendix 3C to Schedule 3	As set out in Part 2 [Deliverables for Total Completion] of Appendix 3C to Schedule 3.	Considered to be <u>100% complete</u> when all such deliverables have been delivered to the Province and, where applicable, endorsed “received” by the Province pursuant to the Review Procedure. Prior to 100% completion the total progress will be 0%.	

**JUMPING CREEK TO MACDONALD SNOWSHED PROJECT
DESIGN-BUILD AGREEMENT
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**APPENDIX 10C
FORMS**

- A Draw Request
- B Deficiency Holdback Payment Application
- C Warranty Holdback Payment Application
- D Indigenous Contracts Incentive Payment Application
- E Statutory Declaration in Support of Payment Application

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FORM A
DRAW REQUEST

[TO BE PRINTED ON THE DESIGN-BUILDER LETTERHEAD]

[Date]

HIS MAJESTY THE KING
IN RIGHT OF THE
PROVINCE OF BRITISH COLUMBIA

Attention: Province's Representative, Jumping Creek to MacDonald Snowshed Project

Email: JCM.ProvRep@gov.bc.ca

Dear Sirs and Mesdames:

Re: Design-Build Agreement dated as of the Effective Date (as amended, modified, supplemented and restated from time to time, the "**Agreement**") among His Majesty the King in Right of the Province of British Columbia (the "**Province**"), BC Transportation Financing Authority and Emil Anderson Construction (EAC) Inc. (the "**Design-Builder**")

And Re: Draw Request under Section 6.1 [Draw Requests for Progress Payments] of Schedule 10 to the Agreement for Progress Payment for the Payment Period beginning • and ending • (the "**Relevant Payment Period**")

-
1. This letter, including the Statement of Progress and other documentation attached hereto, constitutes a Draw Request pursuant to Section 6.1 [Draw Requests for Progress Payments] of Schedule 10 for a Progress Payment. Capitalized terms used and not defined in this Draw Request have the meanings given to them in the Agreement and references to Sections and Schedules are to Sections of and Schedules to the Agreement.

Calculation of Progress Payment

2. The Design-Builder hereby applies for a Progress Payment in the amount of \$• for the portion of the Project Work progressed during the Relevant Payment Period.
3. The Design-Builder hereby confirms that the Progress Payment for the Relevant Payment Period is calculated by reference to the following:
 - (i) the Progress Amount in respect of the Relevant Payment Period: \$•
 - (ii) the aggregate of all Cost Item Progress Amounts in respect of all Specified Cost Items, each of which is determined in accordance with Section 3.1(b) of Schedule 10 to be payable in respect of the Relevant Payment Period: \$•

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- (iii) the amount of any amount payable for such Payment Period in respect of previous Progress Payments Holdbacks pursuant to Section 3.1(a)(iii) of Schedule 10;
- (iv) the amount of any holdback on account of the Progress Payment Holdback to be made for such Payment Period pursuant to Section 3.1(a)(iv) of Schedule 10;
- (v) the amount of any holdback on account of the Deficiency Holdback to be made for such Payment Period pursuant to Section 3.1(a)(v) of Schedule 10;
- (vi) the amount of any holdback on account of the Warranty Holdback to be made for such Payment Period pursuant to Section 3.1(a)(vi) of Schedule 10;
- (vii) the total Progress Payment payable in respect of the Relevant Payment Period, determined pursuant to Section 3.1(a) of Schedule 10: \$●
- (viii) the applicable taxes payable in respect of any of the payments referred to above: \$●

[NTD: list breakdown of tax calculations]

- (ix) the following adjustments to reflect over-payments and/or underpayments (each such adjustment stated separately) in respect of Progress Payments made by the Province during the period prior to the Relevant Payment Period (for which adjustment has not already been made, including by way of determination of a negative Relevant Completion Percentage applicable to any Cost Item):

[NTD: list each adjustment, and the applicable dollar value]

- (x) interest payable in respect of any amounts owed, as described above:

[NTD: list each relevant amount, as described above, and the applicable amount of interest payable]

- (xi) the net amount owing by the Province to the Design-Builder or by the Design-Builder to the Province as at the end of the Relevant Payment Period in respect of the Province's obligation to make Progress Payments pursuant to Section 2.1 [Obligation to make Progress Payments] of Schedule 10: \$●

Claim for payment for additional or varied Project Work

- 4. The Design-Builder hereby applies for payment for the following amount in respect of any additional or varied Project Work performed by the Design-Builder pursuant to a Change Certificate issued pursuant to Part 2 [Province Changes] or Part 3 [Value Engineering Proposals] of Schedule 11:
 - (i) the total amount payable in respect of any additional or varied Project Work authorized or approved by a Change Certificate and performed by the Design-Builder during the Relevant Payment Period: \$●

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- (ii) the applicable taxes payable in respect of the payment referred to above: \$●

[NTD: list breakdown of tax calculations]

- (iii) interest payable in respect of any amounts owed, as described above:

[NTD: list each relevant amount, as described above, and the applicable amount of interest payable]

- (iv) the net amount owing by the Province to the Design-Builder, or by the Design-Builder to the Province, as at the end of the Relevant Payment Period in respect of the Province's obligation to pay for additional or varied Project Work pursuant to Schedule 11 [Changes]: \$●.

Net Amount Claimed

5. The final net amount payable by the Province to the Design-Builder, or payable by the Design-Builder to the Province, as the case may be, pursuant to this Draw Request (being the aggregate of the amounts set out in paragraphs 3(xi), 4(iv) and 5(v) above) is: \$●

Representations and Warranties

6. As of the date hereof but subject to any exceptions set out in Attachment A hereto, and as to the payment of Subcontractors as described in paragraph (iv) below, partly or wholly in reliance on statutory declarations of others, the Design-Builder hereby represents, warrants and certifies to the Province that:
- (i) the Project Work has progressed to the point indicated in this Draw Request;
 - (ii) the Cost Item Progress Amounts identified in this Draw Request have been properly incurred in accordance with Appendix 10B [Progress Measurement Principles] to Schedule 10;
 - (iii) the Project Work described in this Draw Request as having been done, has been done in accordance with the Design-Builder's obligations under the Agreement;
 - (iv) all of the Subcontractors have been paid in full up to the last Progress Payment received by the Design-Builder, subject to holdbacks (including for amounts disputed in good faith) required or permitted by the Subcontracts and the *Builders Lien Act* (British Columbia), if applicable;
 - (v) except to the extent communicated by the Design-Builder to the Province in writing, no Adverse Claim exists with respect to or as a result of or in relation to the Project Work;
 - (vi) the Design-Builder is entitled to payment in the amount requested;
 - (vii) no Design-Builder Default has occurred which has not been either waived in writing by the Province or remedied to the satisfaction of the Province;

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- (viii) there has not been any material adverse change in the Design-Builder's ability to perform its obligations under the Agreement; and
- (ix) to the best of the Design-Builder's knowledge, there has not been any materially adverse change in any Subcontractor's ability to perform its obligations under the applicable Subcontract.

Attachments

7. Attached hereto is the Statement of Progress, as certified by the Independent Engineer, in respect of the Relevant Payment Period, together with working papers clearly setting forth the derivation of the percentages and amounts set out therein.
8. Attached hereto are working papers (including relevant reports, information and documentation) clearly setting forth:
 - (a) the derivation of the percentages and amounts set out herein (to the extent the same are not already set forth in the working papers attached to the Statement of Progress) in accordance with all applicable calculations specified or referred to in Section 3.1 [Calculation of Progress Payments] and Section 3.2 [Labour Rate Adjustment] of Schedule 10 or Part 2 [Province Changes] of Schedule 11;
 - (b) the applicable units of measurement as set out in Appendix 10B [Progress Measurement Principles] to Schedule 10 (or an alternative unit of measurement acceptable to the Province, in its discretion) and actual quantities delivered for each Cost Item during the Relevant Payment Period; and
 - (c) a report which (A) demonstrates that the Key Individuals have been working on the Project as required in accordance with Section 3.3 [Key Individuals] of the Agreement and Schedule 21 [Key Individuals] for the applicable Payment Period; and (B) if applicable, identifies if a Key Individual has been, or will be, temporarily unavailable (such as vacation or other reasonable temporary absence) and outlines the coverage the Design-Builder has provided to address the Key Individual's duties during the time such Key Individual is, or will be, temporarily unavailable.
9. Attached hereto are documents required by the Province in connection with making payment for off-site materials or equipment in accordance with Section 8.1 [Payment for Off-Site Materials and Equipment] of Schedule 10. **[NTD: To be included if applicable.]**
10. Attached hereto is a statutory declaration in the form attached as Appendix 10C, Form E [Form of Statutory Declaration] of Schedule 10 which confirms compliance by the Design-Builder with the *Builders Lien Act* (British Columbia). **[NTD: Not required to be attached to Draw Request for first Payment Period – where this applies, note “not attached”]**
11. Attached hereto is the letter from the Workers' Compensation Board which confirms that the Design-Builder is in good standing with the Workers' Compensation Board and that all required remittances and assessments required by the WCA have been made to a date which is no more than three Business Days prior to the date of this Draw Request.

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12. Attached hereto is a report on the status of the Project, including a description of: (i) the Design-Builder's progress during the Relevant Payment Period to which this Draw Request relates; and (ii) the major activities performed by the Design-Builder during the Relevant Payment Period; and (ii) a look-ahead work plan for the three months following the Relevant Payment Period.

This Draw Request is made subject to and in accordance with the terms and conditions of the Agreement.

EXECUTED AND DELIVERED as of the date first written above.

EMIL ANDERSON CONSTRUCTION (EAC) INC.:

By: _____
Name:
Title: Design-Builder's Representative

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Attachment A

[NTD: List any exceptions to representations and warranties]

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FORM B
DEFICIENCY HOLDBACK PAYMENT APPLICATION
[TO BE PRINTED ON DESIGN-BUILDER LETTERHEAD]

[Date]

HIS MAJESTY THE KING
IN RIGHT OF THE
PROVINCE OF BRITISH COLUMBIA

Attention: Province's Representative, Jumping Creek to MacDonald Snowshed Project

Email: JCM.ProvRep@gov.bc.ca

Dear Sirs and Mesdames:

Re: Design-Build Agreement dated as of the Effective Date (as amended, modified, supplemented and restated from time to time, the "**Agreement**") among His Majesty the King in right of the Province of British Columbia (the "**Province**"), BC Transportation Financing Authority and Emil Anderson Construction (EAC) Inc. (the "**Design-Builder**")

And Re: Payment Application for amount retained by the Province for the Deficiency Holdback under Section 4.1(b) of Schedule 10 of the Agreement for the month ending • (the "**Relevant Period**").

-
1. This letter, including the documentation attached hereto, constitutes the Payment Application pursuant to Section 4.1(b) of Schedule 10 for payment of an amount retained by the Province for the Deficiency Holdback in respect of any Final Deficiency List Deficiencies. Capitalized terms used and not defined in this Payment Application have the meanings given to them in the Agreement and references to Sections and Schedules are to Sections of and Schedules to the Agreement.
 2. The Design-Builder hereby applies for payment in the amount of \$• retained by the Province for the Deficiency Holdback in respect of any Final Deficiency List Deficiencies, being the amount in respect of those Final Deficiency List Deficiencies that have been remedied to the satisfaction of the Province during the Relevant Period.

Representations and Warranties

3. As of the date hereof but subject to any exceptions which are set out in Attachment A hereto, and as to the payment of Subcontractors as described in paragraph (iv) below, partly or wholly in reliance on statutory declarations of others, the Design-Builder hereby represents, warrants and certifies to the Province that:
 - (i) this Payment Application relates to the Final Deficiency List Deficiencies (each a "**Resolved Deficiency**") described in the table below, in respect of which:

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- (A) the amount(s), as indicated in the table below, were withheld in accordance with Schedule 10; and
- (B) the Province's Representative has confirmed by his or her initials on the attached Final Deficiency List have been satisfactorily completed during the Relevant Period;

Resolved Deficiency	Amount in respect of Resolved Deficiency

- (ii) the amount which is the subject of this Payment Application has been calculated in accordance with the requirements of Section 4.1 [Deficiency Holdback] of Schedule 10 and other relevant provisions of the Agreement and the Design-Builder is entitled to payment in the amount requested;
- (iii) the quality of the Project Work undertaken by the Design-Builder in respect of the Resolved Deficiencies is in accordance with the Design-Builder's obligations under the Agreement;
- (iv) all of the Subcontractors have been paid in full up to the last Progress Payment received by the Design-Builder, subject to holdbacks (including for amounts disputed in good faith) required or permitted by the Subcontracts and the *Builders Lien Act* (British Columbia), if applicable;
- (v) except to the extent communicated by the Design-Builder to the Province in writing, no Adverse Claim exists with respect to or as a result of or in relation to the Project Work;
- (vi) no Design-Builder Default has occurred which has not been either waived in writing by the Province or remedied to the satisfaction of the Province;
- (vii) there has not been any material adverse change in the Design-Builder's ability to perform its obligations under the Agreement; and
- (viii) to the best of the Design-Builder's knowledge, there has not been any materially adverse change in any Subcontractor's ability to perform its obligations under the applicable Subcontract.

JUMPING CREEK TO MACDONALD SNOWSHED PROJECT
DESIGN-BUILD AGREEMENT
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Attachments

4. Attached hereto is a copy of the Final Deficiency List, which has been initialled by the Province's Representative to confirm which Final Deficiency List Deficiencies have been satisfactorily completed during the Relevant Period.
5. Attached hereto is a statutory declaration in the form attached at Appendix 10C, Form E [Form of Statutory Declaration] of Schedule 10 which confirms compliance by the Design-Builder with the *Builders Lien Act* (British Columbia).
6. Attached hereto is the letter from the Workers' Compensation Board which confirms that the Design-Builder is in good standing with the Workers' Compensation Board and that all required remittances and assessments required by the WCA have been made to a date which is no more than three Business Days prior to the date of this Payment Application.

This Payment Application is made subject to and in accordance with the terms and conditions of the Agreement.

EXECUTED AND DELIVERED as of the date first written above.

EMIL ANDERSON CONSTRUCTION (EAC) INC.:

By: _____
Name:
Title: Design-Builder's Representative

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Appendix 10C: Forms***

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Attachment A

[NTD: List any exceptions to representations and warranties.]

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FORM C
WARRANTY HOLDBACK PAYMENT APPLICATION

[TO BE PRINTED ON DESIGN-BUILDER LETTERHEAD]

[Date]

HIS MAJESTY THE KING
IN RIGHT OF THE
PROVINCE OF BRITISH COLUMBIA

Attention: Province's Representative, Jumping Creek to MacDonald Snowshed Project

Email: JCM.ProvRep@gov.bc.ca

Dear Sirs and Mesdames:

Re: Design-Build Agreement dated as of the Effective Date (as amended, modified, supplemented and restated from time to time, the "**Agreement**") among His Majesty the King in right of the Province of British Columbia (the "**Province**"), BC Transportation Financing Authority and Emil Anderson Construction (EAC) Inc. (the "**Design-Builder**")

And Re: Payment Application under Section 4.2(b) of Schedule 10 to the Agreement for payment of the Warranty Holdback

-
1. This letter, including the documentation attached hereto, constitutes the Payment Application pursuant to Section 4.2(b) of Schedule 10 for payment of the Warranty Holdback. Capitalized terms used and not defined in this Payment Application have the meanings given to them in the Agreement and references to Sections and Schedules are to Sections of and Schedules to the Agreement.
 2. The Design-Builder hereby applies for payment in the amount of \$•, being the amount of the Warranty Holdback, less any amounts applied therefrom by the Province in accordance with Section 6.4(d) and/or Section 6.4(f) of Schedule 3 to the Agreement.

Representations and Warranties

3. As of the date hereof (being a date following the expiry of the General Project Work Defect Warranty Period) but subject to any exceptions which are set out in Attachment A hereto, and as to the payment of Subcontractors as described in paragraph (iv) below, partly or wholly in reliance on statutory declarations of others, the Design-Builder hereby represents, warrants and certifies to the Province that:
 - (i) the amount which is the subject of this Payment Application has been calculated in accordance with the requirements of Section 4.2 [Warranty Holdback] of Schedule 10 and other relevant provisions of the Agreement;

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- (ii) the Design-Builder is entitled to payment in the amount requested;
 - (iii) all of the Subcontractors have been paid in full up to the last Progress Payment received by the Design-Builder, subject to holdbacks (including for amounts disputed in good faith) required or permitted by the Subcontracts and the *Builders Lien Act* (British Columbia), if applicable;
 - (iv) except to the extent communicated by the Design-Builder to the Province in writing, no Adverse Claim exists with respect to or as a result of or in relation to the Project Work;
 - (v) no Design-Builder Default has occurred which has not been either waived in writing by the Province or remedied to the satisfaction of the Province;
 - (vi) there has not been any material adverse change in the Design-Builder's ability to perform its obligations under the Agreement; and
 - (vii) to the best of the Design-Builder's knowledge, there has not been any materially adverse change in any Subcontractor's ability to perform its obligations under the applicable Subcontract.
4. Attached hereto is a statutory declaration in the form attached at Appendix 10C, Form E [Form of Statutory Declaration] of Schedule 10 which confirms compliance by the Design-Builder with the *Builders Lien Act* (British Columbia).
5. Attached hereto is the letter from the Workers' Compensation Board which confirms that the Design-Builder is in good standing with the Workers' Compensation Board and that all required remittances and assessments required by the WCA have been made to a date which is no more than three Business Days prior to the date of this Payment Application.

This Payment Application is made subject to and in accordance with the terms and conditions of the Agreement.

EXECUTED AND DELIVERED as of the date first written above.

EMIL ANDERSON CONSTRUCTION (EAC) INC.:

By: _____
Name: _____
Title: Design-Builder's Representative

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Attachment A

[NTD: List any exceptions to representations and warranties.]

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FORM D
INDIGENOUS CONTRACTS INCENTIVE PAYMENT APPLICATION

[TO BE PRINTED ON DESIGN-BUILDER LETTERHEAD]

[Date]

HIS MAJESTY THE KING
IN RIGHT OF THE
PROVINCE OF BRITISH COLUMBIA

Attention: Province's Representative, Jumping Creek to MacDonald Snowshed Project

Email: JCM.ProvRep@gov.bc.ca

Dear Sirs and Mesdames:

Re: Design-Build Agreement dated as of the Effective Date (as amended, modified, supplemented and restated from time to time, the "**Agreement**") among His Majesty the King in right of the Province of British Columbia (the "**Province**"), BC Transportation Financing Authority and Emil Anderson Construction (EAC) Inc. (the "**Design-Builder**")

And Re: Payment Application under Section 2.2 of Schedule 10 to the Agreement for payment of the Indigenous Contracts Incentive Payment

-
1. This letter, including the documentation attached hereto, constitutes the Payment Application pursuant to Section 2.2 of Schedule 10 for payment of the Indigenous Contracts Incentive Payment. Capitalized terms used and not defined in this Payment Application have the meanings given to them in the Agreement and references to Sections and Schedules are to Sections of and Schedules to the Agreement.
 2. The Design-Builder hereby applies for payment in the amount of \$•, being the amount of the Indigenous Contracts Incentive Payment payable in accordance with Section 1.6 [Indigenous Contracts Incentive Payment] of Schedule 12 to the Agreement.

Representations and Warranties

3. As of the date hereof but subject to any exceptions which are set out in Attachment A hereto, and as to the payment of Subcontractors as described in paragraph (iv) below, partly or wholly in reliance on statutory declarations of others, the Design-Builder hereby represents, warrants and certifies to the Province that:
 - (i) Total Completion has been achieved;
 - (ii) the amount which is the subject of this Payment Application has been calculated in accordance with the requirements of Section 1.6 [Indigenous Contracts Incentive

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Payment] of Schedule 12 to the Agreement and other relevant provisions of the Agreement;

- (iii) the Design-Builder is entitled to payment in the amount requested;
 - (iv) all of the Subcontractors have been paid in full up to the last Progress Payment received by the Design-Builder, subject to holdbacks (including for amounts disputed in good faith) required or permitted by the Subcontracts and the *Builders Lien Act* (British Columbia), if applicable;
 - (v) except to the extent communicated by the Design-Builder to the Province in writing, no Adverse Claim exists with respect to or as a result of or in relation to the Project Work;
 - (vi) no Design-Builder Default has occurred which has not been either waived in writing by the Province or remedied to the satisfaction of the Province;
 - (vii) there has not been any material adverse change in the Design-Builder's ability to perform its obligations under the Agreement; and
 - (viii) to the best of the Design-Builder's knowledge, there has not been any materially adverse change in any Subcontractor's ability to perform its obligations under the applicable Subcontract.
4. Attached hereto is a statutory declaration in the form attached at Appendix 10C, Form E [Form of Statutory Declaration] of Schedule 10 which confirms compliance by the Design-Builder with the *Builders Lien Act* (British Columbia).
5. Attached hereto is the letter from the Workers' Compensation Board which confirms that the Design-Builder is in good standing with the Workers' Compensation Board and that all required remittances and assessments required by the WCA have been made to a date which is no more than three Business Days prior to the date of this Payment Application.

This Payment Application is made subject to and in accordance with the terms and conditions of the Agreement.

EXECUTED AND DELIVERED as of the date first written above.

EMIL ANDERSON CONSTRUCTION (EAC) INC.:

By: _____
Name:
Title: Design-Builder's Representative

STATUTORY DECLARATION IN SUPPORT OF PAYMENT APPLICATION

Re: Design-Build Agreement dated as of the Effective Date (as amended, modified, supplemented and restated from time to time, the “**Agreement**”) among His Majesty the King in right of the Province of British Columbia (the “**Province**”), BC Transportation Financing Authority and Emil Anderson Construction (EAC) Inc. (the “**Design-Builder**”)

And Re: Payment Application under Section • [•] of Schedule 10 to the Agreement for •
[describe relevant payment]

Capitalized terms used and not defined herein will have the meanings given to them in the Agreement and references to Sections and Schedules are to Sections of and Schedules to the Agreement.

I solemnly declare that, as of the date of this statutory declaration, I am • **[senior officer]** of the Design-Builder, and as such have authority to bind the Design-Builder and have personal knowledge of the fact that, or have relied on one or more statutory declarations of others to establish that:

6. All of the Subcontractors have been paid in full up to the payment of the last Progress Payment subject to holdbacks (including for amounts disputed in good faith) required or permitted by the Subcontracts and the *Builders Lien Act* (British Columbia).
7. The Design-Builder is in full compliance with the *Builders Lien Act* (British Columbia) and the WCA.
8. All accounts for labour, services, materials, equipment and overhead which have been incurred directly by the Design-Builder in the performance of the Project Work pursuant to the Agreement, have been paid in full up to and including the payment of the last Progress Payment.

I make this solemn declaration conscientiously believing it to be true, and knowing that it is of the same force and effect as if made under oath.

DECLARED BEFORE ME
at Vancouver, British Columbia,
on this ____ day of _____, in the year ____.

A Commissioner for taking Affidavits for British
Columbia

Name: _____

Title:

**APPENDIX 10D
FORM OF VESTING CERTIFICATE**

[TO BE PRINTED ON DESIGN-BUILDER LETTERHEAD]

[Date]

HIS MAJESTY THE KING
IN RIGHT OF THE
PROVINCE OF BRITISH COLUMBIA

Attention: Province's Representative, Jumping Creek to MacDonald Snowshed Project

Email: JCM.ProvRep@gov.bc.ca

Dear Sirs and Mesdames:

Re: Design-Build Agreement dated as of the Effective Date (as amended, modified, supplemented and restated from time to time, the "**Agreement**") among His Majesty the King in right of the Province of British Columbia (the "**Province**"), BC Transportation Financing Authority ("**BCTFA**") and Emil Anderson Construction (EAC) Inc. (the "**Design-Builder**")

And Re: This Certificate for Vesting of Goods (hereinafter referred to as the "**Vesting Certificate**") which is for the benefit of the Province and BCTFA.

-
1. This certificate, including the documentation attached hereto, constitutes the Vesting Certificate pursuant to Section 8.1(b) of Schedule 10 to the Agreement. Capitalized terms used and not defined in this Vesting Certificate have the meanings given to them in the Agreement and references to Sections and Schedules are to Sections of and Schedules to the Agreement.

In consideration of the premises, and the mutual covenants, agreements and conditions contained in the Agreement and as otherwise set out herein, the Design-Builder writes in relation to the ownership of certain off-site plant, materials, goods and items.

2. This Vesting Certificate relates to the following:
 - (i) A contract for the supply of goods, services and works between the [●] (the "**Supplier**") and the Design-Builder dated [●] (the "**Supply Contract**").
 - (ii) The Supplier has been engaged to enter into the Supply Contract by the Design-Builder pursuant to the Design-Builder's obligations under the Agreement.
 - (iii) The Supply Contract relates to the design, specification, manufacture, construction, testing, certification, supply and sale of the items listed in "**Schedule A**" to this Vesting Certificate (the "**Goods**"), as listed on Invoice # [●] dated [●], a copy of which is appended hereto in "**Schedule B**" to this Vesting Certificate.

SCHEDULE 10: PAYMENT

Appendix 10D: Form of Vesting Certificate

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3. Prior to the Goods being affixed to or incorporated into the Project Site or the Project Infrastructure, the Design-Builder has applied for payment in relation to the Goods in a Draw Request dated [insert date].
4. The Design-Builder declares that title and property in the Goods will unconditionally pass to and vest absolutely in the Province and BCTFA upon receipt of the Progress Payment (or the portion thereof related to the Goods) related to the Draw Request referred to in Section 3 of this Vesting Certificate.

Representations and Warranties

5. As of the date hereof, the Design-Builder represents, warrants and undertakes that all the actions referred to in this Vesting Certificate have been taken and the statements made herein, including those in this Section 5, are true and correct, including that:
 - (i) the Goods have been manufactured or prepared and are ready for incorporation in the Project Work and are intended to be incorporated in the Project Work;
 - (ii) the Goods have been set apart from any other goods and stored at the premises described in the Schedule D appended hereto, and have been clearly and visibly marked as follows:

“Property of His Majesty The King In Right of The Province of British Columbia, as represented by the Minister of Transportation and Infrastructure and the BC Transportation Financing Authority. These Goods are for use at the Jumping Creek to MacDonald Snowshed Project.”
 - but such markings will not damage, permanently deface or harm the Goods;
 - (iii) the Goods have been stored at a safe and secure location, and in a condition and manner that is to the Province’s satisfaction;
 - (iv) property in the Goods (including but not limited to supplies received by the Design-Builder from a third party for incorporation in the Goods) is vested absolutely in the Design-Builder and the Goods are free from all encumbrances, charges and liens and the Design-Builder is able to pass title to the Province and BCTFA in the Goods absolutely on the earlier of (a) the Goods being affixed to or incorporated into the Project Site or the Project Infrastructure; and (b) payment of the Progress Payment (or portion thereof) referred to in Section 4 of this Vesting Certificate. At that time, the Design-Builder, its Subcontractors, the Supplier, and each of their servants and agents, and any other third party will have no property in any part or all of the Goods, no claim to part or all of the Goods and no lien or charge over part or all of the Goods;
 - (v) the Goods, in every respect, meet the requirements of the Agreement, and, if they are not in accordance with the Agreement, the Design-Builder acknowledges that the Province, or its agents or representatives, may at any time reject the Goods and instruct the Design-Builder that the Goods will immediately re-vest in the Design-Builder and be entirely at the Design-Builder’s risk;

SCHEDULE 10: PAYMENT

Appendix 10D: Form of Vesting Certificate

- 3 -

- (vi) the Goods will at all times after the date of this Vesting Certificate until the Goods are affixed to or incorporated into the Project Site or the Project Infrastructure be insured for their full reinstatement value in accordance with the Required Insurance, or, if the Goods are not covered under the Required Insurance, under a policy of insurance, hereto appended in "**Schedule C**", protecting the interests of the Province and BCTFA against any loss or damage howsoever arising, in the Design-Builder's name and in the Province's and BCTFA's names, and the Design-Builder has provided to Province and BCTFA evidence of the existence of same insurance policy;
 - (vii) the Goods can be inspected at any time upon reasonable notice by the Province or BCTFA and/or the duly authorized agents of the Province and BCTFA; and
 - (viii) the Design-Builder will not, except for use on the Project Work, remove or cause or permit the Goods to be moved or removed from the premises named in the "**Schedule D**" appended.
6. If the Agreement is terminated for any reason, the Design-Builder will, at its cost, deliver the Goods to the Project Site or to an alternative location, as determined by the Province in its discretion, for the purposes of storage. If the Design-Builder fails to promptly perform that delivery, the Province, BCTFA, or their duly authorized agents may enter any premises and, at the Design-Builder's cost, collect the Goods and take them to the Project Site or to an alternative location, as determined by the Province in its discretion.
7. Nothing contained in this Vesting Certificate or the Agreement or any payment that may be made to the Design-Builder in respect of the Goods will be taken as any approval by the Province and BCTFA that the Goods are in accordance with the Agreement or otherwise used by the Design-Builder to prove that such evidence has been otherwise provided.
8. Without limiting the Design-Builder's indemnity obligations under the Agreement or the Design-Builder's liability with respect to the Agreement or the Goods, the Design-Builder will indemnify and save harmless the Province and BCTFA from any and all costs, claims, demands, losses and expenses of whatsoever nature arising from any loss or damage to the Goods howsoever arising and any breach or non-observance of any of the terms contained in this Vesting Certificate.

This Vesting Certificate is made subject to and in accordance with the terms and conditions of the Agreement.

EXECUTED AND DELIVERED as of the date first written above.

EMIL ANDERSON CONSTRUCTION (EAC) INC.:

By: _____
Name: _____
Title: Design-Builder's Representative

***JUMPING CREEK TO MACDONALD SNOWSHED PROJECT
DESIGN-BUILD AGREEMENT
SCHEDULE 10: PAYMENT
Appendix 10D: Form of Vesting Certificate***

***Commercial in Confidence
Execution***

**SCHEDULE A
THE GOODS**

JUMPING CREEK TO MACDONALD SNOWSHED PROJECT
DESIGN-BUILD AGREEMENT
SCHEDULE 10: PAYMENT
Appendix 10D: Form of Vesting Certificate

Commercial in Confidence
Execution

SCHEDULE B
VESTED GOODS INVOICE

JUMPING CREEK TO MACDONALD SNOWSHED PROJECT
DESIGN-BUILD AGREEMENT
SCHEDULE 10: PAYMENT
Appendix 10D: Form of Vesting Certificate

Commercial in Confidence
Execution

SCHEDULE C
VESTED GOODS INSURANCE CERTIFICATE

SCHEDULE D
VESTED GOODS DETAILS

D-1 The Goods will be adequately stored in a suitable indoor environment, climatically controlled as necessary, and will be elevated and wrapped as of their condition for shipping release. The materials will be stored in a location sprinkler protected for fire mitigation and CCTV protected for security.

D-2 Premises:

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D-3 Inventory of Goods:

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JUMPING CREEK TO MACDONALD SNOWSHED PROJECT
DESIGN-BUILD AGREEMENT
SCHEDULE 10: PAYMENT
Appendix 10D: Form of Vesting Certificate
Schedule D: Vested Goods Details

Commercial in Confidence
Execution

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D-4 Attach photographic evidence of the Goods, in their entirety, set apart and stored at the premises as per D-1.

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Appendix 11A Change in Costs Template

**PART 1
GENERAL TERMS**

1.1 Province Changes

- (a) The Province may, at any time during the Term, require Province Changes subject to and in accordance with the provisions of this Schedule, and the Design-Builder will be entitled to apply for relief from its obligations or claim compensation under this Agreement, or both, to the extent, if any, provided in this Schedule.
- (b) The Design-Builder:
 - (i) will, if the Design-Builder becomes aware that any element of the Project Requirements does not comply with and satisfy the specific requirements of any of Sections 5.1(a), 5.1(b), 5.1(c), 5.1(e) or 5.1(f) of this Agreement, notify the Province's Representative prior to complying with such specific requirements and will, in the case of any such discrepancy arising after the Effective Date, request that the Province initiate as a Province Change an amendment to the Project Requirements so that they comply with and satisfy such specific requirements, and
 - (ii) may, at any time during the Term, request that the Province consider, in its discretion, initiating as a Province Change any other matter.

1.2 Value Engineering Proposals

The Design-Builder may initiate Value Engineering Proposals to be prepared and evaluated in accordance with Part 3 [Value Engineering Proposals] of this Schedule.

1.3 Consequences of Province Changes and Value Engineering Proposals

- (a) The Design-Builder will not be entitled to any payment, compensation, extension of time or other relief for a Province Change or a Value Engineering Proposal except in accordance with and to the extent provided in this Schedule.
- (b) Any payments between the Province and the Design-Builder and any adjustments to the payments to be made under this Agreement in respect of Province Changes or Value Engineering Proposals will be made in accordance with Part 10 [Payments] of this Agreement.

**PART 2
PROVINCE CHANGES**

2.1 Province Change Notice

The Province may issue to the Design-Builder a request for a Province Change (each, a “**Province Change Notice**”) setting out the nature, extent and timing of the relevant Province Change with sufficient detail and information to permit the Design-Builder to prepare and deliver to the Province’s Representative a Change Report, and including whether or not the Design-Builder will be required to:

- (a) seek and evaluate competitive proposals, bids or tenders for the Province Change under Section 2.10 [Requirement to Undertake Competition] of this Schedule; and/or

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- (b) prepare and deliver to the Province's Representative a Preliminary Estimate in accordance with Section 2.3 [Preparation of Preliminary Estimate] of this Schedule.

2.2 Design-Builder Objection

- (a) The Design-Builder may, acting reasonably, object to a requirement by the Province to prepare and deliver a Preliminary Estimate, prepare and deliver a Change Report, or commence the performance of a Province Change, as the case may be (each, as applicable, a "**Relevant Obligation**"), on the basis that:
 - (i) to implement the Province Change would not be technically feasible;
 - (ii) the Province Change would, if implemented, materially and adversely affect the Design-Builder's ability to perform its obligations under this Agreement, after having taken into account any amendments to any provision thereof contemplated under this Schedule, and the sufficiency of funds available to the Design-Builder from all sources, including any payments to be made to the Design-Builder by the Province in respect of such Province Change under this Schedule;
 - (iii) to implement the Province Change would be contrary to Good Industry Practice;
 - (iv) to implement the Province Change would be contrary to Laws;
 - (v) to implement the Province Change would be unsafe;
 - (vi) the Design-Builder would be unable (using all reasonable efforts in respect thereof) to obtain any new Permit or any amendment or revision to an existing Permit (other than any new or amended Permit that would be the responsibility of the Province) that is:
 - (A) necessary to implement the Province Change; or
 - (B) necessitated by the revocation or cancellation of any existing Permit or the imposition of any additional conditions with which the Design-Builder would be unable to comply in relation to any existing Permit occurring as a result of the Province Change; or
 - (vii) the Design-Builder would be unable (using all reasonable efforts in respect thereof) to obtain any Land Rights necessary for the purpose of implementing the Province Change except where the Province obtains, directly or indirectly, such Land Rights,

provided that the Design-Builder will deliver to the Province's Representative, within 10 Business Days after the receipt by the Design-Builder of the request for such Relevant Obligation, written notice of such objection together with an explanation of the Design-Builder's reasons therefor in sufficient detail to permit a considered review thereof by the Province.

- (b) If the Design-Builder does not deliver to the Province's Representative any such written notice of objection within such time period set out in Section 2.2(a) of this Schedule, the

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Design-Builder will be deemed to have agreed to proceed to carry out such Relevant Obligation, as applicable, together with any and all other Relevant Obligations in respect of that same Province Change.

- (c) If the Province disagrees with the Design-Builder's objection delivered under Section 2.2(a) of this Schedule, then the Province may notify the Design-Builder of such disagreement within five Business Days of the receipt of the Design-Builder's objection, failing which the request for such Relevant Obligation will be deemed to have been cancelled. Upon delivery of a notice of disagreement from the Province:
 - (i) the parties will cooperate to have any such dispute resolved in a timely manner pursuant to the Dispute Resolution Procedure; and
 - (ii) pending the resolution of such dispute, the Design-Builder will proceed with the performance of the Relevant Obligation in accordance with any Change Directive issued by the Province in accordance with Section 2.11 [Change Directive] of this Schedule.

2.3 Preparation of Preliminary Estimate

- (a) Subject to Section 2.2 [Design-Builder Objection] of this Schedule, within 10 Business Days (or such earlier or later date as the Province may specify acting reasonably in the circumstances) of:
 - (i) the receipt by the Design-Builder of a Province Change Notice requiring the Design-Builder to prepare and deliver a Preliminary Estimate in accordance with Section 2.1(b) of this Schedule; or
 - (ii) where the Design-Builder delivers a notice of objection under Section 2.2(a) of this Schedule, the receipt by the Design-Builder of a notice of disagreement from the Province in accordance with Section 2.2(c) of this Schedule,

the Design-Builder will deliver to the Province's Representative a written preliminary estimate of the impacts of such Province Change (a "**Preliminary Estimate**") covering the matters required to be addressed in a Change Report pursuant to Section 2.4 [Preparation of Change Report] of this Schedule, or in such other form and with such other content as may be requested by the Province.

- (b) Subject to Section 2.3(c) of this Schedule, within 10 Business Days of the delivery of a Preliminary Estimate in accordance with Section 2.3(a) of this Schedule, the Province will notify the Design-Builder in writing whether or not the Province desires to proceed with such Province Change, and, if so, whether the Province requires the Design-Builder to, in respect of such Province Change:
 - (i) prepare and deliver to the Province's Representative a Change Report in accordance with Section 2.4 [Preparation of Change Report] of this Schedule; and
 - (ii) commence the performance of the Province Change as soon as reasonably practicable, and notwithstanding that the matters described in Section 2.7 [Change Certificate] of this Schedule in respect of such Province Change remain to be

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determined as contemplated in Section 2.6 [Agreement or Disagreement Regarding Province Change] of this Schedule.

- (c) The Design-Builder will promptly provide the Province's Representative with such further or additional details and other information as the Province may request with respect to any Preliminary Estimate delivered by the Design-Builder pursuant to Section 2.3(a) of this Schedule, and, in the case of any such request, the 10 Business Day period referred to in Section 2.3(b) of this Schedule will not commence to run until such further details and other information have been provided to the Province's Representative.

2.4 Preparation of Change Report

- (a) Subject to Section 2.2 [Design-Builder Objection] of this Schedule:
 - (i) within 10 Business Days (or such earlier or later date as the Province may specify acting reasonably in the circumstances) of receipt by the Design-Builder of a request from the Province for a Change Report under Section 2.3(b)(i) of this Schedule; or
 - (ii) within 15 Business Days (or such earlier or later date as the Province may specify acting reasonably in the circumstances) of:
 - (A) the receipt by the Design-Builder of a Province Change Notice requiring the Design-Builder to prepare and deliver a Change Report in accordance with this Section 2.4; or
 - (B) where the Design-Builder delivers a notice of objection under Section 2.2(a) of this Schedule, the receipt by the Design-Builder of a notice of disagreement from the Province in accordance with Section 2.2(c) of this Schedule,

the Design-Builder will consider how to accommodate a proposed Province Change in a cost effective manner so as to minimize the cost of such Province Change and its impact on the Project Schedule and the Project, and otherwise on the performance of the Project Work, and will prepare and submit to the Province's Representative pursuant to the Consent Procedure (subject to the specific time periods set out in Section 2.6 [Agreement or Disagreement Regarding Province Change] of this Schedule) a written report (a "**Change Report**") identifying all aspects of the Province Change as they relate to the Project, the Project Work and this Agreement including, without limitation:

- (iii) an estimate in accordance with Section 2.5 [Design-Builder's Estimate of Change in Costs] of this Schedule of the Change in Costs arising from the implementation of the Province Change, and providing with such estimate:
 - (A) all necessary supporting calculations and information including particulars of additional costs to be paid to Subcontractors and professional advisors as reasonably requested and necessary for the Province to be able to understand and evaluate the estimate;

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- (B) any time periods after which such estimated prices or parts thereof will no longer be valid, which periods will be of sufficient length to allow the Province a reasonable time to consider the Change Report and arrive at an initial evaluation;
 - (C) any resulting lump sum payment which the Design-Builder proposes is required to be made pursuant to Section 2.7(c)(i) of this Schedule to reflect the Change in Costs estimated by the Design-Builder under Section 2.4(a)(iii) of this Schedule, together with all supporting information;
 - (iv) any impact on any other amounts payable by one party to another party as a result of the implementation of the Province Change;
 - (v) the Design-Builder's proposal for how any payments related to the Province Change will be invoiced and processed;
 - (vi) any adjustments required to any of the dates set out in the Project Schedule due to the effect of carrying out such Province Change, including any adjustment to the Substantial Completion Target Date or the Total Completion Target Date and details of any corresponding adjustments required by any Subcontractors;
 - (vii) any changes to the Design Data in respect of the Construction required to be submitted to the Design and Certification Procedure in order to implement such Province Change;
 - (viii) any other amendments required to this Agreement, the Project Requirements or any Project Document as a result of such Province Change;
 - (ix) the Design-Builder's requirements for any other assistance and resources from the Province or any other requirements of the Province reasonably required to implement the Province Change;
 - (x) any required additional Permits or amendments to existing Permits or Permits that are in the course of being obtained;
 - (xi) any additional Land Rights necessary for the purpose of implementing the Province Change;
 - (xii) the extent to which the Province Change would interfere with the Design-Builder's ability to comply with any of its obligations under this Agreement, any Project Document or any Permits;
 - (xiii) the identity of any Subcontractors which the Design-Builder intends to engage for the purposes of implementing the Province Change; and
 - (xiv) any further effects (including benefits and impairments) which the Design-Builder foresees as being likely to result from the Province Change.
- (b) Without limiting any other rights of the Province to request further or additional information pursuant to any other provision of this Agreement, the Design-Builder will

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promptly provide the Province's Representative with such further or additional details and other information as the Province may request with respect to any Change Report submitted by the Design-Builder pursuant to Section 2.4(a) of this Schedule and, in the case of any such request, any time period within which the Province is required to provide any response in respect of such Change Report will not commence to run until such further details and other information have been provided to the Province's Representative.

2.5 Design-Builder's Estimate of Change in Costs

The Design-Builder will estimate and provide to the Province's Representative in the Change Report pursuant to Section 2.4(a)(iii) of this Schedule the Change in Costs, together with all such information in sufficient detail, including quantities, as the Province may reasonably require to enable it to properly evaluate and understand such estimate, including a detailed summary of the prices, costs, charges and Mark-ups used to calculate such estimate, to:

- (a) set out, by completing Appendix 11A [Change in Costs Template] to this Schedule, each of the applicable components of the Change in Costs, which components, will be limited to the following, without duplication:
 - (i) the total costs attributable to Design (together, the "**Design Costs**") (excluding Design and engineering comprised in the cost of supply of equipment and systems, which will be included in the amount of the Construction Costs in accordance with Section 2.5(a)(ii)(B) of this Schedule), which will be determined as follows:
 - (A) based on the number of hours reasonably estimated to be required to perform the work multiplied by the net estimated hourly amount (based on base salary) paid to Design and engineering staff, multiplied by 3.0 (or such lower rate as may have been agreed by the Design-Builder, or a Subcontractor for Design services pursuant to a Subcontract), provided that:
 - (1) if the Design Costs include the 3.0 multiplier as contemplated in Section 2.5(a)(i)(A) of this Schedule, the Design-Builder will provide supporting documents (such as rate sheets) to demonstrate that a lower rate has not previously been agreed to by the Design-Builder or a Subcontractor for Design services pursuant to a Subcontract; and
 - (2) other than such 3.0 multiplier (if applicable) and, subject to Section 2.5(a)(i)(B) of this Schedule, no Mark-up will be added to such total costs attributable to Design, regardless of the entity actually undertaking the Design; and
 - (B) if:
 - (1) the Design Costs, or any part thereof, relate to the work performed by a Subcontractor that is not a Contracting Affiliate; and

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- (2) the Subcontractor performed the Design work at a lower rate than a 3.0 multiple (as contemplated in Section 2.5(a)(i)(A) of this Schedule),

then the Design-Builder may include in its estimate of the Change in Costs any Mark-up charged by a Subcontractor for Design work undertaken by such Subcontractor, and its respective Subcontractors, in connection with the proposed Province Change (the “**Design Costs Mark-up**”), provided that the Design Costs Mark-up does not, in the aggregate, exceed 15% of the Design Costs charged by such Subcontractor and its respective Subcontractors in connection with the proposed Province Change;

- (ii) the total costs attributable to Construction (the “**Construction Costs**”), which will be determined as follows:

- (A) construction labour costs will be based on the wages and salaries paid directly in respect of labour and for supervisory personnel actively and necessarily engaged on site on the particular portion of the work required pursuant to the Province Change, including working supervisors and the first line of non-working supervisors, and including allowance for all payroll burdens such as overtime premiums (when paid), vacation pay, pension funds, statutory payments, workers compensation insurance, union dues, tool money, medical insurance and any other payments directly paid in the ordinary course;
- (B) costs of supply and delivery of materials, consumables and equipment, including associated costs such as costs of associated testing (including any laboratory and testing fees), any wastage as a direct result of the implementation of the Province Change, commissioning, spare parts, manuals and software, and including the Design and engineering related thereto, will be based on the estimated price to be charged by the Subcontractor supplying such materials, consumables or equipment;
- (C) costs of construction equipment will be calculated using the rates as may have been agreed with the applicable Subcontractor supplying such construction equipment, or, if no such agreed rates exist, at the then current rates set out in the Blue Book published by BC Roadbuilders, or as are otherwise reasonably commercially available, and the number of hours such equipment is estimated to be required to implement the Province Change, together with appropriate amounts for delivering such equipment to and from the place of Construction; and
- (D) the cost of any other rental, fabrication facility or factory costs directly associated with the implementation of the Province Change will be calculated based on the reasonable direct costs estimated to be paid by the Design-Builder or a Subcontractor,

and provided in each case that such amounts will not include any Mark-up of the net additional direct costs so incurred other than any Mark-up charged by a Lower Tier Subcontractor to a Subcontractor engaged by the Design-Builder for work

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undertaken by such Lower Tier Subcontractor, and its Subcontractors, in connection with the proposed Province Change (the “**Construction Costs Mark-up**”), provided that:

- (E) such Lower Tier Subcontractor is not an Affiliate of the Design-Builder; and
 - (F) the Construction Costs Mark-up does not, in the aggregate, exceed 15% of the Construction Costs charged by such Lower Tier Subcontractor and its Subcontractors, in connection with the proposed Province Change;
- (iii) the total costs attributable to site and project management (the “**Site and Project Management Costs**”), including all key personnel managing health and safety, quality, environmental and site establishment, and general management and administration, which amount will be, if the total Change in Costs:
- (A) is \$3 million or less, 5% of the Construction Costs in respect of the Province Change (excluding any Construction Costs Mark-up as permitted in accordance with Section 2.5(a)(ii) of this Schedule); or
 - (B) exceeds \$3 million, the Design-Builder’s reasonable and substantiated costs attributable to Site and Project Management Costs,
- provided that, if the Province Change will result in a delay to the critical path of the Project Work, then the Site and Project Management Costs may also include, without duplication, any additional costs attributable to site and project management arising directly as a result of such delay;
- (iv) the total costs attributable to profit and overhead (the “**Profit and Overhead Costs**”), which amount may not exceed 15% of the aggregate amount of the Construction Costs (excluding any Construction Costs Mark-up as permitted in accordance with Section 2.5(a)(ii) of this Schedule) and the Site and Project Management Costs in respect of the Province Change;
- (v) the total costs attributable to insurance and bonding (the “**Insurance and Bonding Costs**”), which amount will be, if the total Change in Costs:
- (A) is \$3 million or less, 2% of the total Change in Costs in respect of the Province Change (excluding any Design Costs Mark-Up and Construction Costs Mark-up as permitted in accordance with Sections 2.5(a)(i) and 2.5(a)(ii) of this Schedule); or
 - (B) exceeds \$3 million, the Design-Builder’s reasonable and substantiated (by way of documentation from insurers and/or bonding agencies, as applicable) costs attributable to Insurance and Bonding Costs;
- (vi) the total costs, if any, attributable to warranty obligations (the “**Warranty Costs**”), which amount will be, if the total Change in Costs:

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- (A) is \$3 million or less, 0.5% of the total Change in Costs in respect of the Province Change (excluding any Design Costs Mark-Up and Construction Costs Mark-up as permitted in accordance with Sections 2.5(a)(i) and 2.5(a)(ii) of this Schedule); or
 - (B) exceeds \$3 million, the Design-Builder's reasonable and substantiated costs attributable to Warranty Costs; and
- (vii) the total costs attributable to risk and contingencies (the **"Risk and Contingency Costs"**), which amount will be, if the total Change in Costs:
- (A) is \$3 million or less, 5% of the total Change in Costs in respect of the Province Change (excluding any Design Costs Mark-Up and Construction Costs Mark-up as permitted in accordance with Sections 2.5(a)(i) and 2.5(a)(ii) of this Schedule); or
 - (B) exceeds \$3 million, the Design-Builder's reasonable and substantiated costs attributable to Risk and Contingency Costs,

provided that the Risk and Contingencies Costs will be \$0 for any Province Change which is to be paid for on a time and materials basis; and

(b) confirm that:

- (i) the Design-Builder has used all reasonable efforts, including where required in accordance with Section 2.10(a) of this Schedule or by the Competitive Procurement Requirements, or where otherwise reasonably appropriate, the use of competitive proposals, bids or tenders, to oblige its Subcontractors to minimize any increase in costs and to maximize any reduction in costs;
- (ii) all costs of the Design-Builder and Subcontractors included in the Design Costs and Construction Costs are limited to actual amounts to the extent such amounts relate specifically to the Province Change and would not otherwise have been incurred and are:
 - (A) paid or to be paid or invoiced to the Design-Builder or Subcontractors; or
 - (B) paid by the Design-Builder or Subcontractors,all without addition of any Mark-ups except as otherwise expressly provided for in Section 2.5(a) of this Schedule;
- (iii) the estimate includes an estimate, without any Mark-up, of:
 - (A) all additional amounts that would be payable by the Design-Builder to the Province under Schedule 10 [Payment] as a result of the implementation of the Province Change; and
 - (B) any reduced amounts that would be payable by the Province to the Design-Builder under Schedule 10 [Payment] as a result of the implementation of the Province Change;

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- (iv) all costs included in such estimate reflect:
 - (A) labour and material rates applying in the open market to providers of services similar to those required in connection with the implementation of the Province Change or, if and to the extent such services would be provided by Employees (as defined in the BCIB-Contractor Agreement), the applicable rates pursuant to the Community Benefits Agreement;
 - (B) rates in accordance with Section 2.5(a) of this Schedule;
 - (C) any and all changes in this Agreement or the Project Requirements arising out of the Province Change; and
 - (D) any and all changes in risk allocation;
- (v) the estimated costs will provide good overall value to the Province and take into account any reasonably foreseeable changes in Laws; and
- (vi) the Design-Builder has used commercially reasonable efforts to obtain the best value for money when procuring any work, services, supplies, materials or equipment required in connection with the implementation of the proposed Province Change and has complied or will comply with Good Industry Practice in relation to any such procurement, to a standard no less than the Design-Builder would apply if all costs incurred were to its own account without recourse to the Province.

2.6 Agreement or Disagreement Regarding Province Change

- (a) The Province and the Design-Builder will each use all reasonable efforts to reach agreement on the matters described in Section 2.7 [Change Certificate] of this Schedule in respect of any Province Change, and any agreement so reached in writing will, if recorded in a Change Certificate issued in accordance with Section 2.7 [Change Certificate] of this Schedule, be binding upon the Province and the Design-Builder with respect to the Province Change in accordance with Section 2.8 [Effect of Change Certificate] of this Schedule.
- (b) If the Province and the Design-Builder are unable to agree on the resolution of any or all matters described in Section 2.7 [Change Certificate] of this Schedule within 10 Business Days of, as applicable:
 - (i) the delivery by the Province of a Province Change Notice under Section 2.1 [Province Change Notice] of this Schedule that does not require the preparation and delivery by the Design-Builder of a Preliminary Estimate or a Change Report in respect of such Province Change;
 - (ii) the delivery by the Province of notification under Section 2.3(b) of this Schedule, following receipt of a Preliminary Estimate from the Design-Builder, that the Province wishes to proceed with the Province Change and does not require the preparation and delivery by the Design-Builder of a Change Report in respect of such Province Change; or

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- (iii) the delivery by the Design-Builder of a Change Report under Section 2.4(a) of this Schedule in respect of such Province Change,

then the Province:

- (iv) may elect not to proceed with the relevant Province Change by notice to the Design-Builder; or
 - (v) otherwise will issue to the Design-Builder a Change Certificate stating the determination of the Province of the matters described in Section 2.7 [Change Certificate] of this Schedule in respect of such Province Change.
- (c) If the Design-Builder disagrees with all or any of the determinations set out in a Change Certificate issued by the Province pursuant to Section 2.6(b)(v) of this Schedule, then the Design-Builder may deliver to the Province's Representative, within 10 Business Days of the issuance of such Change Certificate, notice that it disputes such determinations, failing which such Change Certificate will be deemed to have been accepted by the Design-Builder. The Province and the Design-Builder will cooperate to have such dispute resolved in a timely manner pursuant to the Dispute Resolution Procedure. Pending the resolution of any such dispute, the Design-Builder will proceed (or continue, where the Province has previously required such implementation pursuant to Section 2.3(b)(ii) of this Schedule) with the implementation of the Province Change as directed by the Province in the Change Certificate and in accordance with Section 2.8 [Effect of Change Certificate] of this Schedule, provided that any amounts reasonably expensed, and any delay reasonably established, by the Design-Builder in proceeding to implement such Province Change pending resolution pursuant to the Dispute Resolution Procedure will be dealt with as part of such Province Change.

2.7 Change Certificate

A Province Change will be authorized by the Province issuing to the Design-Builder a certificate (the "**Change Certificate**"), which will set out:

- (a) the extent to which such Province Change applies to vary any of the Project Work, the Project Schedule, the Project Requirements, this Agreement or the other Project Documents;
- (b) the final determination of the Change in Costs for such Province Change;
- (c) where a party is required to make a payment to another party in respect to the Change in Costs for such Province Change, whether such payment will be made:
 - (i) by a lump sum payment in accordance with Section 1.2 [Additional Payments] of Schedule 10; or
 - (ii) at such other times and in such other manner as set out in the Change Certificate; and
- (d) the resolution of any other matters contained in a Province Change Notice, Preliminary Estimate or Change Report in respect of such Province Change.

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Unless the Design-Builder disputes the Change Certificate in accordance with Section 2.6(c) of this Schedule, the Design-Builder otherwise agrees to waive and release the Province from any claims, including any claim for Consequential Losses, with respect to, or in any way related to, the subject matter of a Change Certificate, including for any accumulation of Change Certificates, the number of Change Certificates issued by the Province, or any delay by the Province in issuing a Change Certificate.

2.8 Effect of Change Certificate

- (a) A Change Certificate will have the effect of varying the Project Work, the Project Schedule, the Project Requirements and/or this Agreement to the extent provided therein with effect from the date of issuance of the Change Certificate or as otherwise provided in the Change Certificate, subject only to the contrary resolution of any Dispute Resolution Procedure initiated by the Design-Builder pursuant to Section 2.6(c) of this Schedule.
- (b) Unless otherwise agreed in writing or unless otherwise directed by the Province in writing, the Design-Builder will not proceed with the performance of any Province Change prior to the issuance of a Change Certificate or as otherwise provided in the Change Certificate. With effect from the date of issuance of a Change Certificate or as otherwise provided in the Change Certificate or as otherwise agreed or directed by the Province in writing, the Design-Builder will implement the Province Change as directed in the Change Certificate or as otherwise agreed or directed by the Province in writing, and will, subject to the resolution of any dispute initiated by the Design-Builder in accordance with Section 2.6(c) of this Schedule, be bound by this Agreement in so doing as if the Province Change formed part of the Project Requirements.
- (c) Subject only to a dispute initiated by the Design-Builder in accordance with Section 2.6(c) of this Schedule, once issued a Change Certificate will be binding upon the Province and the Design-Builder with respect to the Province Change and may not be reopened by any party, and the relief and/or compensation, if any, to which the Design-Builder is entitled in accordance with such Change Certificate will be the only relief and/or compensation to which the Design-Builder will be entitled in respect of such Province Change.

2.9 Design-Builder Delay in Responding

If the Design-Builder fails to:

- (a) prepare a Preliminary Estimate, if required by the Province, within the applicable time period set out in Section 2.3(a) of this Schedule;
- (b) prepare a Change Report within the applicable time period set out in Section 2.4(a) of this Schedule;
- (c) commence the performance of any Province Change requested by the Province in accordance with the terms provided for in this Schedule; or
- (d) meet any other time period required in respect of any Province Change under this Schedule,

then, without limiting any rights of the Province under this Agreement in respect of such failure, the Design-Builder will bear the sole risk and expense of any increase in the amount that the Province would be required to pay to the Design-Builder pursuant to this Schedule in respect of such Province Change as a result of

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such delay. The onus for establishing that no such increase has resulted from such delay will be on the Design-Builder.

2.10 Requirement to Undertake Competition

- (a) If the Province gives notice of the requirement for the Design-Builder to undertake a competition for any Province Change pursuant to Section 2.1(a) of this Schedule then, subject to the Competitive Procurement Requirements, the Design-Builder will use all reasonable efforts to obtain or cause its Subcontractors to obtain, as appropriate, at least three competitive proposals, bids or tenders that would (if the Province were procuring such work directly) meet the Competitive Procurement Requirements for the work involved in such Province Change, and at least one of such proposals, bids or tenders will, subject to any contrary Competitive Procurement Requirements, be from a third party at arm's length from the Design-Builder and its Affiliates.
- (b) In the case of any Province Change in respect of which competitive proposals, bids or tenders are required, the Change in Costs for such Province Change (or relevant portion thereof) will be the amount obtained pursuant to the proposal, bid or tender which best satisfies the requirements of the competitive process undertaken pursuant to Section 2.10(a) of this Schedule, plus any additional amount contemplated in Section 2.5 [Design-Builder's Estimate of Change in Costs] of this Schedule.

2.11 Change Directive

Subject to Section 2.2 [Design-Builder Objection] of this Schedule but notwithstanding any other provision of this Schedule, the Province may at any time issue to the Design-Builder a written instruction on a form designated as a "Change Directive Form" and signed by the Province's Representative, directing the Design-Builder to immediately proceed with a Province Change, pending the finalization and issuance of a Change Certificate for that Province Change (each, a "**Change Directive**"), and any Change Directive will include at least the level of detail and information required for a Province Change Notice. If the Province issues a Change Directive, the following will apply:

- (a) the Design-Builder will proceed with the Province Change and the valuation and the time extensions and payment of any adjustments will be made as soon as reasonably possible after the implementation thereof in the same manner as a Province Change for which a Preliminary Estimate, Change Report and Change Certificate would be issued hereunder;
- (b) if the Design-Builder has not previously done so, the Design-Builder will within 15 Business Days after the issuance of the Change Directive provide a Change Report in accordance with the requirements of this Schedule for a Change Report;
- (c) pending a final determination as to any time extensions or valuation and payment of any adjustments for a Province Change or any other matters in the Change Report delivered by the Design-Builder pursuant to Section 2.11(b) of this Schedule, the Province will pay the Design-Builder amounts reasonably demonstrated by the Design-Builder in writing from time to time to be payable for the Province Change, including reimbursement of amounts that the Design-Builder reasonably incurs with respect to the Province Change; and
- (d) if the parties:

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- (i) agree on the Change Report, the Province will issue a Change Certificate stating the parties' agreed determination of the matters referred to in the Change Report;
- (ii) do not agree on a Change Report, then the Province may issue a Change Certificate stating the Province's determination of the matters referred to in the Change Report and if the Design-Builder disagrees with all or any of the determinations set out in such Change Certificate, then the Design-Builder:
 - (A) may deliver to the Province a Dispute Notice within 10 Business Days of the issuance of such Change Certificate, failing which such Change Certificate will be deemed to have been accepted by the Design-Builder; and
 - (B) will, without prejudice to its rights with respect to such Dispute, continue to implement the Province Change as directed in the Change Directive.

The Province may issue a Change Directive at any time in its discretion, including in the absence of a Preliminary Estimate, at any time following issuance of a Preliminary Estimate, if the Design-Builder fails to provide a Change Report, or if a Change Report or Change Certificate is not promptly agreed upon by the parties, or if there is a Dispute in relation to a Preliminary Estimate, Change Report, or Change Certificate (including a Dispute as to whether there is a Province Change).

PART 3

VALUE ENGINEERING PROPOSALS

3.1 Notice of Value Engineering Proposal

The Design-Builder may submit to the Province's Representative pursuant to the Consent Procedure a value engineering proposal (a "**Value Engineering Proposal**") which will:

- (a) set out the extent to which such Value Engineering Proposal would, if accepted by the Province, apply to vary the Project Work, the Project Requirements and/or this Agreement;
- (b) set out all the applicable information required in a Change Report;
- (c) provide sufficient information to the Province's Representative to enable it to consider the sharing of benefits under Section 3.4 [Sharing Benefits of Value Engineering Proposal] of this Schedule and, in connection therewith, set out any lump sum payment to be made pursuant to Section 1.2 [Additional Payments] of Schedule 10 as a result;
- (d) specify the Design-Builder's reasons and justification for proposing the Value Engineering Proposal, including:
 - (i) the comparative advantages to the Design-Builder and the Province of each variation to the Project Work, the Project Requirements and/or this Agreement referred to in Section 3.1(a) of this Schedule;
 - (ii) confirmation that the financial strength of the Design-Builder is sufficient to implement the Value Engineering Proposal; and

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- (iii) confirmation that, if such Value Engineering Proposal had been initiated by the Province, the Design-Builder would not have been able to refuse to implement such Value Engineering Proposal on any of the grounds set out in Section 2.2(a) of this Schedule; and
- (e) indicate if there are any dates by which a decision by the Province is requested.

3.2 Evaluation of Value Engineering Proposal

- (a) In accordance with the Consent Procedure, the Province will consider any Value Engineering Proposal received from the Design-Builder, including:
 - (i) requesting any clarification or additional information or documentation regarding the Value Engineering Proposal as required by the Province to fully evaluate and consider the Value Engineering Proposal; and
 - (ii) requesting modifications of the Value Engineering Proposal if required by the Province, but provided that:
 - (A) the Design-Builder may withdraw any Value Engineering Proposal in respect of which the Province requests any such modifications; and
 - (B) the Province will not be required to consider any Value Engineering Proposal unless and until the Design-Builder provides to the Province's Representative sufficient information to enable the Province to adequately consider and evaluate such Value Engineering Proposal.
- (b) The Province may accept or reject any Value Engineering Proposal in its discretion.

3.3 Change Certificate for Value Engineering Proposal

If the Province accepts a Value Engineering Proposal pursuant to Section 3.2(b) of this Schedule, with or without modification, the relevant Value Engineering Proposal will be documented and evidenced by a Change Certificate prepared by the Design-Builder and issued by the Province in the same manner as a Province Change under Section 2.7 [Change Certificate] of this Schedule.

3.4 Sharing Benefits of Value Engineering Proposal

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

3.5 Costs of Value Engineering Proposal

- (a) The Design-Builder may deliver to the Province's Representative preliminary information with respect to a proposed Value Engineering Proposal and the Province may, at its

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discretion, agree in advance to pay all or any portion of the costs of developing such Value Engineering Proposal.

- (b) Subject only to an agreement of the Province otherwise in accordance with Section 3.5(a) of this Schedule, all costs of a Value Engineering Proposal will be borne solely by the Design-Builder, including that the Design-Builder will pay to the Province promptly after receipt of an invoice therefor all costs and expenses reasonably incurred by the Province in connection with:

- (i) reviewing such Value Engineering Proposal;
- (ii) making a determination as to the acceptance or rejection of such Value Engineering Proposal, whether or not such Value Engineering Proposal is accepted and whether or not the proposed Value Engineering Proposal takes place; and
- (iii) implementing such Value Engineering Proposal,

such costs and expenses to include professional costs and expenses, advisor fees and other out of pocket expenses, fees, costs and expenses charged to the Province and the Province's reasonable internal administrative and personnel costs.

PART 4 GENERAL PROVISIONS

4.1 Modification of Processes and Procedures

Nothing in this Schedule or Part 8 [Changes] of this Agreement will limit the ability of the parties to mutually, in writing, modify, simplify or waive some or all of the processes and procedures outlined in this Schedule or such Part in respect of Province Changes or Value Engineering Proposals.

4.2 Changes Not to Correct Errors in Cost Estimates

Neither the Design-Builder nor the Province will use a Value Engineering Proposal or a Province Change, respectively, to correct or derive benefit from any errors or omissions in the cost estimates provided by the Design-Builder for any Project Work forming part of this Agreement.

4.3 Disputes

Any Dispute between the parties arising in connection with any matter in respect of a Province Change, Change Directive or Value Engineering Proposal will be resolved in accordance with the Dispute Resolution Procedure.

JUMPING CREEK TO MACDONALD SNOWSHED PROJECT
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SCHEDULE 11: CHANGES

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APPENDIX 11A
CHANGE IN COSTS TEMPLATE

The Design-Builder will complete and submit the template below in accordance with Section 2.5 [Design-Builder's Estimate of Change in Costs] of this Schedule. A worked example follows the Change in Costs Template and is provided for information purposes only.

Item	Description	Unit	Quantity	Rate	Total	Totals	Schedule 11 Reference and Notes
A1	Design Costs with a 3.0 multiplier (if applicable)	LS	1		\$		Section 2.5(a)(i)
A2	Design Costs of Subcontractor using a lower rate (if applicable)	LS	1		\$		Section 2.5(a)(i)
A3	Design Costs Mark-up	LS	1		\$		Section 2.5(a)(i)
A4	Total Design Costs (A1 + A2)					\$	
B1	Construction Costs	LS	1		\$		Section 2.5(a)(ii)
B2	Construction Costs (Lower-Tier Subcontractor)	LS	1		\$		Section 2.5(a)(ii)
B3	Construction Costs Mark-up	LS	1		\$		Section 2.5(a)(ii)
B4	Total Construction Costs (B1 + B2)					\$	
C	Site and Project Management Costs B4 * 5%		5% ^{1, 2}	\$		\$	Section 2.5(a)(iii) ¹ If the total Change in Costs exceeds \$3 million, the Design-Builder's reasonable and substantiated costs attributable to Site and Project Management Costs. ² If Province Change results in delay to critical path of Project Work, Site and Project Management Costs may also include additional costs attributable to site and project management arising directly as a result of such delay.
D	Profit and Overhead Costs (B4 + C) * 15%		15%	\$		\$	Section 2.5(a)(iv)
	Total Items C, D					\$	
E	Total Items A4, B4, C, D					\$	

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Item	Description	Unit	Quantity	Rate	Total	Totals	Schedule 11 Reference and Notes
F	Insurance and Bonding Costs I * 2%		2% ¹	\$		\$	Section 2.5(a)(v) ¹ If the total Change in Costs exceeds \$3 million, the Design-Builder's reasonable and substantiated costs attributable to Insurance and Bonding Costs.
G	Warranty Costs (if any) I * 0.5%		0.50% ¹	\$		\$	Section 2.5(a)(vi) ¹ If the total Change in Costs exceeds \$3 million, the Design-Builder's reasonable and substantiated costs attributable to Warranty Costs.
H	Risk and Contingency Costs ¹ I * 5%		5% ²	\$		\$	Section 2.5(a)(vii) ¹ Risk and Contingency Costs to be \$0 if Change in Costs to be paid for on time and materials basis. ² If the total Change in Costs exceeds \$3 million, the Design-Builder's reasonable and substantiated costs attributable to Risk and Contingency Costs.
I	Total Change in Costs (without Mark-up) ¹			E /92.5% * 100%		\$	¹ This value does not include the Design Costs Markup and the Construction Costs Mark-up.
A3	Design Costs Mark-up					\$	
A4	Construction Costs Mark-up					\$	
J	Total Change in Costs ¹ (I + A3 + B3)					\$	¹ This value includes the Design Costs Markup and the Construction Costs Mark-up.

**JUMPING CREEK TO MACDONALD SNOWSHED PROJECT
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SCHEDULE 11: CHANGES

Appendix 11A: Change in Costs Template

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Change in Costs (Example Only)

Item	Description	Unit	Quantity	Rate	Total	Totals	Schedule 11 Reference and Notes
A1	Design Costs with a 3.0 multiplier (if applicable)	LS	1		\$10,000		Section 2.5(a)(i)
A2	Design Costs of Subcontractor using a lower rate (if applicable)	LS	1		\$10,000		Section 2.5(a)(i)
A3	Design Costs Mark-up	LS	1		\$1,500		Section 2.5(a)(i)
A4	Total Design Costs (A1 + A2)					\$20,000	
B1	Construction Costs	LS	1		\$50,000		Section 2.5(a)(ii)
B2	Construction Costs (Lower-Tier Subcontractor)	LS	1		\$50,000		Section 2.5(a)(ii)
B3	Construction Costs Mark-up	LS	1		\$7,500		Section 2.5(a)(ii)
B4	Total Construction Costs (B1 + B2)					\$100,000	
C	Site and Project Management Costs B4 * 5%		5% ^{1,2}	\$100,000		\$5,000	Section 2.5(a)(iii) ¹ If the total Change in Costs exceeds \$3 million, the Design-Builder's reasonable and substantiated costs attributable to Site and Project Management Costs. ² If Province Change results in delay to critical path of Project Work, Site and Project Management Costs may also include additional costs attributable to site and project management arising directly as a result of such delay.
D	Profit and Overhead Costs (B4 + C) * 15%		15%	\$105,000		\$15,750	Section 2.5(a)(iv)
	Total Items C, D					\$20,750	
E	Total Items A4, B4, C, D					\$140,750	

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Item	Description	Unit	Quantity	Rate	Total	Totals	Schedule 11 Reference and Notes
F	Insurance and Bonding Costs I * 2%		2% ¹	\$152,162.16		\$3,043.24	Section 2.5(a)(v) ¹ If the total Change in Costs exceeds \$3 million, the Design-Builder's reasonable and substantiated costs attributable to Insurance and Bonding Costs.
G	Warranty Costs (if any) I * 0.5%		0.50% ¹	\$152,162.16		\$760.81	Section 2.5(a)(vi) ¹ If the total Change in Costs exceeds \$3 million, the Design-Builder's reasonable and substantiated costs attributable to Warranty Costs.
H	Risk and Contingency Costs ¹ I * 5%		5% ²	\$152,162.16		\$7,608.11	Section 2.5(a)(vii) ¹ Risk and Contingency Costs to be \$0 if Change in Costs to be paid for on time and materials basis. ² If the total Change in Costs exceeds \$3 million, the Design-Builder's reasonable and substantiated costs attributable to Risk and Contingency Costs.
I	Total Change in Costs (without Mark-up) ¹			E /92.5% * 100%		\$152,162.16	¹ This value does not include the Design Costs Markup and the Construction Costs Mark-up.
A3	Design Costs Mark-up					\$1,500	
A4	Construction Costs Mark-up					\$7,500	
J	Total Change in Costs ¹ (I + A3 + B3)					\$161,162.16	¹ This value includes the Design Costs Markup and the Construction Costs Mark-up.

**SCHEDULE 12
INDIGENOUS REQUIREMENTS**

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**PART 1
INDIGENOUS REQUIREMENTS**

1.1 General Requirements

Through consultation between the Province and the Identified Indigenous Group, the creation of business opportunities for Secwepemc Collective members has been identified as a key objective of the Project. Accordingly, the Design-Builder will at its expense comply with, observe, satisfy and perform all of the obligations and requirements set out in this Part 1 (the “**Indigenous Requirements**”), including the following:

- (a) The Design-Builder will provide to Qualified Indigenous-sourced Resources during the period from the Effective Date to the Substantial Completion Date in relation to the Project Work a total value of contracts of _____ (the “**Minimum Indigenous Contracts Requirement**”), and will be entitled to the Indigenous Contracts Incentive Payment in accordance with Section 1.6 [Indigenous Contracts Incentive Payment] of this Schedule in the event that the total value of such contracts exceeds _____.
- (b) The Design-Builder (including its relevant Subcontractors) will attend and participate in the following meetings with Splat sin, being the lead community to coordinate with the other Secwepemc Collective communities for resources and input for the purposes of this Agreement, as follows, and with all such meetings to be facilitated by the Province:
 - (i) an initial meeting within 30 days of the Effective Date to initiate the process for the determination of the contract opportunities in relation to the Project Work to fulfil the requirement set out in Section 1.1(a) of this Schedule;
 - (ii) regular monthly meetings (or such other frequency as determined by the Province) throughout the Term to inform the development of the Indigenous Participation Plan in accordance with Section 1.2 [Indigenous Participation Plan] of this Schedule and to effectively implement the Indigenous Requirements in accordance with the Indigenous Participation Plan, once so developed, including the sharing of relevant information by and with the Province, the Design-Builder and the Splat sin; and
 - (iii) any business-to-business or other workshops initiated by the Province in relation to the Indigenous Requirements.
- (c) The Design-Builder (including its relevant Subcontractors) will engage with Splat sin pursuant to this Schedule in a meaningful and respectful manner that upholds the relationship between the Province and the Identified Indigenous Group.
- (d) In addition to the requirements set out in Section 1.1(a) of this Schedule, and in recognition of the Province’s support and strong promotion of efforts by its contractors to facilitate training, mentorship and/or other development opportunities with the Identified Indigenous Group, the Design-Builder will work with Splat sin to explore employment opportunities and additional contract opportunities that could be awarded by the Design-Builder and the Subcontractors to the Identified Indigenous Group in support of the Project Work. The Design-Builder will make commercially reasonable efforts to reach mutual agreement with Splat sin for the provision of any such employment opportunities and additional contract opportunities in support of the Project Work, and details of all such efforts will be included in each monthly report submitted to the Province’s Representative pursuant to Section 1.7 [Indigenous Requirements Reporting] of this Schedule.

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1.2 Indigenous Participation Plan

- (a) The Design-Builder will develop and submit to the Province's Representative for approval, acting reasonably, pursuant to the Consent Procedure within 60 days of the Effective Date, a written plan (the "**Indigenous Participation Plan**") which describes the procedures for achieving the Indigenous Requirements specified in Section 1.1 [General Requirements] of this Schedule.
- (b) The Design-Builder will update the Indigenous Participation Plan as required and annually, at a minimum, and submit all proposed amendments or updates to the Indigenous Participation Plan to the Province's Representative pursuant to the Consent Procedure.
- (c) The Indigenous Participation Plan will describe, as a minimum:
 - (i) how the Design-Builder has engaged Identified Indigenous Group in relation to the development of the Indigenous Participation Plan, including how input from the Identified Indigenous Group has been considered in its development;
 - (ii) the identification of priority areas for types of contract opportunities for the Identified Indigenous Group, based on the priority areas identified by the Identified Indigenous Group;
 - (iii) the identification of potential applicable contract opportunities for the Identified Indigenous Group;
 - (iv) how the Design-Builder intends to work with the Identified Indigenous Group and the Province, including through the review by the Identified Indigenous Group of the Construction Environmental Management Plan, to ensure successful implementation of the Indigenous construction monitoring requirements set out in Schedule 6 [Environmental Obligations], including the development and delivery of Indigenous construction monitoring opportunities, describing the identification of Indigenous construction monitoring opportunities and the provision of notice of such monitoring opportunities to the Identified Indigenous Group, the scheduling of Project Site access for Indigenous monitors, the reporting structure in the event that any Indigenous monitors have questions or raise concerns, and the tracking of attendance;
 - (v) how the Design-Builder intends to comply with its obligations under Sections 1.1(a) and 1.1(d) of this Schedule and its obligations under Schedule 6 [Environmental Obligations] and work with the Identified Indigenous Group to ensure successful implementation (including describing appropriate procedural mechanisms for developing and maintaining the ongoing working relationship between the Design-Builder and the Identified Indigenous Group);
 - (vi) communications protocols, including frequency of meetings and frequency of updates and communications with Splantsin and identification of key contacts for Splantsin and the Design-Builder's team, which the Design-Builder has agreed with Splantsin at the meetings referred to in Section 1.1(b) of this Schedule, and including an obligation for the Design-Builder to copy the Province on all communications with Splantsin;

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- (vii) the specific decision-making and procurement processes and how they will be applied to achieve success related to contracting opportunities pursuant to Section 1.1(a) of this Schedule;
- (viii) a milestone schedule by Contract Year for the attainment of the Minimum Indigenous Contracts Requirement;
- (ix) the process by which additional employment and contracting opportunities as contemplated in Section 1.1(d) of this Schedule will be identified and awarded, including how this process has been communicated to Splat'sin and clearly distinguishing between the process in relation to the opportunities described in Section 1.1(a) of this Schedule and these additional employment and contracting opportunities described in Section 1.1(d) of this Schedule;
- (x) training opportunities for the Identified Indigenous Group, with reference to the priority areas identified for the Identified Indigenous Group in accordance with Section 1.2(c)(ii) of this Schedule, and timeframes within which training will be provided;
- (xi) a format, to be consistent with the template provided in the Data Room, of a monthly report to be submitted to the Province's Representative reporting on the following items:
 - (A) all contracts entered into to date in furtherance of achieving the Indigenous Requirements, including the status of the Design-Builder's achievement in respect of the identified milestones for the Minimum Indigenous Contracts Requirement, with reference to the priority areas identified for the Identified Indigenous Group in accordance with Section 1.2(c)(ii) of this Schedule, and including disclosure of contractor name and Indigenous ownership and make-up;
 - (B) explanations for any variances between the status of the Design-Builder's realized achievements referenced in paragraph (A) above and the planned achievements as identified in the Indigenous Participation Plan, and
 - (C) the number of Indigenous construction monitoring opportunities provided to Identified Indigenous Group, a record of which Identified Indigenous Group participated in the monitoring opportunities, and the number of Indigenous monitors present during any given monitoring opportunity;
 - (D) the status of the achievement of employment opportunities and additional contract opportunities identified in accordance with Section 1.2(c)(ix) of this Schedule; and
 - (E) any remedial actions or improvements or updates to the Indigenous Participation Plan that may be necessary to achieve the Indigenous Requirements; and
 - (F) summary of communications including dates and a brief summary of subjects discussed; and

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- (xii) a format of a final report to be submitted to the Province's Representative prior to Total Completion which:
 - (A) summarizes all contracts entered into with the Identified Indigenous Group throughout the Project;
 - (B) sets out the Design-Builder's achievement in respect of the Minimum Indigenous Contracts Requirement; and
 - (C) summarizes all Indigenous construction monitoring opportunities provided to the Identified Indigenous Group throughout the Project.

1.3 Indigenous Coordinator

- (a) The Design-Builder's Indigenous Coordinator will be a Key Individual subject to the applicable requirements of Section 3.3 [Key Individuals] of this Agreement.
- (b) The Design-Builder's Indigenous Coordinator will have excellent communication skills and proven skill and experience in:
 - (i) developing and maintaining productive working relationships with the Indigenous Communities;
 - (ii) coordinating and organizing Indigenous procurement, training, monitoring, contracting, site visits and employment opportunities on infrastructure projects; and
 - (iii) liaising or engaging with and, where appropriate and feasible, mitigating First Nations and Aboriginal interests.
- (c) Without limiting the generality of the foregoing, the job specification and responsibilities of the Indigenous Coordinator will include the following:
 - (i) establishing and maintaining productive working relationships with the Identified Indigenous Group;
 - (ii) planning, establishing, maintaining and reporting on engagement and communication with the Identified Indigenous Group in accordance with this Agreement;
 - (iii) developing, administering and managing the day-to-day implementation of the Indigenous Participation Plan and undertaking related tracking and reporting;
 - (iv) undertaking tracking and reporting in relation to the implementation of the Indigenous Participation Plan and the Indigenous Requirements;
 - (v) updating and reporting on the Indigenous Participation Plan, with input from the Identified Indigenous Group; and

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- (vi) liaising with Indigenous groups, the design-build construction team, including the environmental leads and designers, to implement monitoring and contracting opportunities.

1.4 [Not Used]

1.5 Failure to Meet Indigenous Requirements

- (a) The Design-Builder, the Province and Splat-sin will, in the regular meetings to be held in accordance with Section 1.1(b)(ii) of this Schedule, review the progress, identify obstacles, and work collaboratively to resolve issues with meeting the Indigenous Requirements and the Indigenous Participation Plan.
- (b) The Design-Builder acknowledges that the achievement of the Minimum Indigenous Contracts Requirement is crucial to the purpose and objectives of the Indigenous Requirements and that if the Design-Builder fails to meet the Minimum Indigenous Contracts Requirements, the Province will not be obtaining the level of Project Work assumed to be included in the payments to be made to the Design-Builder hereunder, may suffer losses and damages associated with the Project Work that are difficult to quantify in advance and that are reflected in the payments set out in Section 1.5(c)(ii) of this Schedule.
- (c) Without prejudice to any other right or remedy available to the Province and BCTFA, including the assignment of NCE Points and/or Default Points pursuant to Schedule 9 [Performance Mechanism], in the event that the Design-Builder fails to meet:
 - (i) any milestone for the attainment of the Minimum Indigenous Contracts Requirement as set out in the Indigenous Participation Plan, the Design-Builder and the Province will meet to determine an appropriate remedial strategy to address such failure, provided that, at the option of the Province, the Design-Builder will, along with the Province, meet with Splat-sin in order to seek its views in relation to an appropriate remedial strategy; and
 - (ii) for the period from the Effective Date to the Substantial Completion Date, the Minimum Indigenous Contracts Requirement, such failure will be a Non-Compliance Event and the Design-Builder will pay to the Province in respect thereof a NCE (Cash) Payment determined in accordance with the following formula:

$$NCECP = x [OV - AV]$$

where:

NCECP = the NCE (Cash) Payment

OV = the Objective Value of the Minimum Indigenous Contracts Requirement and calculated as the minimum dollar value of the Project Work required to be delivered using Qualified Indigenous-sourced Resources

AV = the Achieved Value of the Minimum Indigenous Contracts Requirement calculated as the aggregate of the actual payments

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made by the Design-Builder and the Subcontractors directly to Qualified Indigenous-sourced Resources for performance of a portion of the Project Work, as determined by the Province's Representative

and provided that *NCECP* will be zero where *AV* is greater than or equal to *OV*.

- (d) Despite anything else in this Section 1.5, and without limiting the generality of Section 17.7 [Waiver] of this Agreement and Section 1.3(f) of Schedule 9 [Performance Mechanism], the Province expressly reserves the right to waive the obligation to pay all or any portion of any Non-Compliance Event Payment otherwise payable pursuant to Section 1.5(c) of this Schedule if and to the extent that the Design-Builder demonstrates to the satisfaction of the Province that it has made all reasonable efforts to meet the Minimum Indigenous Contracts Requirement and that the reasons for the Design-Builder's failure to meet the Minimum Indigenous Contracts Requirement were beyond the Design-Builder's control.

1.6 Indigenous Contracts Incentive Payment

The Design-Builder will be entitled to an incentive payment (the "**Indigenous Contracts Incentive Payment**"), based on the Achieved Value of the Minimum Indigenous Contracts Requirement for the period from the Effective Date to the Substantial Completion Date calculated as set out in Section 1.5(c)(ii) of this Schedule (the "**Achieved Value**") and payable in accordance with Section 2.2 [Obligation to pay Indigenous Contracts Incentive Payments] of Schedule 10, as follows:

Achieved Value	Indigenous Contracts Incentive Payment

1.7 Indigenous Requirements Reporting

The Design-Builder will submit to the Province's Representative in accordance with the Review Procedure:

- (a) on a monthly basis from the Effective Date until the Total Completion Date, the monthly report referred to in Section 1.2(c)(xi) of this Schedule; and
- (b) on or before the Total Completion Date, the final report referred to in Section 1.2(c)(xii) of this Schedule,

and provide to the Province such other documentation and information in respect of the Indigenous Participation Plan as the Province may reasonably request.

PART 2 OTHER INDIGENOUS MATTERS

2.1 Cooperation with Consultation

The Design-Builder will, at its own reasonable cost and expense (except to the extent expressly provided otherwise in this Agreement), having regard to and without detracting in any way from the

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Indigenous Requirements and the Design-Builder's other obligations contained in this Agreement, cooperate with and assist the Province in connection with any consultations with any Indigenous group on issues pertaining to the Project.

2.2 Other Agreements with Indigenous Groups

In addition to the Indigenous Requirements, the Design-Builder will observe and cause all of its Subcontractors and any other person for whom the Design-Builder is in law responsible to observe the terms and conditions of any agreement between the Province and any Indigenous group with respect to the Project to the extent that such terms and conditions are disclosed from time to time by the Province to the Design-Builder and the Province requires the Design-Builder to observe such terms and conditions, and the Design-Builder will not in the course of exercising its rights or performing its obligations under this Agreement take or omit to take or permit to be taken or omitted any action that would breach any such terms and conditions. Any requirement to comply imposed by the Province pursuant to this Section 2.2 after the Financial Submittal Date will constitute a Province Change.

2.3 Acknowledgement by the Province

As between the Province and the Design-Builder, the Province acknowledges that it is responsible for responding to any court proceeding alleging infringement of indigenous rights or alleging that the Province has failed to discharge legal obligations of consultation and accommodation.

**SCHEDULE 13
COMMUNITY BENEFITS REQUIREMENTS**

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**PART 1
INTERPRETATION**

1.1 Definitions

In this Schedule, in addition to the definitions set out in Schedule 1 [Definitions and Interpretation]:

- (a) **“Apprenticeship and Training Targets”** has the meaning given in the BCIB-Contractor Agreement;
- (b) **“Employees”** has the meaning given in the BCIB-Contractor Agreement;
- (c) **“Monthly ESG Report”** has the meaning given in Section 4.1 [ESG Reporting] of this Schedule;
- (d) **“Workplace Discrimination and Harassment Policy and Procedures”** has the meaning given in the BCIB-Contractor Agreement; and
- (e) **“Workplace Drug and Alcohol Policy and Procedures”** has the meaning given in the BCIB-Contractor Agreement.

**PART 2
COMMUNITY BENEFITS REQUIREMENTS**

2.1 Community Benefits Requirements

The Design-Builder will at its expense comply with, observe, satisfy and perform all of the obligations and requirements set out in this Part (the **“Community Benefits Requirements”**).

2.2 BCIB-Contractor Agreement

The Design-Builder will:

- (a) on or before the Effective Date, execute and deliver the BCIB-Contractor Agreement in the form attached as Appendix A to this Schedule;
- (b) observe, perform and be bound by all the obligations contained in the BCIB-Contractor Agreement on the part of the “Contractor” thereunder to be observed and performed; and
- (c) work cooperatively with the Province and BCIB to achieve the objectives set out in Article 1 of the Community Benefits Agreement, including meeting with the Province and BCIB as and when required to discuss and collaborate on the approaches to meeting such objectives in connection with the Project.

2.3 BCIB-Subcontractor Agreements

The Design-Builder will cause:

- (a) on or before the Effective Date, each Subcontractor as of the Effective Date, other than a Subcontractor described in Section 2.4(b)(i) or (ii) of this Schedule to execute and deliver a BCIB-Subcontractor Agreement in the form attached as Schedule 3 to the BCIB-

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Contractor Agreement, subject only to variations in form required by BCIB, in its sole and absolute discretion, to suit the circumstances;

- (b) during the Term, each Subcontractor, other than a Subcontractor described in Section 2.4(b)(i) or (ii) of this Schedule, to execute and deliver a BCIB-Subcontractor Agreement in the form attached as Schedule 3 to the BCIB-Contractor Agreement, subject only to variations in form required by BCIB, in its sole and absolute discretion, to suit the circumstances; and
- (c) each Subcontractor that has executed and delivered a BCIB-Subcontractor Agreement in accordance with this Section, to observe, perform and be bound by all the obligations contained in the BCIB-Subcontractor Agreement on the part of the “Subcontractor” thereunder to be observed and performed.

2.4 Employees

- (a) The Design-Builder will obtain from BCIB in accordance with the BCIB-Contractor Agreement all the Employees required by the Design-Builder to fulfill its obligations under this Agreement.
- (b) The Design-Builder will not permit any Subcontractor to perform any Project Work at the Project Site, nor will the Design-Builder enter into, or permit any Subcontractor to enter into, any agreement with any Subcontractor for the performance of any Project Work at the Project Site, unless and until such Subcontractor:
 - (i) confirms in writing to the Design-Builder, for delivery to BCIB pursuant to the BCIB-Contractor Agreement, that such Subcontractor will not require any Employees to be provided by BCIB, and BCIB agrees with such determination in accordance with the BCIB-Contractor Agreement;
 - (ii) is granted a permit pursuant to Article 8.400 of the Community Benefits Agreement; or
 - (iii) executes a BCIB-Subcontractor Agreement in accordance with Section 2.3 [BCIB-Subcontractor Agreements] of this Schedule to obtain from BCIB the Employees that such Subcontractor will require for the performance of its portion of the Project Work at the Project Site.

2.5 Apprenticeship and Training Obligations

The implementation by the Design-Builder of the Apprenticeship and Training Targets in accordance with the BCIB-Contractor Agreement, and compliance by the Design-Builder with all other applicable requirements in accordance with Laws, will satisfy all apprenticeship and training obligations of the Design-Builder under this Agreement.

2.6 Workplace Anti-Discrimination and Harassment Obligations

The implementation by the Design-Builder of the Workplace Discrimination and Harassment Policy and Procedures in accordance with the BCIB-Contractor Agreement, and compliance by the Design-

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Builder with all other applicable requirements in accordance with Laws, will satisfy all workplace anti-discrimination and harassment obligations of the Design-Builder under this Agreement.

2.7 Workplace Anti-Drug and Alcohol Obligations

The implementation by the Design-Builder of the Workplace Drug and Alcohol Policy And Procedures in accordance with the BCIB-Contractor Agreement, and compliance by the Design-Builder with all other applicable requirements in accordance with Laws, will satisfy all workplace anti-drug and alcohol obligations of the Design-Builder under this Agreement.

PART 3 OTHER COMMUNITY BENEFITS MATTERS

3.1 Changes to Community Benefits Agreement or Regime

The Province will issue a Province Change, and the provisions of Part 8 [Province Changes and Design-Builder Proposals] and Schedule 11 [Changes] will apply:

- (a) in the case of any amendment to the Apprenticeship and Training Targets, the Workplace Discrimination and Harassment Policy and Procedures or the Workplace Drug and Alcohol Policy made after the Financial Submittal Date;
- (b) in the case of any amendment to the Community Benefits Agreement made after the Financial Submittal Date, other than if such amendment to the Community Benefits Agreement:
 - (i) was requested or initiated by the Design-Builder or any of its Subcontractors;
 - (ii) relates to the wage rate adjustments contemplated in Section 3.2 [Labour Wage Rate Adjustment] of Schedule 10; or
 - (iii) was contemplated before the Financial Submittal Date and provided to the Design-Builder as Disclosed Data prior to the Financial Submittal Date; and
- (c) if it has been determined at any time after the Financial Submittal Date by the Province, or by a court of competent jurisdiction, without any further rights of appeal, that the Community Benefits Agreement does not, or will not continue to, apply to the Project.

PART 4 OTHER WORKPLACE MATTERS

4.1 ESG Reporting

- (a) With respect to non-BCIB Employees that are employed in Design and Construction related Project Work in accordance with Section 2.4(b) of this Schedule, the Design-Builder will deliver to the Province within five days of the end of each calendar month, in accordance with the Review Procedure, a report (a “**Monthly ESG Report**”) in a form to be provided by the Province and summarizing the craft workforce demographic composition of such non-BCIB Employees for the immediately preceding calendar month, including:

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- (i) the number of craft workers and the number of craft hours worked by:
 - (A) residents of British Columbia;
 - (B) women;
 - (C) Indigenous persons;
 - (D) youth (ages 16 to 24); and
 - (E) other equity groups traditionally underrepresented in the construction industry, such as people with disabilities, visible minorities, and members of the 2SLGBTQIA+ community and any other groups as may be recognized by the Province from time to time, acting reasonably; and
- (ii) the number of individuals within the craft workforce:
 - (A) working in a Red Seal trades-related or technical (non-administrative) occupation who are registered with an apprenticeship authority as an apprentice (together, “**Apprentices**”); and
 - (B) working in a Red Seal trades-related or technical (non-administrative) occupation who are certified by an apprenticeship authority as a journeyman (together, “**Journeypersons**”),and the number of hours worked by Apprentices and Journeypersons.
- (b) Within 30 days of Substantial Completion, the Design-Builder will deliver to the Province a final report following the same format and contents of the Monthly ESG Report and covering the entire Project lifetime demographic values.

4.2 Respect in the Workplace

- (a) The Design-Builder will establish, implement and submit to the Province’s Representative pursuant to the Review Procedure, by no later than 30 days after the Effective Date, a respect in the workplace plan that complies with the requirements of this Section 4.2 (the “**Respect in the Workplace Plan**”), and will ensure, and cause its Subcontractors to ensure, that all employees of the Design-Builder and its Subcontractors carrying out the Project Work (including supervising and management personnel) (together, the “**Covered Employees**”) comply with the requirements of the Respect in the Workplace Plan at all times while engaging in any activities, related to the Project.
- (b) The Respect in the Workplace Plan will:
 - (i) include a comprehensive respectful workplace policy that seeks to foster a workplace that is free of racism and discrimination, and that promotes a culturally safe and respectful environment;
 - (ii) prohibit any Covered Employee from engaging in any form of violence, harassment, intimidation, bullying, or any other disparaging or demeaning conduct

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(including by way of verbal communications, written materials, or gestures) towards any other person for any reason, including based on any union affiliation or lack of union affiliation; and

(iii) detail within the respectful workplace policy:

- (A) standards that each Covered Employee is required to comply with;
- (B) a complaints process in the event of an allegation of breach by a Covered Employee of such policy;
- (C) a comprehensive Indigenous awareness training program developed with input and engagement from Identified Indigenous Groups, including as set out in Schedule 12 [Indigenous Requirements];
- (D) a requirement for each newly hired Covered Employee to participate in not less than four hours of respectful workplace training and four hours of Indigenous awareness training prior to accessing the Project Site (pre-access) or upon hire, unless otherwise approved by the Province;
- (E) detail the training procedures that each Covered Employee will be required to partake in and the method for tracking such participation; and
- (F) set out a procedure that the Design-Builder will be required to follow to report any allegations of breach of the respectful workplace policy to the Province's Representative in a manner that respects privacy and confidentiality.

- (c) The Design-Builder will not commence any Construction until the respectful workplace policies and training procedures set out in the Respect in the Workplace Plan have been fully implemented by the Design-Builder in accordance with the Respect in the Workplace Plan.
- (d) The Design-Builder may submit requested updates to the programs from time to time to the Province pursuant to the Review Procedure, in which case the Design-Builder will require all Covered Employees described above to participate in such updated training programs.
- (e) The Province may at any time audit the Respect in the Workplace Plan and its implementation, including inspecting the Design-Builder's training log and requesting information on the Design-Builder's investigations of any allegations of breach of the respectful workplace policy received by the Province in a manner that respects privacy and confidentiality.
- (f) The Design-Builder will consult with the Province regarding training content outlined in this Section 4.2
- (g) Notwithstanding the preceding paragraphs of this Section 4.2, Covered Employees who are present at the Project Site solely for purposes of making deliveries (maximum one delivery/week); or will be present at the Project Site for less than three days in any 30 day

**JUMPING CREEK TO MACDONALD SNOWSHED PROJECT
DESIGN-BUILD AGREEMENT
SCHEDULE 13: COMMUNITY BENEFITS REQUIREMENTS**

***Commercial in Confidence
Execution***

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period, do not need to complete the training requirements of this section, provided that such Covered Employees are escorted by other Covered Employees who have completed the applicable respectful workplace and Indigenous awareness training..

**JUMPING CREEK TO MACDONALD SNOWSHED PROJECT
DESIGN-BUILD AGREEMENT
SCHEDULE 13: COMMUNITY BENEFITS REQUIREMENTS**

***Commercial in Confidence
Execution***

**APPENDIX 13A
FORM OF BCIB-CONTRACTOR AGREEMENT**

See attached.

**BCIB-CONTRACTOR AGREEMENT
TRANS CANADA HIGHWAY 1 – JUMPING CREEK TO
MACDONALD SNOWSHED PROJECT**

**BC INFRASTRUCTURE BENEFITS INC.
AND
EMIL ANDERSON CONSTRUCTION (EAC) INC.**

JULY 16, 2024

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BCIB-CONTRACTOR AGREEMENT

THIS BCIB-CONTRACTOR AGREEMENT is made effective as of the 16th day of July, 2024

BETWEEN:

BC INFRASTRUCTURE BENEFITS INC., a company incorporated under the laws of British Columbia having its head office at Suite 1050 – 89 West Georgia Street, Vancouver, BC V6B 0N8 (“**BCIB**”)

AND:

EMIL ANDERSON CONSTRUCTION (EAC) INC., having a mailing address of 300 – 966 Crowley Avenue, Kelowna, BC V1Y 0L1 (the “**Contractor**”)

WHEREAS:

- A. BCIB has entered into a Community Benefits Agreement dated the 17th day of July, 2018, as amended and restated on March 1, 2022, as may be further amended, supplemented or restated from time to time (the “**Community Benefits Agreement**”) with the Allied Infrastructure and Related Construction Council of British Columbia (the “**Council**”) which governs the terms and conditions of employment for Employees in respect of the Project;
- B. BCIB has entered into an agreement with the Owner made and dated for reference as of the 23rd day of May, 2019, as may be amended, supplemented or restated from time to time, whereby BCIB has, subject to the Community Benefits Agreement, the sole and exclusive right to provide Employees to contractors who will perform work or provide services at the Site in respect of the Project;
- C. The Owner and the Contractor have entered into the Construction Contract;
- D. The Construction Contract requires the Contractor to enter into this Agreement with BCIB;
- E. The Contractor requires Employees in order to fulfill its obligations under the Construction Contract; and
- F. The parties wish to enter into a formal contract for the provision of such Employees to the Contractor by BCIB.

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the sum of One Hundred Dollars (\$100.00) now paid by each of the Contractor and BCIB to the other (the receipt of which sum by the Contractor and by BCIB is hereby irrevocably acknowledged) and of the mutual promises and agreements contained in this Agreement, the parties agree as follows:

1.0 DEFINITIONS AND INTERPRETATION

- 1.1 In this Agreement, except as otherwise expressly provided or unless the context otherwise requires, capitalized terms have the meanings set out in Schedule 1. This Agreement will be interpreted and construed in accordance with the provisions set out in Schedule 1.

2.0 REPRESENTATIVES

- 2.1 Within two Business Days after the Effective Date, and thereafter from time to time as BCIB deems necessary, BCIB will designate one person (“**BCIB’s Representative**”), and an alternate in the event BCIB’s Representative is absent, to be BCIB’s single point of contact for the Contractor with respect to this Agreement. BCIB will, upon designating such person, advise the Contractor in writing of the name, address, telephone number and email address of BCIB’s Representative.
- 2.2 Within two Business Days after the Effective Date, and thereafter from time to time as the Contractor deems necessary, the Contractor will designate one person (the “**Contractor’s Representative**”), and an alternate in the event the Contractor’s Representative is absent, to be the Contractor’s single point of contact for BCIB with respect to this Agreement. The Contractor will, upon designating such person, advise BCIB in writing of the name, address, telephone number and email address of the Contractor’s Representative. If, at any time, BCIB’s Representative, acting reasonably, objects to the Contractor’s Representative, then the Contractor will replace the Contractor’s Representative with a person acceptable to BCIB’s Representative.
- 2.3 As soon as practicable after the Effective Date, and thereafter from time to time as may be necessary, BCIB’s Representative will advise the Contractor’s Representative of the name, address, telephone number and email address of the Council’s Representative.
- 2.4 The Contractor acknowledges that BCIB will have a presence on the construction Site. The parties will, within ten Business Days after the Effective Date, establish a system for ongoing communication and liaison for the purpose of ensuring the timely exchange of information that is necessary for the effective coordination and implementation of this Agreement, including regular, active and open communication with respect to the Contractor’s requirements for Employees (broken down by trade), information the Contractor already has in its possession with respect to individuals who may be available to become Employees and information regarding BCIB’s sourcing of Employees and its anticipated ability to fulfill Employee Requests. The parties will meet as required by either of the parties to review such system and make whatever adjustments to such system as are necessary to ensure that the intent of this provision is put into practice during the Project.

3.0 OBLIGATION TO OBTAIN EMPLOYEES

- 3.1 The Contractor will obtain from BCIB all Employees required by the Contractor to fulfill its obligations under the Construction Contract.

- 3.2 Notwithstanding the powers expressly delegated by this Agreement to the Contractor by BCIB, all Employees provided to the Contractor by BCIB will be employed by BCIB, and BCIB will retain, with respect to all such Employees, the exclusive rights as employer in all aspects of labour relations and in all aspects of the employment relationship. The Contractor will not in any way derogate or attempt to derogate from the rights and authority of BCIB as employer.

4.0 OBTAINING EMPLOYEES

- 4.1 The Contractor will participate in any pre-job conference(s) arranged by BCIB, and will present, after collaboration with BCIB and the Council, details of the Work, including schedule, work type and anticipated numbers and Job Classifications of Employees.
- 4.2 Notwithstanding any Work schedule submission requirements under the Construction Contract, including with respect to submission timelines, and notwithstanding any requirement under the Construction Contract for any approval or acceptance of any such submitted Work schedule, the Contractor will provide the following forecasts:
- (a) *Initial Forecast.* The Contractor will, no later than five Business Days after the Effective Date, provide to BCIB's Representative:
 - (i) in the form and format provided by BCIB, the Contractor's best estimate of the anticipated Employees that will be required by the Contractor and all of the Applicable Subcontractors for the first six months of the Work, giving estimates of headcounts by trade, Job Classifications and skill-level of Employees that will be required, including any specific certifications, training or qualifications required, on a month-by-month basis;
 - (ii) the Contractor's then current overall Work schedule showing the planned order of activities from construction commencement to total completion, in the same format as required pursuant to the Construction Contract; and
 - (iii) the Contractor's best estimate of the craft hours, broken down by trade and on a month-by-month basis, that will be required by the Contractor and all of the Applicable Subcontractors for each month of the Work from the Effective Date and ending at the end of the month that is 18 months after the Effective Date.
 - (b) *Three Month Forecast.* The Contractor will, on the first Business Day of each month starting with the second month after the Effective Date, provide to BCIB's Representative:
 - (i) in the form and format provided by BCIB, the Contractor's best estimate of the anticipated Employees that will be required by the Contractor and all of the Applicable Subcontractors for the then current month and the next following two months of the Work, giving estimates of headcounts by trade, Job Classifications and skill-level of Employees that will be required,

including any specific certifications, training or qualifications required, on a month-by-month basis;

- (ii) the Contractor's then current overall Work schedule showing the planned order of activities from construction commencement to total completion, in the same format as required pursuant to the Construction Contract; and
- (iii) the Contractor's best estimate of the craft hours, broken down by trade, that will be required by the Contractor and all of the Applicable Subcontractors for:
 - (A) the then current month and for each of the next following months of the Work until the next occurring March 31, provided that in no event will there ever be less than three months of estimated craft hours provided each month; and
 - (B) each year of construction with each year commencing on April 1 and ending on the following March 31 until total completion. The Contractor will update these yearly estimates each month as necessary to reflect the Contractor's then current best estimate.
- (c) The parties agree that the forecasts provided pursuant to Section 4.2(a) and Section 4.2(b) are non-binding and are estimates only, but that such forecasts are expected to closely align to the actual Employee Requests provided by the Contractor, and that each such forecast will be used by BCIB to source an appropriate workforce for the Project in collaboration with the Contractor.

4.3 The Contractor will, from time to time during the term of this Agreement but in any event not later than 30 days prior to the date that the Contractor requires certain Employees, provide to BCIB's Representative a request for Employees (each, an "**Employee Request**") in the form and format required by BCIB, and setting out the following information:

- (a) the number and Job Classifications of Employees required by the Contractor;
- (b) the 'name hires' requested by the Contractor (the "**CBA Name Hires**");
- (c) the names of prospective Employees the Contractor wishes to name request from the information provided pursuant to Section 4.8 or from other information that may be available to the Contractor;
- (d) the number and type (level) of apprentices requested by the Contractor;
- (e) the date upon which each such Employee will be required to commence working under the direction of the Contractor;
- (f) the Contractor's best estimate of the time period each such Employee will be required by the Contractor;

- (g) the details of any special experience or technical or other qualifications required in respect of any particular Employee;
 - (h) the intended work assignments in compliance with Article 6 of the Community Benefits Agreement; and
 - (i) such other relevant information with respect to potential Employees as BCIB's Representative may reasonably request (and which the Contractor possesses and is legally permitted to disclose), or that the Contractor may consider beneficial, in order to enable BCIB to provide the Employees required by the Contractor.
- 4.4 BCIB will, in accordance with the dispatch provisions of the Community Benefits Agreement, including Articles 8.200, 8.600 and 9.100 of the Community Benefits Agreement, and subject to the minimum time period described in Section 4.6 where applicable, use reasonable efforts to provide the Contractor with Employees to perform the Work in the numbers and Job Classifications set out in the Employee Request submitted pursuant to Section 4.3 to the extent that BCIB is itself able to obtain Employees in such numbers and Job Classifications.
- 4.5 Unless the CBA Name Hires have already been provided or committed by BCIB to another contractor, or they are unavailable due to circumstances beyond BCIB's control, in each case at the time of the Employee Request, BCIB will provide the CBA Name Hires to the Contractor in accordance with the dispatch provisions of the Community Benefits Agreement.
- 4.6 If, due to unforeseen circumstances related to the timing of the performance of the Work or a component of the Work, the Contractor is not able to provide an Employee Request which provides for the 30 day time period described in Section 4.3, the Contractor acknowledges that, despite any request for Employees to be provided by a certain date, BCIB requires a minimum of three Business Days prior written notice of the date upon which the Contractor requires an Employee or Employees to commence performance of the Work in order to be able to provide the requested Employee(s).
- 4.7 In the case of:
- (a) an Employee Request submitted in accordance with Section 4.3, BCIB will advise the Contractor as soon as practicable but in any event not later than nine days prior to the date that the Contractor requires Employees as set out in a particular Employee Request if BCIB is unable to fulfill such particular Employee Request; and
 - (b) an Employee Request submitted pursuant to Section 4.6, BCIB will advise the Contractor as soon as practicable if BCIB is unable to fulfill such particular Employee Request.

If BCIB advises the Contractor that BCIB is unable to fulfill a particular Employee Request, the Contractor will provide to BCIB's Representative information already in the

possession of the Contractor with respect to individuals who may be available to become Employees, who are suitable for performing the Work and who, if hired by BCIB as Employees, could allow BCIB to fulfill the Employee Request. Unless such identified individuals refuse to become Employees, or have already been provided or committed by BCIB to another contractor, or such individuals are unavailable due to circumstances beyond BCIB's control, in each of the latter two cases at the time the information is provided to BCIB's Representative, BCIB will provide such identified individuals to the Contractor. Any failure to so advise the Contractor, or any indication that BCIB will be able to or unable to fulfill a particular Employee Request, does not derogate from or negate any of the provisions of Section 21.0.

- 4.8 BCIB will promptly provide to the Contractor's Representative information that BCIB:
- (a) has in its possession which relates to work task or activity accommodations that are to be made in respect of the Employees provided to the Contractor by BCIB; and
 - (b) receives from the Affiliated Unions with respect to prospective Employees that may be available to work on the Project for the purpose of the Contractor name requesting prospective Employees from the Affiliated Unions.
- 4.9 The Contractor will, if and when requested by BCIB's Representative from time to time, provide one representative of the Contractor to assist in the interviewing of individuals who are proposed to be hired by BCIB for subsequent assignment to the Contractor.
- 4.10 BCIB will not be responsible for keeping the Contractor informed as to employee requests made by Applicable Subcontractors to BCIB, nor the circumstances with respect to the fulfillment of such requests.

5.0 EMPLOYEE RELATIONS

- 5.1 To the extent necessary to enable the Contractor to perform its obligations under this Agreement, BCIB does hereby delegate to the Contractor, consistent with the provisions of Article 7.400 of the Community Benefits Agreement, BCIB's right to operate, direct and supervise on a day-to-day basis the Employees provided to the Contractor by BCIB. For certainty, but without limiting the foregoing, the Contractor, pursuant to the delegation provided by this Section 5.1, has the authority:
- (a) to assign work tasks and activities to such Employees and to reassign such Employees to other work tasks and activities;
 - (b) to issue warnings to such Employees as described in Section 8.2; and
 - (c) to require such Employees to cease performing work, or to vacate the Site, or to report to BCIB's Representative for further action by BCIB, or all of the foregoing.

5.2 The Contractor will, with respect to the Employees provided to the Contractor by BCIB:

- (a) be solely responsible for the operation, direction and supervision of the Employees pursuant to the delegation of such responsibility in accordance with Section 5.1;
- (b) be solely responsible for the performance of the Work by the Employees;
- (c) promptly advise BCIB's Representative in writing of any requested changes in the status of any Employee, including any changes which may be necessitated by changes in work assignment, completion of work, lack of work or absence of the Employee from the Work for whatever reason;
- (d) give full consideration to a request from BCIB to transfer an Employee from the Contractor to another entity which has a contract with BCIB, recognizing that, pursuant to Article 7.600 of the Community Benefits Agreement, any such transfer will require the agreement of the appropriate Affiliated Union, the contractors involved, the Employee and BCIB;
- (e) promptly upon receipt of a written request from BCIB's Representative, provide BCIB's Representative with such information and documents relating to the Employees who are under the direction of the Contractor as BCIB may from time to time require;
- (f) comply with any instruction which may be given by BCIB or BCIB's Representative with respect to the Job Classifications of any Employee to be used with respect to any type of Work;
- (g) not use or seek to use any full-time Employee for anything other than performing the Work;
- (h) not do anything which could cause and will not direct a lockout of Employees;
- (i) recognize the Council's Representative and any Affiliated Union's representative and, provided reasonable written notice has been provided to the Contractor's Representative, provide such representatives access to all parts of the Site as may be necessary for the administration and application of the Community Benefits Agreement. All such representatives will be required to comply with the health and safety protocols for attendance on the Site as required by the applicable designated "prime contractor" under the *Workers Compensation Act* (British Columbia);
- (j) to the extent necessary to reflect Work-specific and Site-specific matters, provide orientation to Employees that is required by the Community Benefits Agreement and applicable law on the following topics:
 - (i) general matters, including, at a minimum, Site orientation and a discussion of housekeeping, environmental stewardship and cultural awareness; and

- (ii) occupational health and safety matters, including health and safety training and health and safety-related skills training; and
- (k) to the extent necessary and applicable to the Contractor or the performance of the Work, comply with and give effect to the results of negotiations and any rulings, interpretations, orders and decisions made in labour relations matters of which BCIB notifies the Contractor's Representative and that relate to the Employees.

5.3 BCIB will:

- (a) provide to each Employee to be provided to the Contractor or provided to the Contractor:
 - (i) two hours of onboarding training, which training will be provided prior to the Employee being dispatched to the Contractor;
 - (ii) a maximum of 10 hours of general and introductory safety training (the content of which training will be determined by BCIB in its sole and absolute discretion), which training BCIB will endeavour to provide as early as possible after an Employee is identified as being able to fulfill an Employee Request and prior to the Employee being dispatched to the Contractor. If, for whatever reason, an Employee does not receive such training prior to being dispatched to the Contractor, BCIB will provide such training to the Employee at the next following regularly scheduled training session which occurs on the third Wednesday of each month; and
 - (iii) for each supervisor (including any Employee who will be supervising other Employees for safety), a maximum of two days of supervisor training, which training will be provided prior to the Employee commencing work as a supervisor;
- (b) notify the Contractor in writing of any change under the Community Benefits Agreement, including changes to:
 - (i) initiation fees or dues, or of assessments by the Affiliated Unions;
 - (ii) steward appointments;
 - (iii) hourly wage rates and trade provisions; and
 - (iv) new or revised Job Classifications and associated wage rates and trade provisions;
- (c) acting in the best interests of the Project and to uphold the spirit and intent of the Community Benefits Agreement, enforce its rights under the Community Benefits Agreement, it being acknowledged that it is in the mutual best interest of BCIB and the Contractor to prevent and resolve strikes, lockouts, slowdowns or other interruptions in the orderly performance of the Work;

- (d) seek input from the Contractor regarding and will act in good faith in all labour relations matters which are relevant to the Contractor, including in grievance, arbitration and jurisdictional proceedings, including in the settlement of such proceedings, it being acknowledged that it is in the mutual best interest of BCIB and the Contractor to prevent strikes, lockouts, slowdowns or other interruptions in the orderly performance of the Work;
- (e) keep the Contractor's Representative informed of the results of any negotiations and any rulings, interpretations, orders and decisions made in labour relations matters which are relevant to the Contractor so that the Contractor may, to the extent necessary and applicable to the Contractor or the performance of the Work, comply with and give effect to any such results and rulings, interpretations, orders and decisions; and
- (f) provide the Contractor with any and all Employee information which is required by the Contractor in order for the Contractor to fulfill its duties and responsibilities at law.

5.4 The Contractor may implement an employee appreciation and/or recognition program to supplement the wages paid to Employees under the Community Benefits Agreement or to recognize the performance of Employees, provided that any such program is consented to in writing by BCIB, in its discretion, prior to its implementation and which program may require the approval or consent of the Council.

6.0 COMMUNITY BENEFITS AGREEMENT

- 6.1 A true copy of the Community Benefits Agreement has been made available to the Contractor. The Contractor represents and warrants it has full knowledge of and understands the provisions of the Community Benefits Agreement.
- 6.2 The Contractor acknowledges that for all purposes of this Agreement any reference to the Community Benefits Agreement will include all amendments to, supplements to or restatements of the Community Benefits Agreement, and will include all agreements entered into between BCIB and the Council as contemplated by Article 24 of the Community Benefits Agreement.
- 6.3 Unless otherwise expressly modified by the terms of this Agreement, the Contractor, in performing its obligations under this Agreement and to fulfill its obligations under the Construction Contract, will give effect to, and will observe, comply with and perform all terms and conditions of the Community Benefits Agreement that are specified to apply to the Contractor as a "Contractor" (as that term is used in the Community Benefits Agreement), as well as all consequent functions, obligations and responsibilities that are associated with such terms and conditions.
- 6.4 The Contractor, on behalf of BCIB, will give effect to, and will observe, comply with and perform all of BCIB's functions, obligations and responsibilities described in the provisions of the Community Benefits Agreement set out in Schedule 2, as well as all

consequent functions, obligations and responsibilities that are associated with such terms and conditions.

- 6.5 The Contractor will not act in any way which may obstruct, interfere with or impede BCIB's ability to observe, comply with and perform each and every provision of the Community Benefits Agreement.
- 6.6 The Contractor will perform such acts and do such things, including attending meetings, grievance, arbitration, court and other labour relations proceedings and Jurisdictional Assignment Plan hearings, whether or not with the Council, as BCIB may from time to time reasonably require in order to permit BCIB to perform its obligations under and to comply with the Community Benefits Agreement.
- 6.7 The Contractor acknowledges BCIB's authority to act on behalf of the Contractor in all matters related to the interpretation, application, administration or alleged violation of the Community Benefits Agreement, including BCIB's sole responsibility for discussing, resolving or arbitrating any grievance that may arise under the Community Benefits Agreement. BCIB will keep the Contractor informed of, involve the Contractor in and seek input from the Contractor regarding such matters, including in the settlement of such matters, to the extent those matters are relevant to the Contractor or the performance of the Work.

7.0 PAYROLL

- 7.1 Whenever required by BCIB, the Contractor will provide to BCIB payroll administration support by providing information reasonably requested by BCIB in the form and format required by BCIB. Such information will include recruitment information, hours of work schedules, timesheets, change of status requests and termination information, and any other information deemed necessary by BCIB. If requested by BCIB's Representative, the Contractor will review and approve the timesheets prior to submitting them to BCIB.
- 7.2 BCIB will prepare and deliver an invoice (each, a "**Payroll Invoice**") to the Contractor for each pay period. The Payroll Invoice will set out the amount owing by the Contractor to BCIB (the "**Payroll Amount**") in respect of:
 - (a) all amounts:
 - (i) to be paid to Employees provided to the Contractor by BCIB during the applicable pay period, including with respect to any statutory required paid leave or paid sick leave, any Community Benefits Agreement required paid leave or paid sick leave and any administrative paid time off during any investigation involving an Employee. Without limiting the generality of the foregoing, and for further clarity, the Contractor will be responsible for all amounts to be paid in respect of:
 - (A) such leave and time off whether or not such leave and time off is required to be provided and paid for by law (such as, in the case of

leave or time off required to be provided and paid for by law, laws deeming certain leave or time off to be time spent working or laws requiring Employees to be paid for certain leave or time off) and regardless of when or under which employer or contractor the Employee became eligible for any such leave or time off and regardless of the length of time the Employee has been provided to the Contractor; and

- (B) the time Employees are being trained (whether by BCIB (as described in Section 5.3(a) or elsewhere in this Agreement) or the Contractor as described in this Agreement, or otherwise trained by the Contractor); and
- (ii) required by the Community Benefits Agreement to be paid to third parties other than the Employees provided to the Contractor by BCIB based on the number of hours worked by the Employees provided to the Contractor by BCIB, such as the Funds described in Article 13.200 of the Community Benefits Agreement;
- (b) all applicable payroll taxes and assessments, including Employment Insurance, Canada Pension Plan, and Employer Health Tax; and
- (c) all other applicable taxes.

Promptly upon receipt of a Payroll Invoice, the Contractor will review the Payroll Invoice against the Contractor's records and advise BCIB's Representative of any necessary changes. If any changes to a Payroll Invoice are necessary, BCIB will endeavour to revise and reissue the Payroll Invoice in sufficient time to allow the Contractor to comply with Section 7.3. If there is not sufficient time, BCIB will capture the necessary changes on the next issued Payroll Invoice.

- 7.3 The Contractor will pay the Payroll Amount to the account specified in the Payroll Invoice no later than five Business Days after receipt of each initial Payroll Invoice.
- 7.4 If BCIB delivers Employee payroll cheques or payslips, or both, to the Contractor's Representative, the Contractor will promptly distribute such documents to the applicable Employees.
- 7.5 In the event that an Employee or other person or authority on behalf of such Employee was overpaid by BCIB, BCIB and the Contractor will cooperate to obtain repayment of such overpaid amount from such Employee or other person or authority who received such overpayment, and amounts recovered will be credited to the Contractor on the next applicable Payroll Invoice.
- 7.6 The Contractor will remit to WorkSafeBC the WorkSafeBC assessments calculated by the Contractor on each payroll, at the rate or rates which are applicable to the Contractor according to the classification and rates determined by WorkSafeBC. The rate or rates will

be applied to the applicable gross amounts earned in accordance with the *Workers Compensation Act* (British Columbia).

8.0 DISCIPLINE, DISMISSAL, REINSTATEMENT AND TERMINATION OF EMPLOYMENT

- 8.1 The Contractor acknowledges the provisions of Article 10 of the Community Benefits Agreement and agrees to give effect to, and to observe, comply with and perform the terms and conditions set out in that Article.
- 8.2 Notwithstanding anything to the contrary contained in this Agreement, the Contractor will be permitted to issue warnings to the Employees provided to the Contractor by BCIB. The Contractor, in issuing any warnings to Employees, will comply with the provisions of BCIB's Contractor Discipline Process Policy dated January 18, 2024, as may be amended, supplemented or restated from time to time. As soon as practicable after issuing a warning, the Contractor's Representative will notify BCIB's Representative in writing providing details of the warning.
- 8.3 Without limiting the Contractor's abilities as described in Section 5.1 and Section 8.2, if and whenever:
- (a) BCIB has knowledge of any conduct of an Employee who is under the direction of the Contractor which would justify discipline, dismissal or the taking of other corrective or rehabilitative action in respect of such Employee, whether it be for incompetence, insubordination, unreliability or otherwise; or
 - (b) the Contractor's Representative recommends to BCIB that an Employee be disciplined or dismissed or that other corrective or rehabilitative action be taken in respect of an Employee, whether it be for incompetence, insubordination, unreliability or otherwise,

BCIB will, in its sole and absolute discretion:

- (c) take no action where the circumstances do not support the application of discipline or the taking of other corrective or rehabilitative action; or
 - (d) promptly discipline or take such other corrective or rehabilitative action in respect of such Employee as the situation requires; or
 - (e)
 - (i) promptly remove such Employee from the direction of the Contractor; and
 - (ii) terminate such Employee's employment with BCIB in accordance with the provisions of the Community Benefits Agreement and applicable law.
- 8.4 In the event that any Employee whose employment has been terminated pursuant to Section 8.3 initiates a grievance under the Community Benefits Agreement, the Contractor and BCIB will make every effort to complete Stage I of the grievance procedure under the Community Benefits Agreement before the grieving Employee leaves the Site.

- 8.5 With respect to any Employee that has been removed, whether temporarily or permanently, from the direction of the Contractor pursuant to Section 8.3, if the Contractor's Representative requests in writing a replacement Employee, BCIB will, in accordance with the dispatch provisions of the Community Benefits Agreement, including Articles 8.200, 8.600 and 9.100 of the Community Benefits Agreement, and within three Business Days of such request, provide a replacement Employee to the Contractor, such replacement Employee to be in the same Job Classification as and with comparable qualifications, certifications, if any, and experience to the Employee being replaced.
- 8.6 BCIB will permit the Contractor to have an active role in supporting any investigation BCIB conducts into Employee conduct which may lead to BCIB taking action pursuant to Section 8.3 and in connection with a grievance initiated by an Employee provided to the Contractor by BCIB.
- 8.7 The Contractor will comply with the terms of any grievance award, and any order, judgment, direction or interpretation made under the procedures set forth in the Community Benefits Agreement, or by any arbitrator, court or other authority having jurisdiction over the Employees which in any way relates to the Employees provided to the Contractor by BCIB, including awards of the Jurisdictional Assignment Plan Umpire of Work Assignment as described in Article 6.103 of the Community Benefits Agreement, and including any reinstatement order, judgement or direction, to the extent that the Contractor's compliance is necessary in order to enable BCIB to comply with any such award, order, judgment, direction or interpretation.
- 8.8 The Contractor will provide to BCIB, at a location designated by BCIB, any information required by BCIB in a form and format required by BCIB to enable BCIB to complete end of employment documentation in respect of an Employee whose services have been terminated.

9.0 SUBCONTRACTING

- 9.1 The Contractor will notify BCIB's Representative in writing of the names of all of the Contractor's subcontractors (of any and all tiers) (each, a "**Subcontractor**") engaged to perform a portion of the Work at the Site, whether or not such Subcontractor requires Employees. Except in circumstances where two weeks prior notice is not commercially reasonable, the Contractor will provide such notice no less than two weeks prior to the Subcontractor commencing work at the Site.
- 9.2 The Contractor will not permit any Subcontractor to perform any work at the Site unless and until that Subcontractor:
- (a) confirms in writing to BCIB that the Subcontractor will not require any Employees to be provided by BCIB, and BCIB agrees with such determination;
 - (b) is granted a permit pursuant to Article 8.400 of the Community Benefits Agreement; or

- (c) executes a BCIB-Subcontractor Agreement pursuant to Section 9.3.
- 9.3 The Contractor will cause each Subcontractor (other than a Subcontractor described in Section 9.2(a) or Section 9.2(b)) (each, an “**Applicable Subcontractor**”) to enter into an agreement with BCIB (each, a “**BCIB-Subcontractor Agreement**”) to obtain from BCIB the Employees that the Applicable Subcontractor will require for the performance of its portion of the Work at the Site. Each BCIB-Subcontractor Agreement will be in the form attached to this Agreement at Schedule 3, subject only to variations in form required by BCIB, in its sole and absolute discretion, to suit the circumstances.
- 9.4 The Contractor will cause each Subcontractor described in Section 9.2(a) to acknowledge that all policies and procedures identified in Section 15.1 and described in Section 15.4 apply to all Employees working on the Project, and will ensure that all such Subcontractors’ employees and representatives working or attending at the Site are aware of the contents and obligations contained in such policies and procedures. Additionally, the Contractor will ensure that all such Subcontractors and all such Subcontractors’ employees and representatives working or attending at the Site will give effect to, and will observe and comply with, including fully cooperating in any investigation conducted by BCIB pursuant to any such policies and procedures, the terms and conditions of each such policy and procedure to the extent necessary such that the terms, conditions and spirit of each such policy and procedure are adhered to. The Contractor will be fully responsible and liable for all such Subcontractors’ and for all such Subcontractors’ employees’ and representatives’ breaches and violations of such policies and procedures.
- 9.5 BCIB will provide a written report to the Contractor promptly after each Payroll Amount becomes due and payable identifying all Applicable Subcontractors who have failed to pay BCIB as required by the applicable BCIB-Subcontractor Agreements, together with the amount that remains outstanding for each such Applicable Subcontractor.
- 9.6 Without duplication of recovery under Section 12.0, if, under any BCIB-Subcontractor Agreement, an Applicable Subcontractor fails to pay any amount required to be paid to BCIB beyond any period permitted for the payment of such amount as set out in the BCIB-Subcontractor Agreement, then, upon written notice to the Contractor, the Contractor will pay such amount to BCIB, or cause BCIB to be paid such amount, no later than five Business Days after receipt of such notice.

10.0 PERMITTEES

- 10.1 The Contractor may request that permits be granted to Subcontractors or employees (who would ordinarily be “Employees” for the purposes of the Community Benefits Agreement), or both, as described in Article 8.400 of the Community Benefits Agreement.
- 10.2 For any permit request, the Contractor will be responsible for completing a permit request form (in the form required by the Council), and will submit the completed permit request form along with the required fee made payable to the Council to BCIB’s Representative for review. Provided the permit request form and associated fee comply with the provisions of Article 8.400 of the Community Benefits Agreement, BCIB will promptly sign the

permit request form and submit it and the fee to the Council. If BCIB refuses to sign the permit request form, then BCIB's Representative will promptly return the form and fee to the Contractor's Representative with reasons for BCIB's refusal to sign the form.

- 10.3 BCIB will, to the extent necessary, arrange meetings between the Contractor and the Council to resolve any issues with respect to the granting of permits, however, the Contractor remains fully responsible for satisfying the conditions required for the granting of a permit.
- 10.4 The Contractor acknowledges the provisions of Articles 8.403 and 8.409 of the Community Benefits Agreement and agrees to give effect to, and to observe, comply with and perform the terms and conditions set out in those Articles.

11.0 BCIB COSTS

- 11.1 In addition to paying the Payroll Amount, the Contractor will pay to BCIB the following costs and expenses reasonably incurred by BCIB ("**BCIB Costs**") in connection with or with respect to the Employees provided to the Contractor by BCIB for performing the Work, without duplication of items included in the Payroll Amount:
- (a) the fees and disbursements charged to BCIB by those lawyers, accountants, consultants, witnesses or other professionals or experts retained by BCIB at the request of the Contractor;
 - (b) the amount of any damages, salary, severance pay, expenses, costs, penalties, fines or other monies which BCIB is ordered to pay by any arbitrator, court or other authority having jurisdiction, or which BCIB reasonably agrees to pay, in respect of any Employee(s), with respect to grievance, arbitration, court or other labour relations proceedings initiated by any Employee(s), the Council or any Affiliated Union which relates to working conditions or worker camp conditions, the Contractor's operation, direction and supervision of the Employee(s) or the performance of the Work, including the costs incurred by, including third party fees and disbursements charged to, BCIB in investigating the circumstances which led to such proceedings;
 - (c) the costs incurred by, including third party fees and disbursements charged to, BCIB in investigating (whether in relation to the Site or any worker camp) complaints made by an Employee(s) relating to working conditions or worker camp conditions, the Contractor's operation, direction and supervision of the Employee(s), the performance of the Work or any breach or violation of any of the BCIB policies and procedures which are applicable to the Site or worker camp, whether or not any such complaint is made pursuant to BCIB policies and procedures, but only in circumstances where the investigation determines that the Contractor or the Contractor's employee(s) or representative(s) or a Subcontractor(s) described in Section 9.2(a) or any such Subcontractor's employee(s) or representative(s) has breached or violated the Community Benefits Agreement, any applicable BCIB policy and procedure or applicable law;

- (d) notwithstanding anything to the contrary in the Workplace Drug and Alcohol Policy and Procedures, the costs of all Substance Testing (as defined in the Workplace Drug and Alcohol Policy and Procedures), including the costs of all pre-access testing whether the Employee fails to attend for a pre-access test or tests positive or negative on such test, conducted under the Workplace Drug and Alcohol Policy and Procedures;
- (e) the amount of any medical doctor's charges or other charges paid by BCIB in connection with the provision of food handling certificates, underground certificates, audio certificates or any other certificate relating to the fitness or qualifications of any Employee;
- (f) the costs of providing training to an Employee(s) selected by BCIB in consultation with the Contractor in the event that BCIB is unable to provide an Employee(s) to the Contractor with the qualifications requested by the Contractor, and, in addition, the costs of providing to any Employee any other special training or skills upgrading which may be requested or otherwise approved by the Contractor;
- (g) the costs incurred by, including third party fees and disbursements charged to, BCIB in investigating any accident, incident or occurrence requiring an investigation under the *Workers Compensation Act* (British Columbia) or otherwise required by law;
- (h) the costs of any items or services required to be provided to or for any Employee by the provisions of the Community Benefits Agreement which are the responsibility of the Contractor to provide pursuant to the provisions of this Agreement, but which were not provided by the Contractor, including the costs of providing orientation, training, tools, safety equipment, clothing and transportation;
- (i) the costs of any items or services required to be provided by the Contractor pursuant to the provisions of this Agreement, but which were not provided by the Contractor, including the costs of transportation, providing training to Employees, the Contractor's employees and representatives working or attending at the Site and others working or attending at the Site and providing information, instruction, training and supervision to "supervisors" (as that term is used in Part 2 of the *Workers Compensation Act* (British Columbia));
- (j) in the event that BCIB requests an amount from the Owner under the provisions of Section 12.0, the sum of \$1,000.00 for each such request as compensation to BCIB for its costs of administering such request to the Owner. For clarity, BCIB will not charge the Contractor this fee if BCIB has already charged an equivalent fee to an Applicable Subcontractor pursuant to a BCIB-Subcontractor Agreement in respect of the same delinquent amount;
- (k) any WorkSafeBC levies, assessments, reassessments, fines, penalties or other amounts ordered to be paid by BCIB or assessed against BCIB under the *Workers Compensation Act* (British Columbia), including by a court of competent

jurisdiction, but which are in respect specifically to the Contractor and which are not payroll WorkSafeBC assessments as described in Section 7.6; and

- (l) the Contractor's *pro rata* share of any WorkSafeBC levies, assessments, reassessments, fines, penalties or other amounts ordered to be paid by BCIB or assessed against BCIB under the *Workers Compensation Act* (British Columbia), including by a court of competent jurisdiction, which are applied on a Project-wide basis and which are not payroll WorkSafeBC assessments as described in Section 7.6. Such levies, assessments, reassessments, fines, penalties and other amounts will be shared amongst all entities having a contract with BCIB in respect of the Project and be calculated based on the total number of hours worked by the Employees provided to each such entity up to the date of such levy, assessment, reassessment, penalty or other amount.
- 11.2 BCIB will, from time to time but not more frequently than monthly, prepare and deliver an invoice (each, a "**Cost Invoice**") to the Contractor setting out the amount of BCIB Costs owing by the Contractor to BCIB for the relevant time period. The Contractor will pay the amount of such BCIB Costs plus all applicable taxes to the account specified in the Cost Invoice no later than ten Business Days after receipt of the Cost Invoice. The Contractor will pay the full amount set out in the Cost Invoice without prejudice to the Contractor's rights of dispute under Section 22.0.
- 11.3 The Contractor or its authorized agent may, at the Contractor's discretion and expense, at any time and from time to time during the time BCIB is required to keep records pursuant to applicable law, during normal business hours and with reasonable notice and without undue disturbance of BCIB's business operations, enter upon BCIB's premises and, subject to solicitor-client privilege, audit the records of BCIB which relate in any way to BCIB Costs. BCIB will make all such records available for examination and copying by the Contractor at BCIB's premises.

12.0 PAYMENT BY OWNER UPON A FAILURE TO PAY

- 12.1 The Contractor acknowledges that if at any time the Contractor or any Applicable Subcontractor fails to pay any amount required to be paid to BCIB under this Agreement or under a BCIB-Subcontractor Agreement, as the case may be, beyond any period permitted for the payment of such amount as set out in this Agreement or in the BCIB-Subcontractor Agreement, as the case may be, BCIB may advise the Owner in writing and may request payment by the Owner of such amount.
- 12.2 In the event that the Owner pays BCIB the amount requested by BCIB under the provisions of Section 12.1, and provided that the Contractor compensates BCIB for its administration costs as described in Section 11.1(j) in accordance with Section 11.2, then the Contractor will not be in default of its obligation to pay such amount under this Agreement. For clarity, the payment by the Owner of an amount requested by BCIB will be deemed to satisfy the Contractor's obligation to pay that same amount to BCIB.

13.0 **OCCUPATIONAL HEALTH AND SAFETY**

13.1 The parties acknowledge that each has obligations under applicable law as an “employer” for the health and safety of the Employees provided to the Contractor by BCIB. For the purposes of clearly defining and establishing respective responsibilities without duplication of any overlapping responsibilities, and for the purposes of achieving a consistent, proactive and preventative health and safety culture, and implementing effective health and safety programs, the following will apply with respect to occupational health and safety:

- (a) The Contractor will comply with all applicable law relating to occupational health and safety, including:
 - (i) the *Workers Compensation Act* (British Columbia); and
 - (ii) the *Mines Act* (British Columbia).
- (b) The Contractor will be responsible for and will fulfill all of its obligations as an “employer” (as that term is used in Part 2 of the *Workers Compensation Act* (British Columbia)) pursuant to Part 2 of the *Workers Compensation Act* (British Columbia), including as such obligations relate to the Employees provided to the Contractor by BCIB.
- (c) The Contractor will, as an “employer” (as that term is used in Part 2 of the *Workers Compensation Act* (British Columbia)), ensure that:
 - (i) any Employee provided to the Contractor by BCIB that will be acting in the capacity of “supervisor” (as that term is used in Part 2 of the *Workers Compensation Act* (British Columbia)); and
 - (ii) any person not provided to the Contractor by BCIB but who will be acting in the capacity of “supervisor” (as that term is used in Part 2 of the *Workers Compensation Act* (British Columbia)) of any Employees,

has the information, instruction, training and supervision necessary to effectively discharge their responsibilities, such information, instruction and training to be provided by the Contractor prior to such person commencing work as a “supervisor”. In addition, the Contractor will ensure such persons are provided with any updated and additional information, instruction, training and supervision necessary to ensure that the person has the necessary supervisory skills and knowledge to discharge their responsibilities at all times during the performance of the Work. Where the Contractor fails to meet the requirements of this Section 13.1(c) within a reasonable time after receipt of written notice from BCIB’s Representative to provide such information, instruction, training and supervision, the same may be provided by or on behalf of BCIB, and the Contractor will facilitate such training to occur as and when required by BCIB and the Contractor will reimburse BCIB in accordance with Section 11.1(i).

- (d) The Contractor acknowledges receipt of the Health and Safety Program. The Contractor will, as part of and not in substitution for any health and safety obligations that the Contractor must meet under the Construction Contract and applicable law, including the *Workers Compensation Act* (British Columbia), implement the Health and Safety Program in order to achieve or exceed the objectives set out in the Health and Safety Program. For certainty, and notwithstanding anything to the contrary contained in this Agreement, the Contractor acknowledges and agrees that no Employees will be provided to the Contractor by BCIB unless and until the Health and Safety Program has properly been implemented as determined by BCIB, acting reasonably.
- (e) Each party acknowledges that the Health and Safety Program and the Contractor's health and safety program, policies and work procedures will in no way fetter the authority and responsibilities of the applicable designated "prime contractor" under the *Workers Compensation Act* (British Columbia), and each of the parties will recognize the authority of such "prime contractor" and will comply with such "prime contractor's" health and safety program, policies, systems, processes and procedures.
- (f) The parties will, within ten Business Days after the Effective Date, establish a system for ongoing communication and liaison for the purpose of ensuring the timely exchange of information that is necessary for the effective coordination and implementation of the Health and Safety Program and the Contractor's health and safety program, policies and work procedures, and the ongoing health and safety of all Employees provided to the Contractor by BCIB. The parties will meet as required by either of the parties to review such system and make whatever adjustments to such system as are necessary to ensure that the intent of this provision is put into practice during the Project.
- (g) The Contractor will, in respect of the Employees provided to the Contractor by BCIB, fulfill all health and safety-related obligations required by the Community Benefits Agreement, and the Contractor will, for certainty:
 - (i) provide to all such Employees such safety equipment and clothing as required by the Community Benefits Agreement, the Health and Safety Program and applicable law, including the *Workers Compensation Act* (British Columbia) and the *Mines Act* (British Columbia); and
 - (ii) when such an Employee becomes ill or is injured in an accident not covered by WorkSafeBC while being lodged in supplied accommodation and the first aid attendant or a doctor recommends off-Site treatment or return to the Employee's Point of Hire (as defined in the Community Benefits Agreement), provide transportation to off-Site treatment or to the Point of Hire and back to the Site, in each case as applicable, as well as provide transportation for a sick or injured Employee's tools to the Point of Hire whether or not such Employee is being lodged in supplied accommodation.

Where the Contractor fails to meet the requirements of this Section 13.1(g), the same may be provided by or on behalf of BCIB and the Contractor will reimburse BCIB in accordance with Section 11.1(h).

- (h) Where the Contractor fails to meet the requirements of Section 5.2(j) within a reasonable time after receipt of written notice from BCIB's Representative to provide such orientation, the same may be provided by or on behalf of BCIB and the Contractor will reimburse BCIB in accordance with Section 11.1(h).
- (i) The Contractor will, provided reasonable written notice has been provided to the Contractor's Representative and to the applicable designated "prime contractor" under the *Workers Compensation Act* (British Columbia), provide BCIB representatives full access to all parts of the Site and the activities of the Contractor on the Site. All BCIB representatives will be required to comply with the health and safety protocols for attendance on the Site as required by the applicable designated "prime contractor" under the *Workers Compensation Act* (British Columbia).
- (j) Each party will fully cooperate with the other party in any activity performed by the other party to ensure both party's fulfilment of the health and safety obligations under this Agreement, including inspections, investigations, assessments, audits and attending and participating in initiatives such as Joint Health and Safety Committee meetings and tool box talks.
- (k) Prior to commencing performance of the Work at the Site, and at any time on BCIB's Representative's request, the Contractor will deliver to BCIB's Representative a statement from WorkSafeBC that the Contractor is registered and in good standing.
- (l) The Contractor will provide to BCIB's Representative:
 - (i) a copy of the Contractor's safety management plan (or equivalent document) prepared in accordance with the Construction Contract at the same time as such document is submitted to the Owner pursuant to the Construction Contract for review by BCIB. If there is no such submission requirement in the Construction Contract, the Contractor will nevertheless provide to BCIB's Representative a copy of the Contractor's safety management plan (or equivalent document) for review by BCIB. The Contractor will also provide to BCIB's Representative a copy of any and all updates or revisions to such plan for review by BCIB;
 - (ii) notice of any worker compensation claims that are made against the Contractor by the Employees provided to the Contractor by BCIB;
 - (iii) copies of any safety investigation reports which relate to the Employees provided to the Contractor by BCIB, and will keep BCIB's Representative informed of the status and progress of all safety investigations which relate

to the Employees provided to the Contractor by BCIB, and will consult and collaborate with BCIB, and take into account BCIB's input, with respect to any such safety investigations; and

- (iv) copies of all correspondence and forms, including claim forms, papers and reports, received by or sent to Governmental Authorities concerning any worker compensation claims that are made against the Contractor by the Employees provided to the Contractor by BCIB and any other health and safety matters on the Site or at a worker camp which relate to the Employees provided to the Contractor by BCIB.
- (m) For the purpose of this Agreement only, the Contractor acknowledges and agrees that any claims made by Employees provided to the Contractor by BCIB under and pursuant to the *Workers Compensation Act* (British Columbia) will be reported to WorkSafeBC under the Contractor's account with WorkSafeBC and will be considered and reflected in and may therefore adversely affect the experience rating (for purposes of assessments made under the *Workers Compensation Act* (British Columbia)) of the Contractor and not of BCIB. BCIB will not be liable to the Contractor, and the Contractor will have no claim against BCIB, for any loss, cost, damage, assessments, reassessments, penalties or expense suffered or incurred by the Contractor by reason of any claim brought under the *Workers Compensation Act* (British Columbia) by any such Employee, including for any increase in the Contractor's experience rating under the *Workers Compensation Act* (British Columbia) arising as a result of any such claim.
- (n) For the purpose of this Agreement only, BCIB hereby gives and grants to the Contractor authority to act on behalf of BCIB in all matters related to WorkSafeBC claims management and in all adjudications of WorkSafeBC claims, as such relate to the Employees provided to the Contractor by BCIB, and the Contractor undertakes to provide all such claims management and adjudications of claims. For certainty, in all such matters involving Employees provided to the Contractor by BCIB, the Contractor will keep BCIB informed of the status and progress of such matters, and will consult and collaborate with BCIB, and take into account BCIB's input, prior to resolving any such matters with WorkSafeBC.

14.0 GENERAL TRAINING AND APPRENTICESHIPS

- 14.1 The Contractor will provide, at its sole cost and expense, any and all on-the-job skills development and specialized task-specific training beyond that provided under a general trade curriculum.
- 14.2 The Contractor acknowledges receipt of the Apprenticeship and Training Targets. The Contractor will, as part of and not in substitution for any apprenticeship and training obligations that the Contractor must meet under the Construction Contract, seek from BCIB, pursuant to Employee Requests, a sufficient number and type of apprentices that if provided by BCIB would achieve or exceed the objectives set out in the Apprenticeship and Training Targets.

15.0 POLICIES AND PROCEDURES**15.1** The Contractor acknowledges receipt of:

- (a) the Workplace Discrimination and Harassment Policy and Procedures;
- (b) the Workplace Drug and Alcohol Policy and Procedures; and
- (c) the BCIB Policies and Procedures,

and acknowledges that all such policies and procedures, as each appears as of the Effective Date and as each may be amended, supplemented or restated from time to time, apply with respect to the Employees provided to the Contractor by BCIB. BCIB will act reasonably, taking into account what a prudent employer would consider in the then current circumstances, with regard to any amendments, supplements or restatements of such policies and procedures.

15.2 The Contractor will, as part of and not in substitution for any workplace discrimination and harassment obligations and workplace drug and alcohol obligations that the Contractor must meet under the Construction Contract and applicable law, including the *Workers Compensation Act* (British Columbia), implement the Workplace Discrimination and Harassment Policy and Procedures and the Workplace Drug and Alcohol Policy and Procedures in order to achieve or exceed the objectives set out in such policies and procedures, and will give effect to, and will observe, comply with and perform the terms and conditions of such policies and procedures such that the terms, conditions and spirit of such policies and procedures are adhered to. Without limiting the generality of the foregoing and notwithstanding anything to the contrary in the Workplace Drug and Alcohol Policy and Procedures, the Contractor will provide round-trip transportation for any Employee provided to the Contractor by BCIB to submit to Substance Testing. Each party will fully cooperate with the other party in any investigation conducted pursuant to such policies and procedures.

15.3 Without limiting the generality of Section 15.2:

- (a) the Contractor will ensure that all of the Contractor's employees and representatives working or attending at the Site are aware of, and are trained with respect to, the contents and obligations contained in the Workplace Discrimination and Harassment Policy and Procedures, and that all such employees and representatives will give effect to, and will observe, comply with, including fully cooperating in any investigation conducted by BCIB pursuant to such policy and procedures, and perform the terms and conditions of such policy and procedures to the extent necessary such that the terms, conditions and spirit of such policy and procedures are adhered to;
- (b) the Contractor will ensure that all of the Contractor's employees and representatives working or attending at the Site are aware of, and are trained with respect to, the contents and obligations contained in the Workplace Drug and Alcohol Policy and

Procedures, and that all such employees and representatives will give effect to, and will observe, comply with, including fully cooperating in any investigation conducted by BCIB pursuant to such policy and procedures, and perform the terms and conditions of such policy and procedures to the extent necessary such that the terms, conditions and spirit of such policy and procedures are adhered to. In addition, the Contractor will ensure that all persons acting in the capacity of “supervisor” (as that term is used in Part 2 of the *Workers Compensation Act* (British Columbia)) have the necessary information, instruction and training to effectively support the proper implementation of the Workplace Drug and Alcohol Policy and Procedures; and

- (c) the Contractor will provide:
 - (i) such content awareness and training to such Contractor’s employees and representatives immediately upon them commencing work or attending at the Site; and
 - (ii) such information, instruction and training to any person who will act as a “supervisor” of Employees prior to such person commencing to so act. In addition, the Contractor will ensure such persons are provided with any updated and additional information, instruction and training necessary to ensure that the person has the necessary supervisory skills and knowledge to discharge their responsibilities at all times during the performance of the Work.

Where the Contractor fails to meet the requirements of this Section 15.3 within a reasonable time after receipt of written notice from BCIB’s Representative to provide such content awareness, information, instruction and training, the same may be provided by or on behalf of BCIB, and the Contractor will facilitate such training to occur as and when required by BCIB and the Contractor will reimburse BCIB in accordance with Section 11.1(i).

- 15.4 In addition to the policies and procedures identified in Section 15.1, the Contractor acknowledges and agrees that BCIB may implement other policies and procedures that will apply with respect to the Employees provided to the Contractor by BCIB in circumstances where such other policies and procedures (or the contents of such) are required to comply with applicable law. BCIB will provide written notice to the Contractor of the implementation of such policies and procedures and will provide the Contractor with a copy of any such policies and procedures. Such policies and procedures may be amended, supplemented or restated from time to time as required to comply with applicable law. The Contractor will ensure that all of the Contractor’s employees and representatives working or attending at the Site are aware of, and are trained with respect to, the contents and obligations contained in such policies and procedures, including the BCIB Policies and Procedures.
- 15.5 With respect to the BCIB policies and procedures described in Section 15.4, including the BCIB Policies and Procedures, the Contractor, in performing its obligations under this

Agreement, will give effect to, and will observe, comply with, including fully cooperating in any investigation conducted by BCIB pursuant to any such policies and procedures, and perform the terms and conditions of each such policy and procedure to the extent necessary such that the terms, conditions and spirit of each such policy and procedure are adhered to. Additionally, the Contractor will ensure that all of the Contractor's employees and representatives working or attending at the Site will give effect to, and will observe, comply with, including fully cooperating in any investigation conducted by BCIB pursuant to any such policies and procedures, and perform the terms and conditions of each such policy and procedure to the extent necessary such that the terms, conditions and spirit of each such policy and procedure are adhered to.

- 15.6 Without limiting the generality of Section 15.2 or Section 15.5, if any of the policies and procedures referred to in Section 15.1 or Section 15.4 place obligations on the Contractor as a "Contractor" (as that term may be used in such policies and procedures), including through a delegation of responsibility by BCIB pursuant to such policies and procedures, then the Contractor will give effect to, and will observe, comply with and perform all terms and conditions of those policies and procedures that are specified to apply to or which become applicable to the Contractor as a "Contractor" (as that term may be used in such policies and procedures), as well as all consequent functions, obligations and responsibilities that are associated with such terms and conditions.
- 15.7 BCIB will process and investigate any complaint made under any BCIB policy and procedure by or against an Employee provided to the Contractor by BCIB in accordance with such policy and procedures, and the outcome will be binding on the Contractor, and the Contractor will comply with such outcome. To the extent the outcome applies to those for whom the Contractor may in law be responsible, the Contractor will ensure that those persons or entities also comply with the outcome.
- 15.8 The Contractor will fully cooperate in any investigation conducted by BCIB which is required by law.

16.0 INDEMNIFICATION

- 16.1 The Contractor will indemnify and save harmless BCIB, the Owner and their respective officers, directors, servants (including BCIB's Representative), agents and shareholders (collectively, the "**BCIB Indemnified Parties**"), from and against any and all losses, liabilities, damages, fines, penalties, costs, expenses and claims of any and every kind whatsoever which at any time or from time to time may be paid, incurred or asserted by or against the BCIB Indemnified Parties, or any one of them, for, with respect to, or as a result of:
- (a) any act or omission of the Contractor, the Contractor's Representative, or any other person or entity not subject to or otherwise excluded from coverage of the Community Benefits Agreement but who is engaged, directly or indirectly, by the Contractor to perform a portion of the Work, including with respect to any breach or violation of any of the BCIB policies and procedures which are applicable to the Site or worker camp;

- (b) any act or omission of an Employee which occurs while such Employee is under the direction of the Contractor, including with respect to any breach or violation of any of the BCIB policies and procedures which are applicable to the Site or worker camp, whether or not such losses, liabilities, damages, fines, penalties, costs, expenses or claims arise by reason of the employment relationship existing between BCIB and such Employee;
- (c) any failure by the Contractor to perform its obligations under this Agreement, including any failure to give effect to, observe, comply with or perform the terms and conditions of the Community Benefits Agreement, or the functions, obligations or responsibilities of the Community Benefits Agreement, that have been expressly delegated or allocated to the Contractor by this Agreement and any failure (including any failure of the Contractor's employees and representatives working or attending at the Site and any failure of a Subcontractor described in Section 9.2(a) and any failure of such Subcontractors' employees and representatives working or attending at the Site) to give effect to, observe, comply with or perform the terms and conditions of any of the BCIB policies and procedures which are applicable to the Site or worker camp; and
- (d) any failure by the Contractor to perform its obligations under applicable law.

For certainty, the obligations of the Contractor set forth in this Section 16.1 shall not apply to the extent that the losses, liabilities, damages, fines, penalties, costs, expenses and claims for which indemnity is being sought were caused by the negligence or willful misconduct of any of the BCIB Indemnified Parties.

- 16.2 BCIB will indemnify and save harmless the Contractor, its officers, directors, servants (including the Contractor's Representative), agents and shareholders (collectively, the "**Contractor Indemnified Parties**"), from and against any and all losses, liabilities, damages, fines, penalties, costs, expenses and claims of any and every kind whatsoever which at any time or from time to time may be paid, incurred or asserted by or against the Contractor Indemnified Parties, or any one of them, to the extent resulting from the negligent act or negligent omission of the BCIB Indemnified Parties in connection only with BCIB's relationship as employer of the Employees provided to the Contractor by BCIB.

For certainty, the obligations of BCIB set forth in this Section 16.2 shall not apply to the extent that the losses, liabilities, damages, fines, penalties, costs, expenses and claims for which indemnity is being sought were caused by the negligence or willful misconduct of any of the Contractor Indemnified Parties.

- 16.3 The obligations of indemnification set forth in Section 16.0 will survive termination of this Agreement and will continue in full force and effect.

17.0 CONFIDENTIALITY AND DISCLOSURE OF INFORMATION

- 17.1 Subject to Section 17.3, each party will keep confidential all matters respecting the Employees provided to the Contractor by BCIB and all commercial, financial and legal issues relating to or arising out of this Agreement and will not disclose such information, except as follows:
- (a) with the prior written consent of BCIB's Representative or the Contractor's Representative, as the case may be, which consent may be arbitrarily withheld;
 - (b) in the case of BCIB, BCIB may disclose information regarding the Contractor's non-payment of BCIB to the Owner, in order for BCIB to seek recovery of such non-payment;
 - (c) in the case of the Contractor, the Contractor may disclose information respecting the Employees provided to the Contractor by BCIB to the Owner but only to the extent the information to be disclosed is specifically required by the Owner pursuant to the Construction Contract;
 - (d) in strict confidence to the party's professional advisors; or
 - (e) as otherwise required by applicable law.
- 17.2 The obligations of confidentiality described in Section 17.1 will not apply to:
- (a) information that is, or subsequently becomes, publicly available other than through a breach of this Agreement or through a breach of a confidentiality agreement which another entity has entered into concerning such confidential information;
 - (b) information which the disclosing party already possessed before commencing to participate in the Project;
 - (c) information which is rightfully received from a third party without breach of any obligation of confidence by such third party; or
 - (d) information which is independently developed without the use of such confidential information.
- 17.3 Notwithstanding anything to the contrary contained in this Agreement, the Contractor acknowledges and agrees that BCIB may disclose any and all information created or obtained as a result of this Agreement or in respect of the Contractor performing its obligations under this Agreement, or both, including the existence and terms of this Agreement and any BCIB-Subcontractor Agreement, workforce reports identifying the Contractor, the nature and number of permits requested and issued as described in Section 10.0, the Contractor's fulfillment of its obligations pursuant to Sections 13.0, 14.0 and 15.0, the Contractor's fulfillment and compliance with the functions, obligations and responsibilities described in Sections 6.3 and 6.4 and any other Records, to the Owner, and to any provincial ministry, other Governmental Authority or educational institution, which

requires or requests the information in relation to the Project or to permit BCIB to comply with applicable law.

18.0 FREEDOM OF INFORMATION AND PRIVACY PROTECTION

18.1 The Contractor acknowledges that:

- (a) it is aware that FOIPPA applies to this Agreement and to all documents and records relating to this Agreement;
- (b) BCIB is required to fully comply with FOIPPA; and
- (c) no action taken or required to be taken by BCIB for the purpose of complying with FOIPPA shall be considered a breach of any obligation under this Agreement.

18.2 To the extent the Contractor has access to, whether direct, indirect or incidental, or the opportunity to access, any Personal Information, the Contractor will inform all of its personnel and Subcontractors having access to any Personal Information in the course of performing the Work of the confidential nature of the Personal Information and will ensure that its personnel and Subcontractors maintain the confidentiality of the Personal Information in accordance with the terms of Schedule 5. BCIB and the Contractor will have the respective rights and obligations applicable to each of them as provided in Schedule 5, and Section 17.0 will not apply in respect of such Personal Information.

19.0 CONTRACTOR'S RECORDS

19.1 The Contractor will record and maintain within British Columbia during the term of this Agreement, and for so as long as required by applicable law, full, true, proper and accurate records relating to the Employees provided to the Contractor by BCIB (collectively, the "**Records**"), including:

- (a) records of the time worked by Employees;
- (b) records relating to the Contractor's fulfillment of its obligations pursuant to Sections 13.0, 14.0 and 15.0; and
- (c) records relating to the Contractor's fulfillment and compliance with the functions, obligations and responsibilities described in Sections 6.3 and 6.4,

utilizing such recording system and in such form as BCIB may from time to time require. Promptly upon the reasonable written request of BCIB's Representative, the Contractor will deliver such Records to BCIB at BCIB's expense.

19.2 The Contractor will advise BCIB's Representative of the location of the Records upon the written request of BCIB.

19.3 Upon expiration of the retention period(s) described in Section 19.1, and prior to disposing of the applicable Records, the Contractor will notify BCIB in writing as to what the

Contractor intends to do with such Records. BCIB may, within 40 days of receipt of such notice, require the Contractor to deliver to BCIB, at BCIB's sole cost and expense, all such Records.

- 19.4 BCIB or its authorized agent may, at BCIB's discretion and expense, at any time and from time to time during the time the Contractor is required to keep the Records under this Agreement, during normal business hours and with reasonable notice and without undue disturbance of the Contractor's business operations, enter upon the Contractor's premises and audit the Records and any other records of the Contractor which relate in any way to the Employees provided to the Contractor by BCIB. The Contractor will make all such records available for examination and copying by BCIB at the Contractor's premises.

20.0 TERMINATION

- 20.1 This Agreement will continue in effect for so long as the Contractor requires Employees to perform the Work at the Site.
- 20.2 The obligations of the Contractor to pay any amounts which are payable to BCIB under this Agreement will survive termination of this Agreement and will continue in full force and effect.

21.0 DISCLAIMERS

- 21.1 BCIB does not warrant nor guarantee to the Contractor that BCIB will provide to the Contractor any particular quality of Employee or that BCIB will provide all or any of the Employees for which the Contractor may submit Employee Requests.
- 21.2 Neither party will be responsible or liable (whether in contract, tort (including negligence), for breach of statutory duty, pursuant to equitable principles or under any other theory of law) to the other party, and neither party will have a claim against the other party, for any economic loss, loss of anticipated revenue, overhead or profit, loss of production, business or contracts, loss by reason of shutdowns, slowdowns, non-operation or increased costs of construction, manufacturing or operation, or loss of business reputation or opportunities, in connection with this Agreement or the Project and whether or not such losses or costs were foreseeable even if the relevant party was advised of the possibility of them. For certainty, nothing in this Section 21.2 will apply to, or be interpreted so as to preclude, or otherwise limit recovery of liquidated damages specified as payable to BCIB pursuant to this Agreement, if any.
- 21.3 Notwithstanding any other provision of this Agreement, including Section 16.2, but without limiting the other provisions of Section 21.0, BCIB will not be responsible or liable (whether in contract, tort (including negligence), for breach of statutory duty, pursuant to equitable principles or under any other theory of law) to the Contractor, and the Contractor will have no claim against BCIB, for:
- (a) any loss, cost, damage or expense suffered or incurred by the Contractor by reason of or in respect of the Contractor being delayed in performing the Work or having

to re-perform the Work, whether such delay or re-performance is caused by work stoppage, work slowdown, labour shortages, lack of appropriately qualified or skilled labour or otherwise; or

- (b) the operation, direction or supervision of Employees provided to the Contractor by BCIB nor for the performance of the Work by such Employees; or
- (c) paying any of the Contractor's costs of providing Employees with room or board or commissary facilities or commissary supplies whether or not such costs are recovered or are recoverable by the Contractor from Employees; or
- (d) any loss, cost, damage or expense suffered or incurred by the Contractor by reason of or in respect of the implementation of any additional BCIB policies and procedures, or any change, modification or revision to any BCIB policy and procedure or to the Community Benefits Agreement. Without limiting the generality of the foregoing, the Contractor will not have any right to or claim for any payment from BCIB in respect of any such implementation or any such change, modification or revision, that results in or has as a consequence an increase in the expenditures the Contractor must make in order to comply with and fulfill the terms and conditions of this Agreement (as compared to the expenditures the Contractor anticipated making as of the Effective Date); or
- (e) any loss, cost, damage or expense suffered or incurred by the Contractor by reason of or in respect of any change in law. Without limiting the generality of the foregoing, the Contractor will not have any right to or claim for any payment from BCIB in respect of any such change that results in or has as a consequence an increase in the expenditures the Contractor must make in order to comply with and fulfill the terms and conditions of this Agreement (as compared to the expenditures the Contractor anticipated making as of the Effective Date), including with respect to any change in law that necessitates changes to any BCIB policy and procedure or the implementation of additional BCIB policies and procedures.

The Contractor acknowledges and agrees that its sole remedies, if any, in respect of any such foregoing matters lie against the Owner under the Construction Contract.

- 21.4 Except as specifically provided under the Construction Contract (and then solely with respect to the rights and obligations as between the Owner and the Contractor), nothing done in connection with, in respect of, as a result of or in furtherance of this Agreement or omitted to be done will be cause for a justifiable delay by the Contractor under the Construction Contract or a justifiable increase in the Contractor's price under the Construction Contract, and the Contractor will not have any right to or claim for an extension of time under the Construction Contract nor any right to or claim for any payment or additional payment from BCIB or the Owner as a result of such matters.
- 21.5 The Contractor will be fully responsible for all costs and expenses incurred by it in performing its obligations under this Agreement and in providing assistance or input to and in cooperating, consulting or collaborating with BCIB as contemplated by this Agreement

and in participating in any formal process set out in the Community Benefits Agreement, and including for all costs and expenses incurred by the Contractor with respect to grievances initiated by the Contractor. The Contractor will not be entitled to, nor will BCIB be liable to the Contractor for, any compensation or reimbursement of such costs and expenses in respect of the foregoing, such compensation and reimbursement will be deemed to be fully addressed pursuant to the Construction Contract.

22.0 DISPUTE RESOLUTION

- 22.1 The parties agree that, both during and after the term of this Agreement, each of them will make *bona fide* efforts to resolve any disputes arising between them by amicable negotiations.
- 22.2 Either party may require the dispute be mediated by a skilled commercial mediator chosen jointly by the parties. If a mediator is appointed pursuant to this Section 22.2, the mediated negotiations will be terminated ten Business Days after the appointment unless the parties agree otherwise.
- 22.3 Any unresolved dispute arising out of or in connection with this Agreement or in respect of any defined legal relationship associated with it or derived from it, will be referred to and finally resolved by arbitration under the Domestic Arbitration Rules of the Vancouver International Arbitration Centre. Any arbitration will be conducted in Vancouver, British Columbia and heard by a single arbitrator chosen jointly by the parties, or in the absence of mutual agreement appointed by a court of competent jurisdiction.
- 22.4 If the parties agree, any unresolved disputes referred to arbitration under this Agreement may be:
- (a) held in abeyance until completion of the Work; and
 - (b) consolidated into a single arbitration.
- 22.5 Notwithstanding any dispute, the parties will continue to fulfill their obligations pursuant to this Agreement, without prejudice to either party's rights relating to the dispute.

23.0 NOTICES

- 23.1 Unless otherwise expressly required to be given to BCIB's Representative or the Contractor's Representative pursuant to this Agreement, any notice or communication required or permitted to be given under this Agreement will be in writing and will be considered to have been sufficiently given when delivered by hand or by email to the address or email address of the applicable party set out below:
- (a) if to BCIB:

BC Infrastructure Benefits Inc.
Suite 1050 – 89 West Georgia Street
Vancouver, BC V6B 0N8

Attn: Gareth Bowley, Director, Workforce Operations

Email: gbowley@bcib.ca

with a copy to:

Email: contractrep@bcib.ca;

(b) if to the Contractor:

Emil Anderson Construction (EAC) Inc.
300 – 966 Crowley Avenue
Kelowna, BC V1Y 0L1

Attn: Michael Lines

Email: miles@emilanderson.ca; or

(c) to such other address or email address as either party may, from time to time, designate in the manner set out above.

23.2 Any such notice or communication will be considered to have been received:

- (a) if delivered by hand or by a courier service during business hours on a Business Day, when delivered, and if not delivered during business hours, upon the commencement of business hours on the next Business Day; and
- (b) if sent by email during business hours 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 email or by hand delivery, acknowledged to the notifying party in writing 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.

24.0 ASSIGNMENT RESTRICTED

24.1 This Agreement and the rights, duties and obligations of the Contractor under this Agreement will not be assigned, transferred, encumbered or otherwise alienated in whole or in part by the Contractor without the prior written consent of BCIB, which consent may be arbitrarily withheld, and any attempt by the Contractor to assign, transfer, encumber or otherwise alienate its rights, duties or obligations under this Agreement without such consent will be of no effect. Notwithstanding the above, BCIB will provide its consent to any assignment, transfer, encumbrance or other alienation of this Agreement to the extent necessary to give effect to any permitted assignment, transfer, encumbrance or other alienation of the Construction Contract.

25.0 MISCELLANEOUS

- 25.1 Schedules. The following Schedules are incorporated into this Agreement by reference and are deemed to be fully included as part of this Agreement and to be an integral part of this Agreement:
- (a) Schedule 1 – Definitions and Interpretation;
 - (b) Schedule 2 – Functions, Obligations and Responsibilities;
 - (c) Schedule 3 – Form of BCIB-Subcontractor Agreement;
 - (d) Schedule 4 – BCIB Policies and Procedures; and
 - (e) Schedule 5 – Privacy Protection.
- 25.2 No Agency. The Contractor acknowledges and agrees that BCIB is entering into this Agreement for itself and on its own behalf as principal and that BCIB is not an agent of the Owner or the Government of British Columbia for purposes of this Agreement or for purposes of the Construction Contract or otherwise.
- 25.3 Third Party Beneficiary. The provisions of Section 21.4 are intended for the benefit of the Owner and will be enforceable by the Owner and are in addition to, and not in substitution for, any other rights that the Owner may have by contract or otherwise. For clarity, BCIB will also be able to enforce the provisions of Section 21.4.
- 25.4 Independent Contractor. The Contractor is an independent contractor in the performance of the Work and nothing in this Agreement will constitute the Contractor as an agent, partner, joint venture or employee of BCIB for any purpose.
- 25.5 Currency. All payments to be made pursuant to this Agreement will be made in lawful money of Canada.
- 25.6 Public Announcements. The Contractor will not make any public releases, announcements, other disclosure or issue advertising pertaining to this Agreement or the Community Benefits Agreement without the prior written approval of BCIB, approval of which may be arbitrarily withheld. The Contractor will refer any media enquiries to BCIB's Representative, but will not otherwise respond to media enquiries.
- 25.7 Further Assurances. Each of the parties hereby covenants and agrees to execute any further and other documents and instruments and to do any further and other things that may be reasonably necessary to implement and carry out the intent of this Agreement.
- 25.8 Governing Law. This Agreement will be governed by and construed in accordance with the laws of the Province of British Columbia which will be deemed to be the proper law of this Agreement.

- 25.9 Survival. All rights, obligations and remedies of the parties which accrued prior to the termination of this Agreement, or which are by their nature continuing, or which by their express terms survive, and all other provisions necessary for the interpretation or enforcement of such rights, obligations and remedies, will survive termination of this Agreement. Without limiting the generality of the foregoing, the provisions of Sections 5.2(a), 5.2(b), 6.7, 7.3, 7.6, 9.4, 9.6, 11.0, 12.2, 13.1(l)(ii), 13.1(l)(iii), 13.1(l)(iv), 13.1(m), 13.1(n), 15.2, 15.3(a), 15.3(b), 15.5, 15.7, 15.8, 16.0, 17.0, 18.0, 19.0, 20.2, 21.0, 22.0, 25.2, 25.3, 25.4, 25.6, 25.7, 25.8, 25.9, 25.10, 25.11, 25.12 and 25.13, including each other provision necessary for the interpretation or enforcement of such provisions, will survive termination of this Agreement and will continue in full force and effect.
- 25.10 Modification and Waiver. No amendment or waiver of this Agreement or any provision of this Agreement will be binding unless executed in writing by both the parties. No waiver of any provision of this Agreement will be deemed or will constitute a waiver of any other provision nor will any such waiver constitute a continuing waiver unless otherwise expressly provided in writing signed by each of the parties.
- 25.11 Enurement. This Agreement will enure to the benefit of and be binding upon the parties and their respective heirs, personal representatives, successors and permitted assigns.
- 25.12 Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the subject matter of this Agreement, expressing superseding all prior communications, understandings and agreements (both oral and written) between the parties with respect to all matters contained in this Agreement. There are no representations, warranties, terms, conditions, undertakings or collateral agreements express, implied or statutory, between the parties other than as expressly set forth in this Agreement.
- 25.13 Joint and Several.
- (a) If the Contractor is comprised of more than one legal entity, the obligations and liabilities of the Contractor under this Agreement shall be the obligations and liabilities of each legal entity comprising the Contractor, jointly and severally with each other such legal entity.
 - (b) If the Contractor is a general partnership, the obligations and liabilities of the Contractor under this Agreement shall be the obligations and liabilities of the Contractor and each of its partners, jointly and severally with each other.

[Section 25.14 and the signature page follows]

25.14 Counterparts. This Agreement may be executed by counterparts, each of which will be deemed to be an original and all of which taken together will be deemed to constitute one and the same instrument. Delivery by email in portable document format (PDF) of an executed counterpart of this Agreement is as effective as delivery of an originally executed counterpart of this Agreement.

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

BC INFRASTRUCTURE BENEFITS INC.

Per: _____
Name:
Title:

EMIL ANDERSON CONSTRUCTION (EAC) INC.

Per: _____
Name:
Title:

**SCHEDULE 1
DEFINITIONS AND INTERPRETATION**

1. Definitions. In this Agreement, except as otherwise expressly provided or unless the context otherwise requires:
- (a) “**Affiliated Unions**” has the meaning set out in the Community Benefits Agreement;
 - (b) “**Agreement**” means this BCIB-Contractor Agreement, as it may be amended, supplemented or restated from time to time;
 - (c) “**Applicable Subcontractor**” has the meaning set out in Section 9.3;
 - (d) “**Apprenticeship and Training Targets**” means the apprenticeship and training targets established by BCIB dated November 15, 2023, as may be amended, supplemented or restated from time to time;
 - (e) “**BCIB**” has the meaning set out on the first page of this Agreement;
 - (f) “**BCIB Costs**” has the meaning set out in Section 11.1;
 - (g) “**BCIB Indemnified Parties**” has the meaning set out in Section 16.1;
 - (h) “**BCIB Policies and Procedures**” means those BCIB policies and procedures described in Schedule 4;
 - (i) “**BCIB-Subcontractor Agreement**” has the meaning set out in Section 9.3;
 - (j) “**BCIB’s Representative**” has the meaning set out in Section 2.1;
 - (k) “**Business Day**” means a day other than a Saturday, Sunday or Recognized Holiday (as described in Article 16.100 of the Community Benefits Agreement) on the days observed in British Columbia;
 - (l) “**CBA Name Hires**” has the meaning set out in Section 4.3(b);
 - (m) “**Community Benefits Agreement**” has the meaning set out in Recital A;
 - (n) “**Contractor**” has the meaning set out on the first page of this Agreement;
 - (o) “**Contractor Indemnified Parties**” has the meaning set out in Section 16.2;
 - (p) “**Contractor’s Representative**” has the meaning set out in Section 2.2;
 - (q) “**Construction Contract**” means the agreement between the Owner and the Contractor dated on or about the date of this Agreement pursuant to which the Contractor will undertake the Work;

- (r) **“Cost Invoice”** has the meaning set out in Section 11.2;
- (s) **“Council”** has the meaning set out in Recital A;
- (t) **“Council’s Representative”** means the person designated from time to time by the Council who will represent the Council in the administration and application of the Community Benefits Agreement;
- (u) **“Effective Date”** means the effective date of this Agreement as set out on the first page of this Agreement;
- (v) **“Employees”** has the meaning set out in the Community Benefits Agreement, but for clarity, does not include employees of Subcontractors described in Section 9.2(a) or Section 9.2(b) or employees granted a permit pursuant to Article 8.400 of the Community Benefits Agreement;
- (w) **“Employee Request”** has the meaning set out in Section 4.3;
- (x) **“FOIPPA”** means the *Freedom of Information and Protection of Privacy Act* (British Columbia);
- (y) **“Governmental Authority”** means any federal, provincial, territorial, regional, municipal or local authority, quasi-governmental authority, court, government, or self-regulatory organization, commission, board, tribunal, organization, or any regulatory, administrative or other agency, or any political or other subdivision, department or branch of any of the foregoing, having jurisdiction in any way over or in respect of any aspect of the performance of the Construction Contract, this Agreement or the Project;
- (z) **“Health and Safety Program”** means the health and safety program established by BCIB dated March 12, 2020, as may be amended, supplemented or restated from time to time;
- (aa) **“Job Classifications”** means those job classifications set out in the applicable “Trade Sections” of the Community Benefits Agreement;
- (bb) **“Owner”** means His Majesty the King in right of the Province of British Columbia as represented by the Minister of Transportation and Infrastructure;
- (cc) **“Payroll Amount”** has the meaning set out in Section 7.2;
- (dd) **“Payroll Invoice”** has the meaning set out in Section 7.2;
- (ee) **“Personal Information”** means recorded information about an identifiable individual, other than contact information (as defined in FOIPPA), collected, created or otherwise acquired by the Contractor as a result of this Agreement or any previous agreement between BCIB and the Contractor dealing with the same subject matter as this Agreement;

- (ff) **“Project”** means the Trans Canada Highway 1 – Jumping Creek to MacDonald Snowshed Project;
- (gg) **“Records”** has the meaning set out in Section 19.1;
- (hh) **“Site”** means “Site” as defined in the Construction Contract, and will be deemed to include the sites of all facilities purpose built for the Project;
- (ii) **“Subcontractor”** has the meaning set out in Section 9.1;
- (jj) **“Work”** means **“Work”** as defined in the Construction Contract;
- (kk) **“Workplace Discrimination and Harassment Policy and Procedures”** means the workplace discrimination and harassment policy and procedures established by BCIB dated December 8, 2022, as may be amended, supplemented or restated from time to time; and
- (ll) **“Workplace Drug and Alcohol Policy and Procedures”** means the Construction Industry of British Columbia Substance Abuse Testing and Treatment Program Policy (see a copy at: [Canadian Drug Testing \(clra-bc.com\)](http://clra-bc.com)), as may be amended, supplemented or restated from time to time, including pursuant to any interpretation bulletins issued in respect of such policy.

Any words or phrases defined elsewhere in this Agreement will have the particular meaning assigned to such words or phrases.

2. Interpretation. For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:
 - (a) the provision of headings and the division of this Agreement into Sections, paragraphs and other subdivisions are for convenience only and will not define or limit the scope, extent or intent of this Agreement or affect the interpretation of this Agreement or any provision of this Agreement;
 - (b) any reference to a statute will include such statute and its corresponding regulations, together with all amendments made to such statute and regulations and in force from time to time, and any statute or regulation that may be passed which has the effect of amending, supplementing or superseding the statute referred to or such statute’s corresponding regulations;
 - (c) any reference to the *Mines Act* (British Columbia) will include the Health, Safety and Reclamation Code for Mines in British Columbia, together with all amendments made to such code and in force from time to time, and any instrument established pursuant to the *Mines Act* (British Columbia) which has the effect of amending, supplementing or superseding the Health, Safety and Reclamation Code for Mines in British Columbia;

- (d) any reference to an entity will include and will be deemed to be a reference to any entity that is a successor to such entity;
- (e) words in the singular include the plural, and vice-versa, wherever the context requires;
- (f) references in this Agreement to a Recital, a Section, a paragraph, a Schedule or other subdivision are to the corresponding Recital, Section, paragraph, Schedule or other subdivision of this Agreement, unless otherwise indicated;
- (g) where a reference is made to a “day”, “week”, “month” or “year”, the reference is to the calendar period;
- (h) the word “including” is deemed to be followed by “without limitation”;
- (i) if the time for doing an act falls or expires on a day that is not a Business Day, the time for doing such act will be extended to the next Business Day;
- (j) in the calculation of time, the first day will be excluded and the last day included; and
- (k) the parties confirm that they each have obtained independent legal advice, or elected not to obtain such advice, and accordingly agree that any rule of construction to the effect that any ambiguity is to be resolved against the drafting party will not be applicable in the interpretation of this Agreement.

SCHEDULE 2
FUNCTIONS, OBLIGATIONS AND RESPONSIBILITIES

The following are the functions, obligations and responsibilities referred to in Section 6.4 of this Agreement:

1. General:

The Contractor will provide to Employees:

- (a) all food and beverages; and
- (b) all room and board and living out allowances, as applicable,

as required by the Community Benefits Agreement.

2. Master Section:

CBA Article	Function, Obligation or Responsibility
14.501	The Employer may establish a flex work week schedule which allows for a work week starting on a day other than Monday (for example: Tuesday to Saturday).
17.300	An Employee who takes a leave of absence or vacation of one (1) week or more may be requested by the Contractor or camp management to vacate the assigned room for that period. If the Employee is so requested, the Employee shall vacate the room and move all belongings out of the room and shall receive one (1) hour's straight time pay at the regular rate. If an Employee wishes to store belongings, a lockup shall be provided.
17.402	Where the accommodation is a hotel/motel the Employee may be required to vacate the room and remove all belongings out of the room. If an Employee wishes to store belongings, a lockup shall be provided.
19.203	The Employer agrees to transport a sick or injured Employee's tools to the Employee's Point of Hire at the Employer's expense.
23.100	On commercial and institutional projects, heated lunchroom and women's and men's change rooms shall be provided for Employees for drying clothes, and changing clothes. The lunch and change rooms shall have tables, and benches, and provision for drying clothes. Such lunch and change rooms shall have windows and venting with adequate lighting and provision for continuous heat twenty-four (24) hours a day. The lunch and change rooms will be cleaned on each working shift and kept cleared of working materials and other construction paraphernalia. Lunchrooms shall provide enough room for all the workers to be seated at a table for lunch.

CBA Article	Function, Obligation or Responsibility
23.302	Chemical or flush toilets shall be provided for both women and men from the commencement of work on all jobs. Toilet paper shall be provided and facilities shall be cleaned on each working shift.
23.304	Where clean-up facilities are not provided and in mechanical and trade shops, hand cleanser and paper towels shall be provided at no cost to the Employee.
23.401	When working in a fabrication shop, proper ventilation shall be provided. In the event of a dispute, WorkSafeBC Regulations shall prevail.
23.402	When working in confined spaces with fibreglass or toxic fumes or smoke, proper ventilation and/or proper respiratory equipment shall be provided.
23.700	Telephone service shall be made available to all Employees at all times for incoming or outgoing emergency purposes and incoming emergency messages shall be relayed immediately.

3. Interior Road Building Addendum, if applicable to the Project:

CBA Article	Function, Obligation or Responsibility
General re Trade Sections – 1(b)	Where the Employer requires a specific Employee to upgrade or renew a certification or license, or perform a private procedure skills test on Site, unless the applicable Trade Sections indicates another party will pay, the Employer will pay the applicable costs and provide the time necessary.

4. Lower Mainland Road Building Addendum, if applicable to the Project:

CBA Article	Function, Obligation or Responsibility
General re Trade Sections – 1(b)	Where the Employer requires a specific Employee to upgrade or renew a certification or license, or perform a private procedure skills test on Site, unless the applicable Trade Sections indicates another party will pay, the Employer will pay the applicable costs and provide the time necessary.

5. Trade Sections:

CBA Article	Function, Obligation or Responsibility	Additional Contractor Obligation
BM.414	<u>Handicapped Workers</u> The Employer agrees, subject to prior consultation with the Affiliated Union, to employ any member on work which suits their physical ability and which is acceptable to the member (this shall include but not be limited to tool crib). Those who have suffered injury or disability in the	The Contractor will support and cooperate with BCIB to encourage the use

CBA Article	Function, Obligation or Responsibility	Additional Contractor Obligation
	trade should be employed when their capabilities are considered suitable, provided workers have the approval of the Workers' Compensation Board.	of Handicapped Workers.
FL.420	<u>Older Workers</u> An Employee incapacitated by age or accident may be permitted to be employed at less than the regular scale of wages at a rate of pay mutually agreed upon by the Employee, the Employer, and the Affiliated Union. The conditions of employment shall be amended so as to enable such Employees to continue with their employment.	The Contractor will cooperate with BCIB in determining the reduced scale of wages and conditions of employment.
OPR.412	All Mechanics, Welders, Servicepersons, Drill Doctors, Steel Sharpeners, Vehicle Body Painters, and Mechanics and Welder Apprentices who request coveralls shall have these supplied and cleaned by the Employer. There shall be one change a week available in the Employee's proper size. Employees are expected to take reasonable care of coveralls supplied. In the event that an Employee does not return the coveralls supplied by the Employer, the Employer shall charge the cost of same to the Employee and deduct this cost from any monies owing to the Employee. When requested, coveralls shall be supplied on a temporary basis to Employees who assist on work as described above, or where the Employer and the Union mutually agree that coveralls are required. Employees entitled to receive coveralls as provided herein may obtain an additional change of coveralls in any one week providing the condition of the coveralls requires a change. The shop Foreperson shall use discretion in authorizing the additional change.	If such items are not returned, the Contractor will advise BCIB and BCIB will deduct the applicable amount of the next Payroll Invoice. The Contractor will provide input to BCIB to assist in the determination of whether coveralls are required.

SCHEDULE 3
FORM OF BCIB-SUBCONTRACTOR AGREEMENT
(see attached)

**BCIB-SUBCONTRACTOR AGREEMENT
TRANS CANADA HIGHWAY 1 – JUMPING CREEK TO
MACDONALD SNOWSHED PROJECT**

BC INFRASTRUCTURE BENEFITS INC.

AND

[SUBCONTRACTOR]

[INSERT DATE]

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BCIB-SUBCONTRACTOR AGREEMENT

THIS BCIB-SUBCONTRACTOR AGREEMENT is made effective as of the <*> day of <*>, 202<*>

BETWEEN:

BC INFRASTRUCTURE BENEFITS INC., a company incorporated under the laws of British Columbia having its head office at Suite 1050 – 89 West Georgia Street, Vancouver, BC V6B 0N8 (“**BCIB**”)

AND:

<*>, having a mailing address of <*> (the “**Subcontractor**”)

WHEREAS:

- A. BCIB has entered into a Community Benefits Agreement dated the 17th day of July, 2018, as amended and restated on March 1, 2022, as may be further amended, supplemented or restated from time to time (the “**Community Benefits Agreement**”) with the Allied Infrastructure and Related Construction Council of British Columbia (the “**Council**”) which governs the terms and conditions of employment for Employees in respect of the Project;
- B. BCIB has entered into an agreement with the Owner made and dated for reference as of the 23rd day of May, 2019, as may be amended, supplemented or restated from time to time, whereby BCIB has, subject to the Community Benefits Agreement, the sole and exclusive right to provide Employees to contractors who will perform work or provide services at the Site in respect of the Project;
- C. The Owner and the Contractor have entered into the Construction Contract;
- D. BCIB and the Contractor have entered into the BCIB-Contractor Agreement, which, among other things, requires the Contractor to cause the Subcontractor to enter into this Agreement with BCIB;
- E. The Subcontractor requires Employees in order to fulfill its obligations under the Subcontract; and
- F. The parties wish to enter into a formal contract for the provision of such Employees to the Subcontractor by BCIB.

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the sum of One Hundred Dollars (\$100.00) now paid by each of the Subcontractor and BCIB to the other (the receipt of which sum by the Subcontractor and by BCIB is hereby irrevocably acknowledged) and of the mutual promises and agreements contained in this Agreement, the parties agree as follows:

1.0 DEFINITIONS AND INTERPRETATION

- 1.1 In this Agreement, except as otherwise expressly provided or unless the context otherwise requires, capitalized terms have the meanings set out in Schedule 1. This Agreement will be interpreted and construed in accordance with the provisions set out in Schedule 1.

2.0 REPRESENTATIVES

- 2.1 Within two Business Days after the Effective Date, and thereafter from time to time as BCIB deems necessary, BCIB will designate one person (“**BCIB’s Representative**”), and an alternate in the event BCIB’s Representative is absent, to be BCIB’s single point of contact for the Subcontractor with respect to this Agreement. BCIB will, upon designating such person, advise the Subcontractor in writing of the name, address, telephone number and email address of BCIB’s Representative.
- 2.2 Within two Business Days after the Effective Date, and thereafter from time to time as the Subcontractor deems necessary, the Subcontractor will designate one person (the “**Subcontractor’s Representative**”), and an alternate in the event the Subcontractor’s Representative is absent, to be the Subcontractor’s single point of contact for BCIB with respect to this Agreement. The Subcontractor will, upon designating such person, advise BCIB in writing of the name, address, telephone number and email address of the Subcontractor’s Representative. If, at any time, BCIB’s Representative, acting reasonably, objects to the Subcontractor’s Representative, then the Subcontractor will replace the Subcontractor’s Representative with a person acceptable to BCIB’s Representative.
- 2.3 As soon as practicable after the Effective Date, and thereafter from time to time as may be necessary, BCIB’s Representative will advise the Subcontractor’s Representative of the name, address, telephone number and email address of the Council’s Representative.
- 2.4 The Subcontractor acknowledges that BCIB will have a presence on the construction Site. The parties will, within ten Business Days after the Effective Date, establish a system for ongoing communication and liaison for the purpose of ensuring the timely exchange of information that is necessary for the effective coordination and implementation of this Agreement, including regular, active and open communication with respect to the Subcontractor’s requirements for Employees (broken down by trade), information the Subcontractor already has in its possession with respect to individuals who may be available to become Employees and information regarding BCIB’s sourcing of Employees and its anticipated ability to fulfill Employee Requests. The parties will meet as required by either of the parties to review such system and make whatever adjustments to such system as are necessary to ensure that the intent of this provision is put into practice during the Project.

3.0 OBLIGATION TO OBTAIN EMPLOYEES

- 3.1 The Subcontractor will obtain from BCIB all Employees required by the Subcontractor to fulfill its obligations under the Subcontract.
- 3.2 Notwithstanding the powers expressly delegated by this Agreement to the Subcontractor by BCIB, all Employees provided to the Subcontractor by BCIB will be employed by BCIB, and BCIB will retain, with respect to all such Employees, the exclusive rights as employer in all aspects of labour relations and in all aspects of the employment relationship. The Subcontractor will not in any way derogate or attempt to derogate from the rights and authority of BCIB as employer.

4.0 OBTAINING EMPLOYEES

- 4.1 The Subcontractor will participate in any pre-job conference(s) arranged by BCIB, and will present, after collaboration with BCIB and the Council, details of the Subcontract Work, including schedule, work type and anticipated numbers and Job Classifications of Employees.
- 4.2 Notwithstanding any Subcontract Work schedule submission requirements under the Subcontract, including with respect to submission timelines, and notwithstanding any requirement under the Subcontract for any approval or acceptance of any such submitted Subcontract Work schedule, the Subcontractor will provide the following forecasts:
- (a) *Initial Forecast.* The Subcontractor will, no later than five Business Days after the Effective Date, provide to BCIB's Representative:
 - (i) in the form and format provided by BCIB, the Subcontractor's best estimate of the anticipated Employees that will be required by the Subcontractor and all of the Applicable Sub-subcontractors for the first six months of the Subcontract Work, giving estimates of headcounts by trade, Job Classifications and skill-level of Employees that will be required, including any specific certifications, training or qualifications required, on a month-by-month basis; and
 - (ii) the Subcontractor's then current overall Subcontract Work schedule showing the planned order of activities from commencement of the Subcontract Work to the end of the Subcontract Work.
 - (b) *Three Month Forecast.* The Subcontractor will, on the first Business Day of each month starting with the second month after the Effective Date, provide to BCIB's Representative:
 - (i) in the form and format provided by BCIB, the Subcontractor's best estimate of the anticipated Employees that will be required by the Subcontractor and all of the Applicable Sub-subcontractors for the then current month and the next following two months of the Subcontract Work, giving estimates of headcounts by trade, Job Classifications and

skill-level of Employees that will be required, including any specific certifications, training or qualifications required, on a month-by-month basis; and

- (ii) the Subcontractor's then current overall Subcontract Work schedule showing the planned order of activities from commencement of the Subcontract Work to the end of the Subcontract Work.
- (c) The parties agree that the forecasts provided pursuant to Section 4.2(a) and Section 4.2(b) are non-binding and are estimates only, but that such forecasts are expected to closely align to the actual Employee Requests provided by the Subcontractor, and that each such forecast will be used by BCIB to source an appropriate workforce for the Project in collaboration with the Subcontractor.

4.3 The Subcontractor will, from time to time during the term of this Agreement but in any event not later than 30 days prior to the date that the Subcontractor requires certain Employees, provide to BCIB's Representative a request for Employees (each, an **"Employee Request"**) in the form and format required by BCIB, and setting out the following information:

- (a) the number and Job Classifications of Employees required by the Subcontractor;
- (b) the 'name hires' requested by the Subcontractor (the **"CBA Name Hires"**);
- (c) the names of prospective Employees the Subcontractor wishes to name request from the information provided pursuant to Section 4.8 or from other information that may be available to the Subcontractor;
- (d) the number and type (level) of apprentices requested by the Subcontractor;
- (e) the date upon which each such Employee will be required to commence working under the direction of the Subcontractor;
- (f) the Subcontractor's best estimate of the time period each such Employee will be required by the Subcontractor;
- (g) the details of any special experience or technical or other qualifications required in respect of any particular Employee;
- (h) the intended work assignments in compliance with Article 6 of the Community Benefits Agreement; and
- (i) such other relevant information with respect to potential Employees as BCIB's Representative may reasonably request (and which the Subcontractor possesses and is legally permitted to disclose), or that the Subcontractor may consider beneficial, in order to enable BCIB to provide the Employees required by the Subcontractor.

- 4.4 BCIB will, in accordance with the dispatch provisions of the Community Benefits Agreement, including Articles 8.200, 8.600 and 9.100 of the Community Benefits Agreement, and subject to the minimum time period described in Section 4.6 where applicable, use reasonable efforts to provide the Subcontractor with Employees to perform the Subcontract Work in the numbers and Job Classifications set out in the Employee Request submitted pursuant to Section 4.3 to the extent that BCIB is itself able to obtain Employees in such numbers and Job Classifications.
- 4.5 Unless the CBA Name Hires have already been provided or committed by BCIB to another contractor, or they are unavailable due to circumstances beyond BCIB's control, in each case at the time of the Employee Request, BCIB will provide the CBA Name Hires to the Subcontractor in accordance with the dispatch provisions of the Community Benefits Agreement.
- 4.6 If, due to unforeseen circumstances related to the timing of the performance of the Subcontract Work or a component of the Subcontract Work, the Subcontractor is not able to provide an Employee Request which provides for the 30 day time period described in Section 4.3, the Subcontractor acknowledges that, despite any request for Employees to be provided by a certain date, BCIB requires a minimum of three Business Days prior written notice of the date upon which the Subcontractor requires an Employee or Employees to commence performance of the Subcontract Work in order to be able to provide the requested Employee(s).
- 4.7 In the case of:
- (a) an Employee Request submitted in accordance with Section 4.3, BCIB will advise the Subcontractor as soon as practicable but in any event not later than nine days prior to the date that the Subcontractor requires Employees as set out in a particular Employee Request if BCIB is unable to fulfill such particular Employee Request; and
 - (b) an Employee Request submitted pursuant to Section 4.6, BCIB will advise the Subcontractor as soon as practicable if BCIB is unable to fulfill such particular Employee Request.

If BCIB advises the Subcontractor that BCIB is unable to fulfill a particular Employee Request, the Subcontractor will provide to BCIB's Representative information already in the possession of the Subcontractor with respect to individuals who may be available to become Employees, who are suitable for performing the Subcontract Work and who, if hired by BCIB as Employees, could allow BCIB to fulfill the Employee Request. Unless such identified individuals refuse to become Employees, or have already been provided or committed by BCIB to another contractor, or such individuals are unavailable due to circumstances beyond BCIB's control, in each of the latter two cases at the time the information is provided to BCIB's Representative, BCIB will provide such identified individuals to the Subcontractor. Any failure to so advise the Subcontractor, or any indication that BCIB will be able to or unable to fulfill a particular Employee Request, does not derogate from or negate any of the provisions of Section 21.0.

- 4.8 BCIB will promptly provide to the Subcontractor's Representative information that BCIB:
- (a) has in its possession which relates to work task or activity accommodations that are to be made in respect of the Employees provided to the Subcontractor by BCIB; and
 - (b) receives from the Affiliated Unions with respect to prospective Employees that may be available to work on the Project for the purpose of the Subcontractor name requesting prospective Employees from the Affiliated Unions.
- 4.9 The Subcontractor will, if and when requested by BCIB's Representative from time to time, provide one representative of the Subcontractor to assist in the interviewing of individuals who are proposed to be hired by BCIB for subsequent assignment to the Subcontractor.
- 4.10 BCIB will not be responsible for keeping the Subcontractor informed as to employee requests made by Applicable Sub-subcontractors to BCIB, nor the circumstances with respect to the fulfillment of such requests.

5.0 EMPLOYEE RELATIONS

- 5.1 To the extent necessary to enable the Subcontractor to perform its obligations under this Agreement, BCIB does hereby delegate to the Subcontractor, consistent with the provisions of Article 7.400 of the Community Benefits Agreement, BCIB's right to operate, direct and supervise on a day-to-day basis the Employees provided to the Subcontractor by BCIB. For certainty, but without limiting the foregoing, the Subcontractor, pursuant to the delegation provided by this Section 5.1, has the authority:
- (a) to assign work tasks and activities to such Employees and to reassign such Employees to other work tasks and activities;
 - (b) to issue warnings to such Employees as described in Section 8.2; and
 - (c) to require such Employees to cease performing work, or to vacate the Site, or to report to BCIB's Representative for further action by BCIB, or all of the foregoing.
- 5.2 The Subcontractor will, with respect to the Employees provided to the Subcontractor by BCIB:
- (a) be solely responsible for the operation, direction and supervision of the Employees pursuant to the delegation of such responsibility in accordance with Section 5.1;
 - (b) be solely responsible for the performance of the Subcontract Work by the Employees;

- (c) promptly advise BCIB's Representative in writing of any requested changes in the status of any Employee, including any changes which may be necessitated by changes in work assignment, completion of work, lack of work or absence of the Employee from the Subcontract Work for whatever reason;
- (d) give full consideration to a request from BCIB to transfer an Employee from the Subcontractor to another entity which has a contract with BCIB, recognizing that, pursuant to Article 7.600 of the Community Benefits Agreement, any such transfer will require the agreement of the appropriate Affiliated Union, the contractors involved, the Employee and BCIB;
- (e) promptly upon receipt of a written request from BCIB's Representative, provide BCIB's Representative with such information and documents relating to the Employees who are under the direction of the Subcontractor as BCIB may from time to time require;
- (f) comply with any instruction which may be given by BCIB or BCIB's Representative with respect to the Job Classifications of any Employee to be used with respect to any type of Subcontract Work;
- (g) not use or seek to use any full-time Employee for anything other than performing the Subcontract Work;
- (h) not do anything which could cause and will not direct a lockout of Employees;
- (i) recognize the Council's Representative and any Affiliated Union's representative and, provided reasonable written notice has been provided to the Subcontractor's Representative, provide such representatives access to all parts of the Site as may be necessary for the administration and application of the Community Benefits Agreement. All such representatives will be required to comply with the health and safety protocols for attendance on the Site as required by the applicable designated "prime contractor" under the *Workers Compensation Act* (British Columbia);
- (j) to the extent necessary to reflect Subcontract Work-specific and Site-specific matters, provide orientation to Employees that is required by the Community Benefits Agreement and applicable law on the following topics:
 - (i) general matters, including, at a minimum, Site orientation and a discussion of housekeeping, environmental stewardship and cultural awareness; and
 - (ii) occupational health and safety matters, including health and safety training and health and safety-related skills training; and
- (k) to the extent necessary and applicable to the Subcontractor or the performance of the Subcontract Work, comply with and give effect to the results of negotiations and any rulings, interpretations, orders and decisions made in labour relations

matters of which BCIB notifies the Subcontractor's Representative and that relate to the Employees.

5.3 BCIB will:

- (a) provide to each Employee to be provided to the Subcontractor or provided to the Subcontractor:
 - (i) two hours of onboarding training, which training will be provided prior to the Employee being dispatched to the Subcontractor;
 - (ii) a maximum of 10 hours of general and introductory safety training (the content of which training will be determined by BCIB in its sole and absolute discretion), which training BCIB will endeavour to provide as early as possible after an Employee is identified as being able to fulfill an Employee Request and prior to the Employee being dispatched to the Subcontractor. If, for whatever reason, an Employee does not receive such training prior to being dispatched to the Subcontractor, BCIB will provide such training to the Employee at the next following regularly scheduled training session which occurs on the third Wednesday of each month; and
 - (iii) for each supervisor (including any Employee who will be supervising other Employees for safety), a maximum of two days of supervisor training, which training will be provided prior to the Employee commencing work as a supervisor;
- (b) notify the Subcontractor in writing of any change under the Community Benefits Agreement, including changes to:
 - (i) initiation fees or dues, or of assessments by the Affiliated Unions;
 - (ii) steward appointments;
 - (iii) hourly wage rates and trade provisions; and
 - (iv) new or revised Job Classifications and associated wage rates and trade provisions;
- (c) acting in the best interests of the Project and to uphold the spirit and intent of the Community Benefits Agreement, enforce its rights under the Community Benefits Agreement, it being acknowledged that it is in the mutual best interest of BCIB and the Subcontractor to prevent and resolve strikes, lockouts, slowdowns or other interruptions in the orderly performance of the Work, including the Subcontract Work;
- (d) seek input from the Subcontractor regarding and will act in good faith in all labour relations matters which are relevant to the Subcontractor, including in

grievance, arbitration and jurisdictional proceedings, including in the settlement of such proceedings, it being acknowledged that it is in the mutual best interest of BCIB and the Subcontractor to prevent strikes, lockouts, slowdowns or other interruptions in the orderly performance of the Work, including the Subcontract Work;

- (e) keep the Subcontractor's Representative informed of the results of any negotiations and any rulings, interpretations, orders and decisions made in labour relations matters which are relevant to the Subcontractor so that the Subcontractor may, to the extent necessary and applicable to the Subcontractor or the performance of the Subcontract Work, comply with and give effect to any such results and rulings, interpretations, orders and decisions; and
- (f) provide the Subcontractor with any and all Employee information which is required by the Subcontractor in order for the Subcontractor to fulfill its duties and responsibilities at law.

5.4 The Subcontractor may implement an employee appreciation and/or recognition program to supplement the wages paid to Employees under the Community Benefits Agreement or to recognize the performance of Employees, provided that any such program is consented to in writing by BCIB, in its discretion, prior to its implementation and which program may require the approval or consent of the Council.

6.0 COMMUNITY BENEFITS AGREEMENT

6.1 A true copy of the Community Benefits Agreement has been made available to the Subcontractor. The Subcontractor represents and warrants it has full knowledge of and understands the provisions of the Community Benefits Agreement.

6.2 The Subcontractor acknowledges that for all purposes of this Agreement any reference to the Community Benefits Agreement will include all amendments to, supplements to or restatements of the Community Benefits Agreement, and will include all agreements entered into between BCIB and the Council as contemplated by Article 24 of the Community Benefits Agreement.

6.3 Unless otherwise expressly modified by the terms of this Agreement, the Subcontractor, in performing its obligations under this Agreement and to fulfill its obligations under the Subcontract, will give effect to, and will observe, comply with and perform all terms and conditions of the Community Benefits Agreement that are specified to apply to the Subcontractor as a "Contractor" (as that term is used in the Community Benefits Agreement), as well as all consequent functions, obligations and responsibilities that are associated with such terms and conditions.

6.4 The Subcontractor, on behalf of BCIB, will give effect to, and will observe, comply with and perform all of BCIB's functions, obligations and responsibilities described in the provisions of the Community Benefits Agreement set out in Schedule 2, as well as all

consequent functions, obligations and responsibilities that are associated with such terms and conditions.

- 6.5 The Subcontractor will not act in any way which may obstruct, interfere with or impede BCIB's ability to observe, comply with and perform each and every provision of the Community Benefits Agreement.
- 6.6 The Subcontractor will perform such acts and do such things, including attending meetings, grievance, arbitration, court and other labour relations proceedings and Jurisdictional Assignment Plan hearings, whether or not with the Council, as BCIB may from time to time reasonably require in order to permit BCIB to perform its obligations under and to comply with the Community Benefits Agreement.
- 6.7 The Subcontractor acknowledges BCIB's authority to act on behalf of the Subcontractor in all matters related to the interpretation, application, administration or alleged violation of the Community Benefits Agreement, including BCIB's sole responsibility for discussing, resolving or arbitrating any grievance that may arise under the Community Benefits Agreement. BCIB will keep the Subcontractor informed of, involve the Subcontractor in and seek input from the Subcontractor regarding such matters, including in the settlement of such matters, to the extent those matters are relevant to the Subcontractor or the performance of the Subcontract Work.

7.0 PAYROLL

- 7.1 Whenever required by BCIB, the Subcontractor will provide to BCIB payroll administration support by providing information reasonably requested by BCIB in the form and format required by BCIB. Such information will include recruitment information, hours of work schedules, timesheets, change of status requests and termination information, and any other information deemed necessary by BCIB. If requested by BCIB's Representative, the Subcontractor will review and approve the timesheets prior to submitting them to BCIB.
- 7.2 BCIB will prepare and deliver an invoice (each, a "**Payroll Invoice**") to the Subcontractor for each pay period. The Payroll Invoice will set out the amount owing by the Subcontractor to BCIB (the "**Payroll Amount**") in respect of:
 - (a) all amounts:
 - (i) to be paid to Employees provided to the Subcontractor by BCIB during the applicable pay period, including with respect to any statutory required paid leave or paid sick leave, any Community Benefits Agreement required paid leave or paid sick leave and any administrative paid time off during any investigation involving an Employee. Without limiting the generality of the foregoing, and for further clarity, the Subcontractor will be responsible for all amounts to be paid in respect of:

- (A) such leave and time off whether or not such leave and time off is required to be provided and paid for by law (such as, in the case of leave or time off required to be provided and paid for by law, laws deeming certain leave or time off to be time spent working or laws requiring Employees to be paid for certain leave or time off) and regardless of when or under which employer or contractor the Employee became eligible for any such leave or time off and regardless of the length of time the Employee has been provided to the Subcontractor; and
- (B) the time Employees are being trained (whether by BCIB (as described in Section 5.3(a) or elsewhere in this Agreement) or the Subcontractor as described in this Agreement, or otherwise trained by the Subcontractor); and
- (ii) required by the Community Benefits Agreement to be paid to third parties other than the Employees provided to the Subcontractor by BCIB based on the number of hours worked by the Employees provided to the Subcontractor by BCIB, such as the Funds described in Article 13.200 of the Community Benefits Agreement;
- (b) all applicable payroll taxes and assessments, including Employment Insurance, Canada Pension Plan, and Employer Health Tax; and
- (c) all other applicable taxes.

Promptly upon receipt of a Payroll Invoice, the Subcontractor will review the Payroll Invoice against the Subcontractor's records and advise BCIB's Representative of any necessary changes. If any changes to a Payroll Invoice are necessary, BCIB will endeavour to revise and reissue the Payroll Invoice in sufficient time to allow the Subcontractor to comply with Section 7.3. If there is not sufficient time, BCIB will capture the necessary changes on the next issued Payroll Invoice.

- 7.3 The Subcontractor will pay the Payroll Amount to the account specified in the Payroll Invoice no later than five Business Days after receipt of each initial Payroll Invoice.
- 7.4 If BCIB delivers Employee payroll cheques or payslips, or both, to the Subcontractor's Representative, the Subcontractor will promptly distribute such documents to the applicable Employees.
- 7.5 In the event that an Employee or other person or authority on behalf of such Employee was overpaid by BCIB, BCIB and the Subcontractor will cooperate to obtain repayment of such overpaid amount from such Employee or other person or authority who received such overpayment, and amounts recovered will be credited to the Subcontractor on the next applicable Payroll Invoice.

- 7.6 The Subcontractor will remit to WorkSafeBC the WorkSafeBC assessments calculated by the Subcontractor on each payroll, at the rate or rates which are applicable to the Subcontractor according to the classification and rates determined by WorkSafeBC. The rate or rates will be applied to the applicable gross amounts earned in accordance with the *Workers Compensation Act* (British Columbia).

8.0 DISCIPLINE, DISMISSAL, REINSTATEMENT AND TERMINATION OF EMPLOYMENT

- 8.1 The Subcontractor acknowledges the provisions of Article 10 of the Community Benefits Agreement and agrees to give effect to, and to observe, comply with and perform the terms and conditions set out in that Article.
- 8.2 Notwithstanding anything to the contrary contained in this Agreement, the Subcontractor will be permitted to issue warnings to the Employees provided to the Subcontractor by BCIB. The Subcontractor, in issuing any warnings to Employees, will comply with the provisions of BCIB's Contractor Discipline Process Policy dated January 18, 2024, as may be amended, supplemented or restated from time to time. As soon as practicable after issuing a warning, the Subcontractor's Representative will notify BCIB's Representative in writing providing details of the warning.
- 8.3 Without limiting the Subcontractor's abilities as described in Section 5.1 and Section 8.2, if and whenever:
- (a) BCIB has knowledge of any conduct of an Employee who is under the direction of the Subcontractor which would justify discipline, dismissal or the taking of other corrective or rehabilitative action in respect of such Employee, whether it be for incompetence, insubordination, unreliability or otherwise; or
 - (b) the Subcontractor's Representative recommends to BCIB that an Employee be disciplined or dismissed or that other corrective or rehabilitative action be taken in respect of an Employee, whether it be for incompetence, insubordination, unreliability or otherwise,

BCIB will, in its sole and absolute discretion:

- (c) take no action where the circumstances do not support the application of discipline or the taking of other corrective or rehabilitative action; or
- (d) promptly discipline or take such other corrective or rehabilitative action in respect of such Employee as the situation requires; or
- (e)
 - (i) promptly remove such Employee from the direction of the Subcontractor; and
 - (ii) terminate such Employee's employment with BCIB in accordance with the provisions of the Community Benefits Agreement and applicable law.

- 8.4 In the event that any Employee whose employment has been terminated pursuant to Section 8.3 initiates a grievance under the Community Benefits Agreement, the Subcontractor and BCIB will make every effort to complete Stage I of the grievance procedure under the Community Benefits Agreement before the grieving Employee leaves the Site.
- 8.5 With respect to any Employee that has been removed, whether temporarily or permanently, from the direction of the Subcontractor pursuant to Section 8.3, if the Subcontractor's Representative requests in writing a replacement Employee, BCIB will, in accordance with the dispatch provisions of the Community Benefits Agreement, including Articles 8.200, 8.600 and 9.100 of the Community Benefits Agreement, and within three Business Days of such request, provide a replacement Employee to the Subcontractor, such replacement Employee to be in the same Job Classification as and with comparable qualifications, certifications, if any, and experience to the Employee being replaced.
- 8.6 BCIB will permit the Subcontractor to have an active role in supporting any investigation BCIB conducts into Employee conduct which may lead to BCIB taking action pursuant to Section 8.3 and in connection with a grievance initiated by an Employee provided to the Subcontractor by BCIB.
- 8.7 The Subcontractor will comply with the terms of any grievance award, and any order, judgment, direction or interpretation made under the procedures set forth in the Community Benefits Agreement, or by any arbitrator, court or other authority having jurisdiction over the Employees which in any way relates to the Employees provided to the Subcontractor by BCIB, including awards of the Jurisdictional Assignment Plan Umpire of Work Assignment as described in Article 6.103 of the Community Benefits Agreement, and including any reinstatement order, judgement or direction, to the extent that the Subcontractor's compliance is necessary in order to enable BCIB to comply with any such award, order, judgment, direction or interpretation.
- 8.8 The Subcontractor will provide to BCIB, at a location designated by BCIB, any information required by BCIB in a form and format required by BCIB to enable BCIB to complete end of employment documentation in respect of an Employee whose services have been terminated.

9.0 SUBCONTRACTING

- 9.1 The Subcontractor will notify BCIB's Representative in writing of the names of all of the Subcontractor's sub-subcontractors (of any and all tiers) (each, a "**Sub-subcontractor**") engaged to perform a portion of the Subcontract Work at the Site, whether or not such Sub-subcontractor requires Employees. Except in circumstances where two weeks prior notice is not commercially reasonable, the Subcontractor will provide such notice no less than two weeks prior to the Sub-subcontractor commencing work at the Site.

- 9.2 The Subcontractor will not permit any Sub-subcontractor to perform any work at the Site unless and until that Sub-subcontractor:
- (a) confirms in writing to BCIB that the Sub-subcontractor will not require any Employees to be provided by BCIB, and BCIB agrees with such determination;
 - (b) is granted a permit pursuant to Article 8.400 of the Community Benefits Agreement; or
 - (c) executes a BCIB-Subcontractor Agreement pursuant to Section 9.3.
- 9.3 The Subcontractor will cause each Sub-subcontractor (other than a Sub-subcontractor described in Section 9.2(a) or Section 9.2(b)) (each, an “**Applicable Sub-subcontractor**”) to enter into an agreement with BCIB (each, also a “**BCIB-Subcontractor Agreement**”) to obtain from BCIB the Employees that the Applicable Sub-subcontractor will require for the performance of its portion of the Subcontract Work at the Site. Each other BCIB-Subcontractor Agreement will be in the form of this Agreement, subject only to variations in form required by BCIB, in its sole and absolute discretion, to suit the circumstances.
- 9.4 The Subcontractor will cause each Sub-subcontractor described in Section 9.2(a) to acknowledge that all policies and procedures identified in Section 15.1 and described in Section 15.4 apply to all Employees working on the Project, and will ensure that all such Sub-subcontractors’ employees and representatives working or attending at the Site are aware of the contents and obligations contained in such policies and procedures. Additionally, the Subcontractor will ensure that all such Sub-subcontractors and all such Sub-subcontractors’ employees and representatives working or attending at the Site will give effect to, and will observe and comply with, including fully cooperating in any investigation conducted by BCIB pursuant to any such policies and procedures, the terms and conditions of each such policy and procedure to the extent necessary such that the terms, conditions and spirit of each such policy and procedure are adhered to. The Subcontractor will be fully responsible and liable for all such Sub-subcontractors’ and for all such Sub-subcontractors’ employees’ and representatives’ breaches and violations of such policies and procedures.
- 9.5 Without duplication of recovery under Section 12.0, if, under any other BCIB-Subcontractor Agreement, an Applicable Sub-subcontractor fails to pay any amount required to be paid to BCIB beyond any period permitted for the payment of such amount as set out in the BCIB-Subcontractor Agreement, then, upon written notice to the Subcontractor, the Subcontractor will pay such amount to BCIB, or cause BCIB to be paid such amount, no later than five Business Days after receipt of such notice.

10.0 PERMITTEES

- 10.1 The Subcontractor may request that permits be granted to Sub-subcontractors or employees (who would ordinarily be “Employees” for the purposes of the Community

Benefits Agreement), or both, as described in Article 8.400 of the Community Benefits Agreement.

- 10.2 For any permit request, the Subcontractor will be responsible for completing a permit request form (in the form required by the Council), and will submit the completed permit request form along with the required fee made payable to the Council to BCIB's Representative for review. Provided the permit request form and associated fee comply with the provisions of Article 8.400 of the Community Benefits Agreement, BCIB will promptly sign the permit request form and submit it and the fee to the Council. If BCIB refuses to sign the permit request form, then BCIB's Representative will promptly return the form and fee to the Subcontractor's Representative with reasons for BCIB's refusal to sign the form.
- 10.3 BCIB will, to the extent necessary, arrange meetings between the Subcontractor and the Council to resolve any issues with respect to the granting of permits, however, the Subcontractor remains fully responsible for satisfying the conditions required for the granting of a permit.
- 10.4 The Subcontractor acknowledges the provisions of Articles 8.403 and 8.409 of the Community Benefits Agreement and agrees to give effect to, and to observe, comply with and perform the terms and conditions set out in those Articles.

11.0 BCIB COSTS

- 11.1 In addition to paying the Payroll Amount, the Subcontractor will pay to BCIB the following costs and expenses reasonably incurred by BCIB ("**BCIB Costs**") in connection with or with respect to the Employees provided to the Subcontractor by BCIB for performing the Subcontract Work, without duplication of items included in the Payroll Amount:
 - (a) the fees and disbursements charged to BCIB by those lawyers, accountants, consultants, witnesses or other professionals or experts retained by BCIB at the request of the Subcontractor;
 - (b) the amount of any damages, salary, severance pay, expenses, costs, penalties, fines or other monies which BCIB is ordered to pay by any arbitrator, court or other authority having jurisdiction, or which BCIB reasonably agrees to pay, in respect of any Employee(s), with respect to grievance, arbitration, court or other labour relations proceedings initiated by any Employee(s), the Council or any Affiliated Union which relates to working conditions or worker camp conditions, the Subcontractor's operation, direction and supervision of the Employee(s) or the performance of the Subcontract Work, including the costs incurred by, including third party fees and disbursements charged to, BCIB in investigating the circumstances which led to such proceedings;
 - (c) the costs incurred by, including third party fees and disbursements charged to, BCIB in investigating (whether in relation to the Site or any worker camp)

complaints made by an Employee(s) relating to working conditions or worker camp conditions, the Subcontractor's operation, direction and supervision of the Employee(s), the performance of the Subcontract Work or any breach or violation of any of the BCIB policies and procedures which are applicable to the Site or worker camp, whether or not any such complaint is made pursuant to BCIB policies and procedures, but only in circumstances where the investigation determines that the Subcontractor or the Subcontractor's employee(s) or representative(s) or a Sub-subcontractor(s) described in Section 9.2(a) or any such Sub-subcontractor's employee(s) or representative(s) has breached or violated the Community Benefits Agreement, any applicable BCIB policy and procedure or applicable law;

- (d) notwithstanding anything to the contrary in the Workplace Drug and Alcohol Policy and Procedures, the costs of all Substance Testing (as defined in the Workplace Drug and Alcohol Policy and Procedures), including the costs of all pre-access testing whether the Employee fails to attend for a pre-access test or tests positive or negative on such test, conducted under the Workplace Drug and Alcohol Policy and Procedures;
- (e) the amount of any medical doctor's charges or other charges paid by BCIB in connection with the provision of food handling certificates, underground certificates, audio certificates or any other certificate relating to the fitness or qualifications of any Employee;
- (f) the costs of providing training to an Employee(s) selected by BCIB in consultation with the Subcontractor in the event that BCIB is unable to provide an Employee(s) to the Subcontractor with the qualifications requested by the Subcontractor, and, in addition, the costs of providing to any Employee any other special training or skills upgrading which may be requested or otherwise approved by the Subcontractor;
- (g) the costs incurred by, including third party fees and disbursements charged to, BCIB in investigating any accident, incident or occurrence requiring an investigation under the *Workers Compensation Act* (British Columbia) or otherwise required by law;
- (h) the costs of any items or services required to be provided to or for any Employee by the provisions of the Community Benefits Agreement which are the responsibility of the Subcontractor to provide pursuant to the provisions of this Agreement, but which were not provided by the Subcontractor, including the costs of providing orientation, training, tools, safety equipment, clothing and transportation;
- (i) the costs of any items or services required to be provided by the Subcontractor pursuant to the provisions of this Agreement, but which were not provided by the Subcontractor, including the costs of transportation, providing training to Employees, the Subcontractor's employees and representatives working or

attending at the Site and others working or attending at the Site and providing information, instruction, training and supervision to “supervisors” (as that term is used in Part 2 of the *Workers Compensation Act* (British Columbia));

- (j) in the event that BCIB requests an amount from the Owner under the provisions of Section 12.0, the sum of \$1,000.00 for each such request as compensation to BCIB for its costs of administering such request to the Owner. For clarity, BCIB will not charge the Subcontractor this fee if BCIB has already charged an equivalent fee to an Applicable Sub-subcontractor pursuant to a BCIB-Subcontractor Agreement in respect of the same delinquent amount;
 - (k) any WorkSafeBC levies, assessments, reassessments, fines, penalties or other amounts ordered to be paid by BCIB or assessed against BCIB under the *Workers Compensation Act* (British Columbia), including by a court of competent jurisdiction, but which are in respect specifically to the Subcontractor and which are not payroll WorkSafeBC assessments as described in Section 7.6; and
 - (l) the Subcontractor’s *pro rata* share of any WorkSafeBC levies, assessments, reassessments, fines, penalties or other amounts ordered to be paid by BCIB or assessed against BCIB under the *Workers Compensation Act* (British Columbia), including by a court of competent jurisdiction, which are applied on a Project-wide basis and which are not payroll WorkSafeBC assessments as described in Section 7.6. Such levies, assessments, reassessments, fines, penalties and other amounts will be shared amongst all entities having a contract with BCIB in respect of the Project and be calculated based on the total number of hours worked by the Employees provided to each such entity up to the date of such levy, assessment, reassessment, penalty or other amount.
- 11.2 BCIB will, from time to time but not more frequently than monthly, prepare and deliver an invoice (each, a “**Cost Invoice**”) to the Subcontractor setting out the amount of BCIB Costs owing by the Subcontractor to BCIB for the relevant time period. The Subcontractor will pay the amount of such BCIB Costs plus all applicable taxes to the account specified in the Cost Invoice no later than ten Business Days after receipt of the Cost Invoice. The Subcontractor will pay the full amount set out in the Cost Invoice without prejudice to the Subcontractor’s rights of dispute under Section 22.0.
- 11.3 The Subcontractor or its authorized agent may, at the Subcontractor’s discretion and expense, at any time and from time to time during the time BCIB is required to keep records pursuant to applicable law, during normal business hours and with reasonable notice and without undue disturbance of BCIB’s business operations, enter upon BCIB’s premises and, subject to solicitor-client privilege, audit the records of BCIB which relate in any way to BCIB Costs. BCIB will make all such records available for examination and copying by the Subcontractor at BCIB’s premises.

12.0 PAYMENT BY OWNER UPON A FAILURE TO PAY

- 12.1 The Subcontractor acknowledges that if at any time the Subcontractor or any Applicable Sub-subcontractor fails to pay any amount required to be paid to BCIB under this Agreement or under another BCIB-Subcontractor Agreement, as the case may be, beyond any period permitted for the payment of such amount as set out in this Agreement or in the BCIB-Subcontractor Agreement, as the case may be, BCIB may advise the Owner in writing and may request payment by the Owner of such amount.
- 12.2 In the event that the Owner pays BCIB the amount requested by BCIB under the provisions of Section 12.1, and provided that the Subcontractor compensates BCIB for its administration costs as described in Section 11.1(j) in accordance with Section 11.2, then the Subcontractor will not be in default of its obligation to pay such amount under this Agreement. For clarity, the payment by the Owner of an amount requested by BCIB will be deemed to satisfy the Subcontractor's obligation to pay that same amount to BCIB.

13.0 OCCUPATIONAL HEALTH AND SAFETY

- 13.1 The parties acknowledge that each has obligations under applicable law as an “employer” for the health and safety of the Employees provided to the Subcontractor by BCIB. For the purposes of clearly defining and establishing respective responsibilities without duplication of any overlapping responsibilities, and for the purposes of achieving a consistent, proactive and preventative health and safety culture, and implementing effective health and safety programs, the following will apply with respect to occupational health and safety:
- (a) The Subcontractor will comply with all applicable law relating to occupational health and safety, including:
 - (i) the *Workers Compensation Act* (British Columbia); and
 - (ii) the *Mines Act* (British Columbia).
 - (b) The Subcontractor will be responsible for and will fulfill all of its obligations as an “employer” (as that term is used in Part 2 of the *Workers Compensation Act* (British Columbia)) pursuant to Part 2 of the *Workers Compensation Act* (British Columbia), including as such obligations relate to the Employees provided to the Subcontractor by BCIB.
 - (c) The Subcontractor will, as an “employer” (as that term is used in Part 2 of the *Workers Compensation Act* (British Columbia)), ensure that:
 - (i) any Employee provided to the Subcontractor by BCIB that will be acting in the capacity of “supervisor” (as that term is used in Part 2 of the *Workers Compensation Act* (British Columbia)); and

- (ii) any person not provided to the Subcontractor by BCIB but who will be acting in the capacity of “supervisor” (as that term is used in Part 2 of the *Workers Compensation Act* (British Columbia)) of any Employees,

has the information, instruction, training and supervision necessary to effectively discharge their responsibilities, such information, instruction and training to be provided by the Subcontractor prior to such person commencing work as a “supervisor”. In addition, the Subcontractor will ensure such persons are provided with any updated and additional information, instruction, training and supervision necessary to ensure that the person has the necessary supervisory skills and knowledge to discharge their responsibilities at all times during the performance of the Subcontract Work. Where the Subcontractor fails to meet the requirements of this Section 13.1(c) within a reasonable time after receipt of written notice from BCIB’s Representative to provide such information, instruction, training and supervision, the same may be provided by or on behalf of BCIB, and the Subcontractor will facilitate such training to occur as and when required by BCIB and the Subcontractor will reimburse BCIB in accordance with Section 11.1(i).

- (d) The Subcontractor acknowledges receipt of the Health and Safety Program. The Subcontractor will, as part of and not in substitution for any health and safety obligations that the Subcontractor must meet under the Subcontract and applicable law, including the *Workers Compensation Act* (British Columbia), implement the Health and Safety Program in order to achieve or exceed the objectives set out in the Health and Safety Program. For certainty, and notwithstanding anything to the contrary contained in this Agreement, the Subcontractor acknowledges and agrees that no Employees will be provided to the Subcontractor by BCIB unless and until the Health and Safety Program has properly been implemented as determined by BCIB, acting reasonably.
- (e) Each party acknowledges that the Health and Safety Program and the Subcontractor’s health and safety program, policies and work procedures will in no way fetter the authority and responsibilities of the applicable designated “prime contractor” under the *Workers Compensation Act* (British Columbia), and each of the parties will recognize the authority of such “prime contractor” and will comply with such “prime contractor’s” health and safety program, policies, systems, processes and procedures.
- (f) The parties will, within ten Business Days after the Effective Date, establish a system for ongoing communication and liaison for the purpose of ensuring the timely exchange of information that is necessary for the effective coordination and implementation of the Health and Safety Program and the Subcontractor’s health and safety program, policies and work procedures, and the ongoing health and safety of all Employees provided to the Subcontractor by BCIB. The parties will meet as required by either of the parties to review such system and make whatever adjustments to such system as are necessary to ensure that the intent of this provision is put into practice during the Project.

- (g) The Subcontractor will, in respect of the Employees provided to the Subcontractor by BCIB, fulfill all health and safety-related obligations required by the Community Benefits Agreement, and the Subcontractor will, for certainty:
 - (i) provide to all such Employees such safety equipment and clothing as required by the Community Benefits Agreement, the Health and Safety Program and applicable law, including the *Workers Compensation Act* (British Columbia) and the *Mines Act* (British Columbia); and
 - (ii) when such an Employee becomes ill or is injured in an accident not covered by WorkSafeBC while being lodged in supplied accommodation and the first aid attendant or a doctor recommends off-Site treatment or return to the Employee's Point of Hire (as defined in the Community Benefits Agreement), provide transportation to off-Site treatment or to the Point of Hire and back to the Site, in each case as applicable, as well as provide transportation for a sick or injured Employee's tools to the Point of Hire whether or not such Employee is being lodged in supplied accommodation.

Where the Subcontractor fails to meet the requirements of this Section 13.1(g), the same may be provided by or on behalf of BCIB and the Subcontractor will reimburse BCIB in accordance with Section 11.1(h).

- (h) Where the Subcontractor fails to meet the requirements of Section 5.2(j) within a reasonable time after receipt of written notice from BCIB's Representative to provide such orientation, the same may be provided by or on behalf of BCIB and the Subcontractor will reimburse BCIB in accordance with Section 11.1(h).
- (i) The Subcontractor will, provided reasonable written notice has been provided to the Subcontractor's Representative and to the applicable designated "prime contractor" under the *Workers Compensation Act* (British Columbia), provide BCIB representatives full access to all parts of the Site and the activities of the Subcontractor on the Site. All BCIB representatives will be required to comply with the health and safety protocols for attendance on the Site as required by the applicable designated "prime contractor" under the *Workers Compensation Act* (British Columbia).
- (j) Each party will fully cooperate with the other party in any activity performed by the other party to ensure both party's fulfilment of the health and safety obligations under this Agreement, including inspections, investigations, assessments, audits and attending and participating in initiatives such as Joint Health and Safety Committee meetings and tool box talks.
- (k) Prior to commencing performance of the Subcontract Work at the Site, and at any time on BCIB's Representative's request, the Subcontractor will deliver to BCIB's Representative a statement from WorkSafeBC that the Subcontractor is registered and in good standing.

- (l) The Subcontractor will provide to BCIB's Representative:
 - (i) a copy of the Subcontractor's safety management plan (or equivalent document) for review by BCIB. The Subcontractor will also provide to BCIB's Representative a copy of any and all updates or revisions to such plan for review by BCIB;
 - (ii) notice of any worker compensation claims that are made against the Subcontractor by the Employees provided to the Subcontractor by BCIB;
 - (iii) copies of any safety investigation reports which relate to the Employees provided to the Subcontractor by BCIB, and will keep BCIB's Representative informed of the status and progress of all safety investigations which relate to the Employees provided to the Subcontractor by BCIB, and will consult and collaborate with BCIB, and take into account BCIB's input, with respect to any such safety investigations; and
 - (iv) copies of all correspondence and forms, including claim forms, papers and reports, received by or sent to Governmental Authorities concerning any worker compensation claims that are made against the Subcontractor by the Employees provided to the Subcontractor by BCIB and any other health and safety matters on the Site or at a worker camp which relate to the Employees provided to the Subcontractor by BCIB.
- (m) For the purpose of this Agreement only, the Subcontractor acknowledges and agrees that any claims made by Employees provided to the Subcontractor by BCIB under and pursuant to the *Workers Compensation Act* (British Columbia) will be reported to WorkSafeBC under the Subcontractor's account with WorkSafeBC and will be considered and reflected in and may therefore adversely affect the experience rating (for purposes of assessments made under the *Workers Compensation Act* (British Columbia)) of the Subcontractor and not of BCIB. BCIB will not be liable to the Subcontractor, and the Subcontractor will have no claim against BCIB, for any loss, cost, damage, assessments, reassessments, penalties or expense suffered or incurred by the Subcontractor by reason of any claim brought under the *Workers Compensation Act* (British Columbia) by any such Employee, including for any increase in the Subcontractor's experience rating under the *Workers Compensation Act* (British Columbia) arising as a result of any such claim.
- (n) For the purpose of this Agreement only, BCIB hereby gives and grants to the Subcontractor authority to act on behalf of BCIB in all matters related to WorkSafeBC claims management and in all adjudications of WorkSafeBC claims, as such relate to the Employees provided to the Subcontractor by BCIB, and the Subcontractor undertakes to provide all such claims management and adjudications of claims. For certainty, in all such matters involving Employees provided to the Subcontractor by BCIB, the Subcontractor will keep BCIB

informed of the status and progress of such matters, and will consult and collaborate with BCIB, and take into account BCIB's input, prior to resolving any such matters with WorkSafeBC.

14.0 GENERAL TRAINING AND APPRENTICESHIPS

- 14.1 The Subcontractor will provide, at its sole cost and expense, any and all on-the-job skills development and specialized task-specific training beyond that provided under a general trade curriculum.
- 14.2 The Subcontractor acknowledges receipt of the Apprenticeship and Training Targets. The Subcontractor will, as part of and not in substitution for any apprenticeship and training obligations that the Subcontractor must meet under the Subcontract, seek from BCIB, pursuant to Employee Requests, a sufficient number and type of apprentices that if provided by BCIB would achieve or exceed the objectives set out in the Apprenticeship and Training Targets.

15.0 POLICIES AND PROCEDURES

- 15.1 The Subcontractor acknowledges receipt of:

- (a) the Workplace Discrimination and Harassment Policy and Procedures;
- (b) the Workplace Drug and Alcohol Policy and Procedures; and
- (c) the BCIB Policies and Procedures,

and acknowledges that all such policies and procedures, as each appears as of the Effective Date and as each may be amended, supplemented or restated from time to time, apply with respect to the Employees provided to the Subcontractor by BCIB. BCIB will act reasonably, taking into account what a prudent employer would consider in the then current circumstances, with regard to any amendments, supplements or restatements of such policies and procedures.

- 15.2 The Subcontractor will, as part of and not in substitution for any workplace discrimination and harassment obligations and workplace drug and alcohol obligations that the Subcontractor must meet under the Subcontract and applicable law, including the *Workers Compensation Act* (British Columbia), implement the Workplace Discrimination and Harassment Policy and Procedures and the Workplace Drug and Alcohol Policy and Procedures in order to achieve or exceed the objectives set out in such policies and procedures, and will give effect to, and will observe, comply with and perform the terms and conditions of such policies and procedures such that the terms, conditions and spirit of such policies and procedures are adhered to. Without limiting the generality of the foregoing and notwithstanding anything to the contrary in the Workplace Drug and Alcohol Policy and Procedures, the Subcontractor will provide round-trip transportation for any Employee provided to the Subcontractor by BCIB to submit to Substance Testing. Each party will fully cooperate with the other party in any investigation conducted pursuant to such policies and procedures.

15.3 Without limiting the generality of Section 15.2:

- (a) the Subcontractor will ensure that all of the Subcontractor's employees and representatives working or attending at the Site are aware of, and are trained with respect to, the contents and obligations contained in the Workplace Discrimination and Harassment Policy and Procedures, and that all such employees and representatives will give effect to, and will observe, comply with, including fully cooperating in any investigation conducted by BCIB pursuant to such policy and procedures, and perform the terms and conditions of such policy and procedures to the extent necessary such that the terms, conditions and spirit of such policy and procedures are adhered to;
- (b) the Subcontractor will ensure that all of the Subcontractor's employees and representatives working or attending at the Site are aware of, and are trained with respect to, the contents and obligations contained in the Workplace Drug and Alcohol Policy and Procedures, and that all such employees and representatives will give effect to, and will observe, comply with, including fully cooperating in any investigation conducted by BCIB pursuant to such policy and procedures, and perform the terms and conditions of such policy and procedures to the extent necessary such that the terms, conditions and spirit of such policy and procedures are adhered to. In addition, the Subcontractor will ensure that all persons acting in the capacity of "supervisor" (as that term is used in Part 2 of the *Workers Compensation Act* (British Columbia)) have the necessary information, instruction and training to effectively support the proper implementation of the Workplace Drug and Alcohol Policy and Procedures; and
- (c) the Subcontractor will provide:
 - (i) such content awareness and training to such Subcontractor's employees and representatives immediately upon them commencing work or attending at the Site; and
 - (ii) such information, instruction and training to any person who will act as a "supervisor" of Employees prior to such person commencing to so act. In addition, the Subcontractor will ensure such persons are provided with any updated and additional information, instruction and training necessary to ensure that the person has the necessary supervisory skills and knowledge to discharge their responsibilities at all times during the performance of the Subcontract Work.

Where the Subcontractor fails to meet the requirements of this Section 15.3 within a reasonable time after receipt of written notice from BCIB's Representative to provide such content awareness, information, instruction and training, the same may be provided by or on behalf of BCIB, and the Subcontractor will facilitate such training to occur as and when required by BCIB and the Subcontractor will reimburse BCIB in accordance with Section 11.1(i).

- 15.4 In addition to the policies and procedures identified in Section 15.1, the Subcontractor acknowledges and agrees that BCIB may implement other policies and procedures that will apply with respect to the Employees provided to the Subcontractor by BCIB in circumstances where such other policies and procedures (or the contents of such) are required to comply with applicable law. BCIB will provide written notice to the Subcontractor of the implementation of such policies and procedures and will provide the Subcontractor with a copy of any such policies and procedures. Such policies and procedures may be amended, supplemented or restated from time to time as required to comply with applicable law. The Subcontractor will ensure that all of the Subcontractor's employees and representatives working or attending at the Site are aware of, and are trained with respect to, the contents and obligations contained in such policies and procedures, including the BCIB Policies and Procedures.
- 15.5 With respect to the BCIB policies and procedures described in Section 15.4, including the BCIB Policies and Procedures, the Subcontractor, in performing its obligations under this Agreement, will give effect to, and will observe, comply with, including fully cooperating in any investigation conducted by BCIB pursuant to any such policies and procedures, and perform the terms and conditions of each such policy and procedure to the extent necessary such that the terms, conditions and spirit of each such policy and procedure are adhered to. Additionally, the Subcontractor will ensure that all of the Subcontractor's employees and representatives working or attending at the Site will give effect to, and will observe, comply with, including fully cooperating in any investigation conducted by BCIB pursuant to any such policies and procedures, and perform the terms and conditions of each such policy and procedure to the extent necessary such that the terms, conditions and spirit of each such policy and procedure are adhered to.
- 15.6 Without limiting the generality of Section 15.2 or Section 15.5, if any of the policies and procedures referred to in Section 15.1 or Section 15.4 place obligations on the Subcontractor as a "Contractor" (as that term may be used in such policies and procedures), including through a delegation of responsibility by BCIB pursuant to such policies and procedures, then the Subcontractor will give effect to, and will observe, comply with and perform all terms and conditions of those policies and procedures that are specified to apply to or which become applicable to the Subcontractor as a "Contractor" (as that term may be used in such policies and procedures), as well as all consequent functions, obligations and responsibilities that are associated with such terms and conditions.
- 15.7 BCIB will process and investigate any complaint made under any BCIB policy and procedure by or against an Employee provided to the Subcontractor by BCIB in accordance with such policy and procedures, and the outcome will be binding on the Subcontractor, and the Subcontractor will comply with such outcome. To the extent the outcome applies to those for whom the Subcontractor may in law be responsible, the Subcontractor will ensure that those persons or entities also comply with the outcome.
- 15.8 The Subcontractor will fully cooperate in any investigation conducted by BCIB which is required by law.

16.0 **INDEMNIFICATION**

16.1 The Subcontractor will indemnify and save harmless BCIB, the Owner and their respective officers, directors, servants (including BCIB's Representative), agents and shareholders (collectively, the "**BCIB Indemnified Parties**"), from and against any and all losses, liabilities, damages, fines, penalties, costs, expenses and claims of any and every kind whatsoever which at any time or from time to time may be paid, incurred or asserted by or against the BCIB Indemnified Parties, or any one of them, for, with respect to, or as a result of:

- (a) any act or omission of the Subcontractor, the Subcontractor's Representative, or any other person or entity not subject to or otherwise excluded from coverage of the Community Benefits Agreement but who is engaged, directly or indirectly, by the Subcontractor to perform a portion of the Subcontract Work, including with respect to any breach or violation of any of the BCIB policies and procedures which are applicable to the Site or worker camp;
- (b) any act or omission of an Employee which occurs while such Employee is under the direction of the Subcontractor, including with respect to any breach or violation of any of the BCIB policies and procedures which are applicable to the Site or worker camp, whether or not such losses, liabilities, damages, fines, penalties, costs, expenses or claims arise by reason of the employment relationship existing between BCIB and such Employee;
- (c) any failure by the Subcontractor to perform its obligations under this Agreement, including any failure to give effect to, observe, comply with or perform the terms and conditions of the Community Benefits Agreement, or the functions, obligations or responsibilities of the Community Benefits Agreement, that have been expressly delegated or allocated to the Subcontractor by this Agreement and any failure (including any failure of the Subcontractor's employees and representatives working or attending at the Site and any failure of a Sub-subcontractor described in Section 9.2(a) and any failure of such Sub-subcontractors' employees and representatives working or attending at the Site) to give effect to, observe, comply with or perform the terms and conditions of any of the BCIB policies and procedures which are applicable to the Site or worker camp; and
- (d) any failure by the Subcontractor to perform its obligations under applicable law.

For certainty, the obligations of the Subcontractor set forth in this Section 16.1 shall not apply to the extent that the losses, liabilities, damages, fines, penalties, costs, expenses and claims for which indemnity is being sought were caused by the negligence or willful misconduct of any of the BCIB Indemnified Parties.

16.2 BCIB will indemnify and save harmless the Subcontractor, its officers, directors, servants (including the Subcontractor's Representative), agents and shareholders (collectively, the "**Subcontractor Indemnified Parties**"), from and against any and all losses, liabilities,

damages, fines, penalties, costs, expenses and claims of any and every kind whatsoever which at any time or from time to time may be paid, incurred or asserted by or against the Subcontractor Indemnified Parties, or any one of them, to the extent resulting from the negligent act or negligent omission of the BCIB Indemnified Parties in connection only with BCIB's relationship as employer of the Employees provided to the Subcontractor by BCIB.

For certainty, the obligations of BCIB set forth in this Section 16.2 shall not apply to the extent that the losses, liabilities, damages, fines, penalties, costs, expenses and claims for which indemnity is being sought were caused by the negligence or willful misconduct of any of the Subcontractor Indemnified Parties.

- 16.3 The obligations of indemnification set forth in Section 16.0 will survive termination of this Agreement and will continue in full force and effect.

17.0 CONFIDENTIALITY AND DISCLOSURE OF INFORMATION

- 17.1 Subject to Section 17.3, each party will keep confidential all matters respecting the Employees provided to the Subcontractor by BCIB and all commercial, financial and legal issues relating to or arising out of this Agreement and will not disclose such information, except as follows:

- (a) with the prior written consent of BCIB's Representative or the Subcontractor's Representative, as the case may be, which consent may be arbitrarily withheld;
- (b) in the case of BCIB, BCIB may disclose information regarding the Subcontractor's non-payment of BCIB to the Contractor, any entity engaged by the Contractor who has entered into a BCIB-Subcontractor Agreement and which is in the same subcontract chain but in a tier higher than the Subcontractor or the Owner, or all of them, in order for BCIB to seek recovery of such non-payment;
- (c) in the case of the Subcontractor, the Subcontractor may disclose information respecting the Employees provided to the Subcontractor by BCIB to the Contractor but only to the extent the information to be disclosed is specifically required by the Owner pursuant to the Construction Contract;
- (d) in strict confidence to the party's professional advisors; or
- (e) as otherwise required by applicable law.

- 17.2 The obligations of confidentiality described in Section 17.1 will not apply to:

- (a) information that is, or subsequently becomes, publicly available other than through a breach of this Agreement or through a breach of a confidentiality agreement which another entity has entered into concerning such confidential information;

- (b) information which the disclosing party already possessed before commencing to participate in the Project;
- (c) information which is rightfully received from a third party without breach of any obligation of confidence by such third party; or
- (d) information which is independently developed without the use of such confidential information.

17.3 Notwithstanding anything to the contrary contained in this Agreement, the Subcontractor acknowledges and agrees that BCIB may disclose any and all information created or obtained as a result of this Agreement or in respect of the Subcontractor performing its obligations under this Agreement, or both, including the existence and terms of this Agreement and any other BCIB-Subcontractor Agreement, workforce reports identifying the Subcontractor, the nature and number of permits requested and issued as described in Section 10.0, the Subcontractor's fulfillment of its obligations pursuant to Sections 13.0, 14.0 and 15.0, the Subcontractor's fulfillment and compliance with the functions, obligations and responsibilities described in Sections 6.3 and 6.4 and any other Records, to the Owner, and to any provincial ministry, other Governmental Authority or educational institution, which requires or requests the information in relation to the Project or to permit BCIB to comply with applicable law.

18.0 FREEDOM OF INFORMATION AND PRIVACY PROTECTION

18.1 The Subcontractor acknowledges that:

- (a) it is aware that FOIPPA applies to this Agreement and to all documents and records relating to this Agreement;
- (b) BCIB is required to fully comply with FOIPPA; and
- (c) no action taken or required to be taken by BCIB for the purpose of complying with FOIPPA shall be considered a breach of any obligation under this Agreement.

18.2 To the extent the Subcontractor has access to, whether direct, indirect or incidental, or the opportunity to access, any Personal Information, the Subcontractor will inform all of its personnel and Sub-subcontractors having access to any Personal Information in the course of performing the Subcontract Work of the confidential nature of the Personal Information and will ensure that its personnel and Sub-subcontractors maintain the confidentiality of the Personal Information in accordance with the terms of Schedule 4. BCIB and the Subcontractor will have the respective rights and obligations applicable to each of them as provided in Schedule 4, and Section 17.0 will not apply in respect of such Personal Information.

19.0 SUBCONTRACTOR'S RECORDS

19.1 The Subcontractor will record and maintain within British Columbia during the term of this Agreement, and for so long as required by applicable law, full, true, proper and accurate records relating to the Employees provided to the Subcontractor by BCIB (collectively, the “**Records**”), including:

- (a) records of the time worked by Employees;
- (b) records relating to the Subcontractor's fulfillment of its obligations pursuant to Sections 13.0, 14.0 and 15.0; and
- (c) records relating to the Subcontractor's fulfillment and compliance with the functions, obligations and responsibilities described in Sections 6.3 and 6.4,

utilizing such recording system and in such form as BCIB may from time to time require. Promptly upon the reasonable written request of BCIB's Representative, the Subcontractor will deliver such Records to BCIB at BCIB's expense.

19.2 The Subcontractor will advise BCIB's Representative of the location of the Records upon the written request of BCIB.

19.3 Upon expiration of the retention period(s) described in Section 19.1, and prior to disposing of the applicable Records, the Subcontractor will notify BCIB in writing as to what the Subcontractor intends to do with such Records. BCIB may, within 40 days of receipt of such notice, require the Subcontractor to deliver to BCIB, at BCIB's sole cost and expense, all such Records.

19.4 BCIB or its authorized agent may, at BCIB's discretion and expense, at any time and from time to time during the time the Subcontractor is required to keep the Records under this Agreement, during normal business hours and with reasonable notice and without undue disturbance of the Subcontractor's business operations, enter upon the Subcontractor's premises and audit the Records and any other records of the Subcontractor which relate in any way to the Employees provided to the Subcontractor by BCIB. The Subcontractor will make all such records available for examination and copying by BCIB at the Subcontractor's premises.

20.0 TERMINATION

20.1 This Agreement will continue in effect for so long as the Subcontractor requires Employees to perform the Subcontract Work at the Site.

20.2 The obligations of the Subcontractor to pay any amounts which are payable to BCIB under this Agreement will survive termination of this Agreement and will continue in full force and effect.

21.0 DISCLAIMERS

- 21.1 BCIB does not warrant nor guarantee to the Subcontractor that BCIB will provide to the Subcontractor any particular quality of Employee or that BCIB will provide all or any of the Employees for which the Subcontractor may submit Employee Requests.
- 21.2 Neither party will be responsible or liable (whether in contract, tort (including negligence), for breach of statutory duty, pursuant to equitable principles or under any other theory of law) to the other party, and neither party will have a claim against the other party, for any economic loss, loss of anticipated revenue, overhead or profit, loss of production, business or contracts, loss by reason of shutdowns, slowdowns, non-operation or increased costs of construction, manufacturing or operation, or loss of business reputation or opportunities, in connection with this Agreement or the Project and whether or not such losses or costs were foreseeable even if the relevant party was advised of the possibility of them. For certainty, nothing in this Section 21.2 will apply to, or be interpreted so as to preclude, or otherwise limit recovery of liquidated damages specified as payable to BCIB pursuant to this Agreement, if any.
- 21.3 Notwithstanding any other provision of this Agreement, including Section 16.2, but without limiting the other provisions of Section 21.0, BCIB will not be responsible or liable (whether in contract, tort (including negligence), for breach of statutory duty, pursuant to equitable principles or under any other theory of law) to the Subcontractor, and the Subcontractor will have no claim against BCIB, for:
- (a) any loss, cost, damage or expense suffered or incurred by the Subcontractor by reason of or in respect of the Subcontractor being delayed in performing the Subcontract Work or having to re-perform the Subcontract Work, whether such delay or re-performance is caused by work stoppage, work slowdown, labour shortages, lack of appropriately qualified or skilled labour or otherwise; or
 - (b) the operation, direction or supervision of Employees provided to the Subcontractor by BCIB nor for the performance of the Subcontract Work by such Employees; or
 - (c) paying any of the Subcontractor's costs of providing Employees with room or board or commissary facilities or commissary supplies whether or not such costs are recovered or are recoverable by the Subcontractor from Employees; or
 - (d) any loss, cost, damage or expense suffered or incurred by the Subcontractor by reason of or in respect of the implementation of any additional BCIB policies and procedures, or any change, modification or revision to any BCIB policy and procedure or to the Community Benefits Agreement. Without limiting the generality of the foregoing, the Subcontractor will not have any right to or claim for any payment from BCIB in respect of any such implementation or any such change, modification or revision, that results in or has as a consequence an increase in the expenditures the Subcontractor must make in order to comply with

and fulfill the terms and conditions of this Agreement (as compared to the expenditures the Subcontractor anticipated making as of the Effective Date); or

- (e) any loss, cost, damage or expense suffered or incurred by the Subcontractor by reason of or in respect of any change in law. Without limiting the generality of the foregoing, the Subcontractor will not have any right to or claim for any payment from BCIB in respect of any such change that results in or has as a consequence an increase in the expenditures the Subcontractor must make in order to comply with and fulfill the terms and conditions of this Agreement (as compared to the expenditures the Subcontractor anticipated making as of the Effective Date), including with respect to any change in law that necessitates changes to any BCIB policy and procedure or the implementation of additional BCIB policies and procedures.

The Subcontractor acknowledges and agrees that its sole remedies, if any, in respect of any such foregoing matters lie against its counterparty under the Subcontract.

- 21.4 Nothing done in connection with, in respect of, as a result of or in furtherance of this Agreement or omitted to be done will be cause for a justifiable delay by the Subcontractor under the Subcontract or a justifiable increase in the Subcontractor's price under the Subcontract, and the Subcontractor will not have any right to or claim for an extension of time under the Subcontract nor any right to or claim for any payment or additional payment from BCIB or the Third Party Beneficiaries, or any one of them, as a result of such matters.
- 21.5 The Subcontractor will be fully responsible for all costs and expenses incurred by it in performing its obligations under this Agreement and in providing assistance or input to and in cooperating, consulting or collaborating with BCIB as contemplated by this Agreement and in participating in any formal process set out in the Community Benefits Agreement, and including for all costs and expenses incurred by the Subcontractor with respect to grievances initiated by the Subcontractor. The Subcontractor will not be entitled to, nor will BCIB be liable to the Subcontractor for, any compensation or reimbursement of such costs and expenses in respect of the foregoing, such compensation and reimbursement will be deemed to be fully addressed pursuant to the Subcontract.

22.0 DISPUTE RESOLUTION

- 22.1 The parties agree that, both during and after the term of this Agreement, each of them will make *bona fide* efforts to resolve any disputes arising between them by amicable negotiations.
- 22.2 Either party may require the dispute be mediated by a skilled commercial mediator chosen jointly by the parties. If a mediator is appointed pursuant to this Section 22.2, the mediated negotiations will be terminated ten Business Days after the appointment unless the parties agree otherwise.

- 22.3 Any unresolved dispute arising out of or in connection with this Agreement or in respect of any defined legal relationship associated with it or derived from it, will be referred to and finally resolved by arbitration under the Domestic Arbitration Rules of the Vancouver International Arbitration Centre. Any arbitration will be conducted in Vancouver, British Columbia and heard by a single arbitrator chosen jointly by the parties, or in the absence of mutual agreement appointed by a court of competent jurisdiction.
- 22.4 If the parties agree, any unresolved disputes referred to arbitration under this Agreement may be:
- (a) held in abeyance until completion of the Subcontract Work; and
 - (b) consolidated into a single arbitration.
- 22.5 Notwithstanding any dispute, the parties will continue to fulfill their obligations pursuant to this Agreement, without prejudice to either party's rights relating to the dispute.

23.0 NOTICES

- 23.1 Unless otherwise expressly required to be given to BCIB's Representative or the Subcontractor's Representative pursuant to this Agreement, any notice or communication required or permitted to be given under this Agreement will be in writing and will be considered to have been sufficiently given when delivered by hand or by email to the address or email address of the applicable party set out below:

- (a) if to BCIB:

BC Infrastructure Benefits Inc.
Suite 1050 – 89 West Georgia Street
Vancouver, BC V6B 0N8

Attn: Gareth Bowley, Director, Workforce Operations

Email: gbowley@bcib.ca

with a copy to:

Email: contractrep@bcib.ca;

- (b) if to the Subcontractor:

[insert address]

Attn: [insert appropriate addressee, i.e. President]

Email: [insert appropriate email address]; or

- (c) to such other address or email address as either party may, from time to time, designate in the manner set out above.

23.2 Any such notice or communication will be considered to have been received:

- (a) if delivered by hand or by a courier service during business hours on a Business Day, when delivered, and if not delivered during business hours, upon the commencement of business hours on the next Business Day; and
- (b) if sent by email during business hours 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 email or by hand delivery, acknowledged to the notifying party in writing 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.

24.0 ASSIGNMENT RESTRICTED

24.1 This Agreement and the rights, duties and obligations of the Subcontractor under this Agreement will not be assigned, transferred, encumbered or otherwise alienated in whole or in part by the Subcontractor without the prior written consent of BCIB, which consent may be arbitrarily withheld, and any attempt by the Subcontractor to assign, transfer, encumber or otherwise alienate its rights, duties or obligations under this Agreement without such consent will be of no effect. Notwithstanding the above, BCIB will provide its consent to any assignment, transfer, encumbrance or other alienation of this Agreement to the extent necessary to give effect to any permitted assignment, transfer, encumbrance or other alienation of the Construction Contract.

25.0 MISCELLANEOUS

25.1 Schedules. The following Schedules are incorporated into this Agreement by reference and are deemed to be fully included as part of this Agreement and to be an integral part of this Agreement:

- (a) Schedule 1 – Definitions and Interpretation;
- (b) Schedule 2 – Functions, Obligations and Responsibilities;
- (c) Schedule 3 – BCIB Policies and Procedures; and
- (d) Schedule 4 – Privacy Protection.

25.2 No Agency. The Subcontractor acknowledges and agrees that BCIB is entering into this Agreement for itself and on its own behalf as principal and that BCIB is not an agent of

the Owner, the Government of British Columbia or any other entity for purposes of this Agreement or for purposes of the Subcontract or otherwise.

- 25.3 Third Party Beneficiary. The provisions of Section 21.4 are intended for the benefit of the Third Party Beneficiaries and will be enforceable by the Third Party Beneficiaries, or any one of them, and are in addition to, and not in substitution for, any other rights that the Third Party Beneficiaries may have by contract or otherwise. For clarity, BCIB will also be able to enforce the provisions of Section 21.4.
- 25.4 Independent Contractor. The Subcontractor is an independent contractor in the performance of the Subcontract Work and nothing in this Agreement will constitute the Subcontractor as an agent, partner, joint venture or employee of BCIB for any purpose.
- 25.5 Currency. All payments to be made pursuant to this Agreement will be made in lawful money of Canada.
- 25.6 Public Announcements. The Subcontractor will not make any public releases, announcements, other disclosure or issue advertising pertaining to this Agreement or the Community Benefits Agreement without the prior written approval of BCIB, approval of which may be arbitrarily withheld. The Subcontractor will refer any media enquiries to BCIB's Representative, but will not otherwise respond to media enquiries.
- 25.7 Further Assurances. Each of the parties hereby covenants and agrees to execute any further and other documents and instruments and to do any further and other things that may be reasonably necessary to implement and carry out the intent of this Agreement.
- 25.8 Governing Law. This Agreement will be governed by and construed in accordance with the laws of the Province of British Columbia which will be deemed to be the proper law of this Agreement.
- 25.9 Survival. All rights, obligations and remedies of the parties which accrued prior to the termination of this Agreement, or which are by their nature continuing, or which by their express terms survive, and all other provisions necessary for the interpretation or enforcement of such rights, obligations and remedies, will survive termination of this Agreement. Without limiting the generality of the foregoing, the provisions of Sections 5.2(a), 5.2(b), 6.7, 7.3, 7.6, 9.4, 9.5, 11.0, 12.2, 13.1(l)(ii), 13.1(l)(iii), 13.1(l)(iv), 13.1(m), 13.1(n), 15.2, 15.3(a), 15.3(b), 15.5, 15.7, 15.8, 16.0, 17.0, 18.0, 19.0, 20.2, 21.0, 22.0, 25.2, 25.3, 25.4, 25.6, 25.7, 25.8, 25.9, 25.10, 25.11, 25.12 and 25.13, including each other provision necessary for the interpretation or enforcement of such provisions, will survive termination of this Agreement and will continue in full force and effect.
- 25.10 Modification and Waiver. No amendment or waiver of this Agreement or any provision of this Agreement will be binding unless executed in writing by both the parties. No waiver of any provision of this Agreement will be deemed or will constitute a waiver of any other provision nor will any such waiver constitute a continuing waiver unless otherwise expressly provided in writing signed by each of the parties.

- 25.11 Enurement. This Agreement will enure to the benefit of and be binding upon the parties and their respective heirs, personal representatives, successors and permitted assigns.
- 25.12 Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the subject matter of this Agreement, expressing superseding all prior communications, understandings and agreements (both oral and written) between the parties with respect to all matters contained in this Agreement. There are no representations, warranties, terms, conditions, undertakings or collateral agreements express, implied or statutory, between the parties other than as expressly set forth in this Agreement.
- 25.13 Joint and Several.
- (a) If the Subcontractor is comprised of more than one legal entity, the obligations and liabilities of the Subcontractor under this Agreement shall be the obligations and liabilities of each legal entity comprising the Subcontractor, jointly and severally with each other such legal entity.
 - (b) If the Subcontractor is a general partnership, the obligations and liabilities of the Subcontractor under this Agreement shall be the obligations and liabilities of the Subcontractor and each of its partners, jointly and severally with each other.
- 25.14 Counterparts. This Agreement may be executed by counterparts, each of which will be deemed to be an original and all of which taken together will be deemed to constitute one and the same instrument. Delivery by email in portable document format (PDF) of an executed counterpart of this Agreement is as effective as delivery of an originally executed counterpart of this Agreement.

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

BC INFRASTRUCTURE BENEFITS INC.

Per: _____
Name:
Title:

[INSERT LEGAL NAME OF SUBCONTRACTOR]

Per: _____
Name:
Title:

**SCHEDULE 1
DEFINITIONS AND INTERPRETATION**

1. Definitions. In this Agreement, except as otherwise expressly provided or unless the context otherwise requires:
- (a) “**Affiliated Unions**” has the meaning set out in the Community Benefits Agreement;
 - (b) “**Agreement**” means this BCIB-Subcontractor Agreement, as it may be amended, supplemented or restated from time to time;
 - (c) “**Applicable Sub-subcontractor**” has the meaning set out in Section 9.3;
 - (d) “**Apprenticeship and Training Targets**” means the apprenticeship and training targets established by BCIB dated November 15, 2023, as may be amended, supplemented or restated from time to time;
 - (e) “**BCIB**” has the meaning set out on the first page of this Agreement;
 - (f) “**BCIB-Contractor Agreement**” means the agreement between BCIB and the Contractor pursuant to which the Contractor will obtain Employees from BCIB;
 - (g) “**BCIB Costs**” has the meaning set out in Section 11.1;
 - (h) “**BCIB Indemnified Parties**” has the meaning set out in Section 16.1;
 - (i) “**BCIB Policies and Procedures**” means those BCIB policies and procedures described in Schedule 3;
 - (j) “**BCIB-Subcontractor Agreement**” has the meaning set out in Section 9.3;
 - (k) “**BCIB’s Representative**” has the meaning set out in Section 2.1;
 - (l) “**Business Day**” means a day other than a Saturday, Sunday or Recognized Holiday (as described in Article 16.100 of the Community Benefits Agreement) on the days observed in British Columbia;
 - (m) “**CBA Name Hires**” has the meaning set out in Section 4.3(b);
 - (n) “**Community Benefits Agreement**” has the meaning set out in Recital A;
 - (o) “**Contractor**” means Emil Anderson Construction (EAC) Inc., and any assignee of the Contractor permitted by BCIB;
 - (p) “**Construction Contract**” means the agreement between the Owner and the Contractor pursuant to which the Contractor will undertake the Work;
 - (q) “**Cost Invoice**” has the meaning set out in Section 11.2;

- (r) “**Council**” has the meaning set out in Recital A;
- (s) “**Council’s Representative**” means the person designated from time to time by the Council who will represent the Council in the administration and application of the Community Benefits Agreement;
- (t) “**Effective Date**” means the effective date of this Agreement as set out on the first page of this Agreement;
- (u) “**Employees**” has the meaning set out in the Community Benefits Agreement, but for clarity, does not include employees of Sub-subcontractors described in Section 9.2(a) or Section 9.2(b) or employees granted a permit pursuant to Article 8.400 of the Community Benefits Agreement;
- (v) “**Employee Request**” has the meaning set out in Section 4.3;
- (w) “**FOIPPA**” means the *Freedom of Information and Protection of Privacy Act* (British Columbia);
- (x) “**Governmental Authority**” means any federal, provincial, territorial, regional, municipal or local authority, quasi-governmental authority, court, government, or self-regulatory organization, commission, board, tribunal, organization, or any regulatory, administrative or other agency, or any political or other subdivision, department or branch of any of the foregoing, having jurisdiction in any way over or in respect of any aspect of the performance of the Construction Contract, the Subcontract, this Agreement or the Project;
- (y) “**Health and Safety Program**” means the health and safety program established by BCIB dated March 12, 2020, as may be amended, supplemented or restated from time to time;
- (z) “**Job Classifications**” means those job classifications set out in the applicable “Trade Sections” of the Community Benefits Agreement;
- (aa) “**Owner**” means His Majesty the King in right of the Province of British Columbia as represented by the Minister of Transportation and Infrastructure;
- (bb) “**Payroll Amount**” has the meaning set out in Section 7.2;
- (cc) “**Payroll Invoice**” has the meaning set out in Section 7.2;
- (dd) “**Personal Information**” means recorded information about an identifiable individual, other than contact information (as defined in FOIPPA), collected, created or otherwise acquired by the Subcontractor as a result of this Agreement or any previous agreement between BCIB and the Subcontractor dealing with the same subject matter as this Agreement;

- (ee) **“Project”** means the Trans Canada Highway 1 – Jumping Creek to MacDonald Snowshed Project;
- (ff) **“Records”** has the meaning set out in Section 19.1;
- (gg) **“Site”** means “Site” as defined in the Construction Contract, and will be deemed to include the sites of all facilities purpose built for the Project;
- (hh) **“Subcontract”** means the agreement entered into by the Subcontractor pursuant to which the Subcontractor will undertake the Subcontract Work;
- (ii) **“Subcontractor”** has the meaning set out on the first page of this Agreement;
- (jj) **“Subcontractor Indemnified Parties”** has the meaning set out in Section 16.2;
- (kk) **“Subcontractor’s Representative”** has the meaning set out in Section 2.2;
- (ll) **“Subcontract Work”** means the portion of the Work to be performed by the Subcontractor;
- (mm) **“Sub-subcontractor”** has the meaning set out in Section 9.1;
- (nn) **“Third Party Beneficiaries”** means the Owner, the Contractor and the Subcontractor’s counterparty in respect of the Subcontract;
- (oo) **“Work”** means “Work” as defined in the Construction Contract;
- (pp) **“Workplace Discrimination and Harassment Policy and Procedures”** means the workplace discrimination and harassment policy and procedures established by BCIB dated December 8, 2022, as may be amended, supplemented or restated from time to time; and
- (qq) **“Workplace Drug and Alcohol Policy and Procedures”** means the Construction Industry of British Columbia Substance Abuse Testing and Treatment Program Policy (see a copy at: [Canadian Drug Testing \(clra-bc.com\)](http://clra-bc.com)), as may be amended, supplemented or restated from time to time, including pursuant to any interpretation bulletins issued in respect of such policy.

Any words or phrases defined elsewhere in this Agreement will have the particular meaning assigned to such words or phrases.

2. Interpretation. For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:
 - (a) the provision of headings and the division of this Agreement into Sections, paragraphs and other subdivisions are for convenience only and will not define or limit the scope, extent or intent of this Agreement or affect the interpretation of this Agreement or any provision of this Agreement;

- (b) any reference to a statute will include such statute and its corresponding regulations, together with all amendments made to such statute and regulations and in force from time to time, and any statute or regulation that may be passed which has the effect of amending, supplementing or superseding the statute referred to or such statute's corresponding regulations;
- (c) any reference to the *Mines Act* (British Columbia) will include the Health, Safety and Reclamation Code for Mines in British Columbia, together with all amendments made to such code and in force from time to time, and any instrument established pursuant to the *Mines Act* (British Columbia) which has the effect of amending, supplementing or superseding the Health, Safety and Reclamation Code for Mines in British Columbia;
- (d) any reference to an entity will include and will be deemed to be a reference to any entity that is a successor to such entity;
- (e) words in the singular include the plural, and vice-versa, wherever the context requires;
- (f) references in this Agreement to a Recital, a Section, a paragraph, a Schedule or other subdivision are to the corresponding Recital, Section, paragraph, Schedule or other subdivision of this Agreement, unless otherwise indicated;
- (g) where a reference is made to a "day", "week", "month" or "year", the reference is to the calendar period;
- (h) the word "including" is deemed to be followed by "without limitation";
- (i) if the time for doing an act falls or expires on a day that is not a Business Day, the time for doing such act will be extended to the next Business Day;
- (j) in the calculation of time, the first day will be excluded and the last day included; and
- (k) the parties confirm that they each have obtained independent legal advice, or elected not to obtain such advice, and accordingly agree that any rule of construction to the effect that any ambiguity is to be resolved against the drafting party will not be applicable in the interpretation of this Agreement.

SCHEDULE 2
FUNCTIONS, OBLIGATIONS AND RESPONSIBILITIES

The following are the functions, obligations and responsibilities referred to in Section 6.4 of this Agreement:

1. General:

The Subcontractor will provide to Employees:

- (a) all food and beverages; and
- (b) all room and board and living out allowances, as applicable,

as required by the Community Benefits Agreement.

2. Master Section:

CBA Article	Function, Obligation or Responsibility
14.501	The Employer may establish a flex work week schedule which allows for a work week starting on a day other than Monday (for example: Tuesday to Saturday).
17.300	An Employee who takes a leave of absence or vacation of one (1) week or more may be requested by the Contractor or camp management to vacate the assigned room for that period. If the Employee is so requested, the Employee shall vacate the room and move all belongings out of the room and shall receive one (1) hour's straight time pay at the regular rate. If an Employee wishes to store belongings, a lockup shall be provided.
17.402	Where the accommodation is a hotel/motel the Employee may be required to vacate the room and remove all belongings out of the room. If an Employee wishes to store belongings, a lockup shall be provided.
19.203	The Employer agrees to transport a sick or injured Employee's tools to the Employee's Point of Hire at the Employer's expense.
23.100	On commercial and institutional projects, heated lunchroom and women's and men's change rooms shall be provided for Employees for drying clothes, and changing clothes. The lunch and change rooms shall have tables, and benches, and provision for drying clothes. Such lunch and change rooms shall have windows and venting with adequate lighting and provision for continuous heat twenty-four (24) hours a day. The lunch and change rooms will be cleaned on each working shift and kept cleared of working materials and other construction paraphernalia. Lunchrooms shall provide enough room for all the workers to be seated at a table for lunch.
23.302	Chemical or flush toilets shall be provided for both women and men from the commencement of work on all jobs. Toilet paper shall be provided and

CBA Article	Function, Obligation or Responsibility
	facilities shall be cleaned on each working shift.
23.304	Where clean-up facilities are not provided and in mechanical and trade shops, hand cleanser and paper towels shall be provided at no cost to the Employee.
23.401	When working in a fabrication shop, proper ventilation shall be provided. In the event of a dispute, WorkSafeBC Regulations shall prevail.
23.402	When working in confined spaces with fibreglass or toxic fumes or smoke, proper ventilation and/or proper respiratory equipment shall be provided.
23.700	Telephone service shall be made available to all Employees at all times for incoming or outgoing emergency purposes and incoming emergency messages shall be relayed immediately.

3. Interior Road Building Addendum, if applicable to the Project:

CBA Article	Function, Obligation or Responsibility
General re Trade Sections – 1(b)	Where the Employer requires a specific Employee to upgrade or renew a certification or license, or perform a private procedure skills test on Site, unless the applicable Trade Sections indicates another party will pay, the Employer will pay the applicable costs and provide the time necessary.

4. Lower Mainland Road Building Addendum, if applicable to the Project:

CBA Article	Function, Obligation or Responsibility
General re Trade Sections – 1(b)	Where the Employer requires a specific Employee to upgrade or renew a certification or license, or perform a private procedure skills test on Site, unless the applicable Trade Sections indicates another party will pay, the Employer will pay the applicable costs and provide the time necessary.

5. Trade Sections:

CBA Article	Function, Obligation or Responsibility	Additional Subcontractor Obligation
BM.414	<u>Handicapped Workers</u> The Employer agrees, subject to prior consultation with the Affiliated Union, to employ any member on work which suits their physical ability and which is acceptable to the member (this shall include but not be limited to tool crib). Those who have suffered injury or disability in the trade should be employed when their capabilities are considered suitable, provided workers have the approval	The Subcontractor will support and cooperate with BCIB to encourage the use of Handicapped Workers.

CBA Article	Function, Obligation or Responsibility	Additional Subcontractor Obligation
	of the Workers' Compensation Board.	
FL.420	<u>Older Workers</u> An Employee incapacitated by age or accident may be permitted to be employed at less than the regular scale of wages at a rate of pay mutually agreed upon by the Employee, the Employer, and the Affiliated Union. The conditions of employment shall be amended so as to enable such Employees to continue with their employment.	The Subcontractor will cooperate with BCIB in determining the reduced scale of wages and conditions of employment.
OPR.412	All Mechanics, Welders, Servicepersons, Drill Doctors, Steel Sharpeners, Vehicle Body Painters, and Mechanics and Welder Apprentices who request coveralls shall have these supplied and cleaned by the Employer. There shall be one change a week available in the Employee's proper size. Employees are expected to take reasonable care of coveralls supplied. In the event that an Employee does not return the coveralls supplied by the Employer, the Employer shall charge the cost of same to the Employee and deduct this cost from any monies owing to the Employee. When requested, coveralls shall be supplied on a temporary basis to Employees who assist on work as described above, or where the Employer and the Union mutually agree that coveralls are required. Employees entitled to receive coveralls as provided herein may obtain an additional change of coveralls in any one week providing the condition of the coveralls requires a change. The shop Foreperson shall use discretion in authorizing the additional change.	If such items are not returned, the Subcontractor will advise BCIB and BCIB will deduct the applicable amount of the next Payroll Invoice. The Subcontractor will provide input to BCIB to assist in the determination of whether coveralls are required.

**SCHEDULE 3
BCIB POLICIES AND PROCEDURES**

The following are the BCIB Policies and Procedures:

1. Contractor Discipline Process Policy dated January 18, 2024, as may be amended, supplemented or restated from time to time.
2. Health & Safety Policy dated December 8, 2022, as may be amended, supplemented or restated from time to time.
3. Whistleblower Policy dated December 8, 2022, as may be amended, supplemented or restated from time to time.
4. Workplace Monitoring Policy dated December 6, 2022, as may be amended, supplemented or restated from time to time.

SCHEDULE 4 PRIVACY PROTECTION

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Schedule 4, in addition to the definitions set out in Schedule 1:

“**access**” means disclosure by the provision of access.

1.2 Interpretation

- (a) Any reference to “the Subcontractor” in this Schedule 4 includes any “associate” as defined in FOIPPA and the Subcontractor must ensure that all such persons comply with this Schedule 4.
- (b) The obligations of the Subcontractor in this Schedule 4 will survive the termination of this Agreement.
- (c) If a provision of this Agreement (including any authorization or direction given by BCIB under this Schedule 4) conflicts with a requirement of FOIPPA or an applicable order of the Information and Privacy Commissioner under FOIPPA, the conflicting provision of this Agreement (or authorization or direction) will be inoperative to the extent of the conflict.
- (d) The Subcontractor will comply with this Schedule 4 notwithstanding any conflicting provisions of this Agreement or the law of any jurisdiction outside Canada.

2 PURPOSE

2.1 Purpose

The purpose of this Schedule 4 is to:

- (a) enable BCIB to comply with its statutory obligations under FOIPPA with respect to Personal Information that is within BCIB’s control and in the Subcontractor’s custody; and
- (b) assist the Subcontractor, as a service provider to BCIB, to comply with its statutory obligations under FOIPPA.

3 COLLECTION OF PERSONAL INFORMATION

3.1 Collection

Unless this Agreement otherwise specifies or BCIB otherwise authorizes or directs in writing:

- (a) the Subcontractor may only collect or create Personal Information that is necessary for the performance of the Subcontractor's obligations, or the exercise of the Subcontractor's rights, under this Agreement or the Subcontract;
- (b) the Subcontractor must collect Personal Information directly from the individual the information is about or from another source other than that individual with the written consent of the individual, or the individual's lawful representative; and
- (c) the Subcontractor must advise an individual from whom the Subcontractor collects Personal Information:
 - (i) the purpose for collecting it;
 - (ii) the legal authority for collecting it; and
 - (iii) the title, business address and business telephone number of the person designated by BCIB to answer questions concerning the Subcontractor's collection of Personal Information.

3.2 Accuracy of Personal Information

The Subcontractor must make every reasonable effort to ensure the accuracy and completeness of any Personal Information to be used by the Subcontractor or BCIB to make a decision that directly affects an individual the information is about.

3.3 Requests for Access to Personal Information

If the Subcontractor receives a request, from a person other than BCIB, for access to Personal Information, the Subcontractor must promptly advise the person to make the request to BCIB unless this Agreement expressly requires the Subcontractor to provide such access, and, if BCIB has advised the Subcontractor of the name or title and contact information of an official of BCIB to whom such requests are to be made, the Subcontractor must also promptly provide that official's name or title and contact information to the person making the request.

3.4 Correction of Personal Information

- (a) Within five Business Days of receiving a written direction from BCIB to correct or annotate any Personal Information, the Subcontractor must correct or annotate the information in accordance with the direction.
- (b) When issuing a written direction under Section 3.4(a) of this Schedule 4 BCIB must advise the Subcontractor of the date the correction request to which the direction relates

was received by BCIB in order that the Subcontractor may comply with Section 3.4(c) of this Schedule 4.

- (c) Within five Business Days of correcting or annotating any Personal Information under Section 3.4(a) of this Schedule 4, the Subcontractor must provide the corrected or annotated information to any party to whom, within one year prior to the date the correction request was made to BCIB, the Subcontractor disclosed the information being corrected or annotated.
- (d) If the Subcontractor receives a request for correction of Personal Information from a person other than BCIB, the individual whose Personal Information has been requested, or that individual's lawful representative, the Subcontractor must promptly advise the person to make the request to BCIB and, if BCIB has advised the Subcontractor of the name or title and contact information of an official of BCIB to whom such requests are to be made, the Subcontractor must also promptly provide that official's name or title and contact information to the person making the request.

3.5 Protection of Personal Information

The Subcontractor must protect Personal Information by making reasonable security arrangements against such risks as unauthorized access, collection, use, disclosure or disposal, including any expressly set out in this Agreement.

3.6 Storage and Access to Personal Information

Unless BCIB otherwise authorizes or directs in writing, the Subcontractor must not store Personal Information outside Canada or permit access to Personal Information from outside Canada.

3.7 Retention of Personal Information

Unless this Agreement otherwise specifies, the Subcontractor must retain Personal Information until authorized or directed by BCIB in writing to dispose of it or deliver it as specified in the authorization or direction.

3.8 Use of Personal Information

Unless BCIB otherwise authorizes or directs in writing, the Subcontractor may only use Personal Information if that use is for the performance of the Subcontractor's obligations, or the exercise of the Subcontractor's rights, under this Agreement, and for clarity in accordance with Section 3.6 of this Schedule 4.

3.9 Disclosure of Personal Information

The Subcontractor must not disclose Personal Information inside or outside Canada to any person other than BCIB or the Contractor (and in the case of disclosure to the Contractor, only to the extent the Personal Information to be disclosed is specifically required by the Owner pursuant to the Construction Contract) unless the disclosure is to an entity that can legitimately

compel disclosure under the laws of British Columbia or the disclosure is directed or authorized by BCIB or the disclosure is requested or authorized by the individual whose Personal Information is at issue or that individual's lawful representative. BCIB will not unreasonably withhold its authorization under this Section 3.9.

3.10 Inspection of Personal Information

In addition to any other rights of inspection BCIB may have under this Agreement or under statute, BCIB may, at any reasonable time and on reasonable notice to the Subcontractor, enter on the Subcontractor's premises to inspect any Personal Information in the possession of the Subcontractor or any of the Subcontractor's information management policies or practices relevant to its management of Personal Information or its compliance with this Schedule 4 and the Subcontractor must permit, and provide reasonable assistance in respect to, any such inspection.

4 COMPLIANCE WITH FOIPPA AND AUTHORIZATIONS

4.1 Service Provider

- (a) The Subcontractor understands and acknowledges that it is a service provider of a public body as defined in FOIPPA.
- (b) The Subcontractor acknowledges that it is familiar with the requirements of FOIPPA governing Personal Information that are applicable to it as a service provider.
- (c) The Subcontractor must in relation to Personal Information comply with:
 - (i) the requirements of FOIPPA applicable to the Subcontractor as a service provider, including any applicable order of the Information and Privacy Commissioner under FOIPPA; and
 - (ii) any direction given by BCIB under this Schedule 4.

4.2 Notice of Non-Compliance

If for any reason the Subcontractor does not comply, or anticipates that it will be unable to comply, with a provision in this Schedule 4 in any respect, the Subcontractor must promptly notify BCIB of the particulars of the non-compliance or anticipated non-compliance and what steps it proposes to take to address, or prevent recurrence of, the non-compliance or anticipated non-compliance.

SCHEDULE 4
BCIB POLICIES AND PROCEDURES

The following are the BCIB Policies and Procedures:

1. Contractor Discipline Process Policy dated January 18, 2024, as may be amended, supplemented or restated from time to time.
2. Health & Safety Policy dated December 8, 2022, as may be amended, supplemented or restated from time to time.
3. Whistleblower Policy dated December 8, 2022, as may be amended, supplemented or restated from time to time.
4. Workplace Monitoring Policy dated December 6, 2022, as may be amended, supplemented or restated from time to time.

SCHEDULE 5 PRIVACY PROTECTION

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Schedule 5, in addition to the definitions set out in Schedule 1:

“**access**” means disclosure by the provision of access.

1.2 Interpretation

- (a) Any reference to “the Contractor” in this Schedule 5 includes any “associate” as defined in FOIPPA and the Contractor must ensure that all such persons comply with this Schedule 5.
- (b) The obligations of the Contractor in this Schedule 5 will survive the termination of this Agreement.
- (c) If a provision of this Agreement (including any authorization or direction given by BCIB under this Schedule 5) conflicts with a requirement of FOIPPA or an applicable order of the Information and Privacy Commissioner under FOIPPA, the conflicting provision of this Agreement (or authorization or direction) will be inoperative to the extent of the conflict.
- (d) The Contractor will comply with this Schedule 5 notwithstanding any conflicting provisions of this Agreement or the law of any jurisdiction outside Canada.

2 PURPOSE

2.1 Purpose

The purpose of this Schedule 5 is to:

- (a) enable BCIB to comply with its statutory obligations under FOIPPA with respect to Personal Information that is within BCIB’s control and in the Contractor’s custody; and
- (b) assist the Contractor, as a service provider to BCIB, to comply with its statutory obligations under FOIPPA.

3 COLLECTION OF PERSONAL INFORMATION

3.1 Collection

Unless this Agreement otherwise specifies or BCIB otherwise authorizes or directs in writing:

- (a) the Contractor may only collect or create Personal Information that is necessary for the performance of the Contractor's obligations, or the exercise of the Contractor's rights, under this Agreement or the Construction Contract;
- (b) the Contractor must collect Personal Information directly from the individual the information is about or from another source other than that individual with the written consent of the individual, or the individual's lawful representative; and
- (c) the Contractor must advise an individual from whom the Contractor collects Personal Information:
 - (i) the purpose for collecting it;
 - (ii) the legal authority for collecting it; and
 - (iii) the title, business address and business telephone number of the person designated by BCIB to answer questions concerning the Contractor's collection of Personal Information.

3.2 Accuracy of Personal Information

The Contractor must make every reasonable effort to ensure the accuracy and completeness of any Personal Information to be used by the Contractor or BCIB to make a decision that directly affects an individual the information is about.

3.3 Requests for Access to Personal Information

If the Contractor receives a request, from a person other than BCIB, for access to Personal Information, the Contractor must promptly advise the person to make the request to BCIB unless this Agreement expressly requires the Contractor to provide such access, and, if BCIB has advised the Contractor of the name or title and contact information of an official of BCIB to whom such requests are to be made, the Contractor must also promptly provide that official's name or title and contact information to the person making the request.

3.4 Correction of Personal Information

- (a) Within five Business Days of receiving a written direction from BCIB to correct or annotate any Personal Information, the Contractor must correct or annotate the information in accordance with the direction.

- (b) When issuing a written direction under Section 3.4(a) of this Schedule 5 BCIB must advise the Contractor of the date the correction request to which the direction relates was received by BCIB in order that the Contractor may comply with Section 3.4(c) of this Schedule 5.
- (c) Within five Business Days of correcting or annotating any Personal Information under Section 3.4(a) of this Schedule 5, the Contractor must provide the corrected or annotated information to any party to whom, within one year prior to the date the correction request was made to BCIB, the Contractor disclosed the information being corrected or annotated.
- (d) If the Contractor receives a request for correction of Personal Information from a person other than BCIB, the individual whose Personal Information has been requested, or that individual's lawful representative, the Contractor must promptly advise the person to make the request to BCIB and, if BCIB has advised the Contractor of the name or title and contact information of an official of BCIB to whom such requests are to be made, the Contractor must also promptly provide that official's name or title and contact information to the person making the request.

3.5 Protection of Personal Information

The Contractor must protect Personal Information by making reasonable security arrangements against such risks as unauthorized access, collection, use, disclosure or disposal, including any expressly set out in this Agreement.

3.6 Storage and Access to Personal Information

Unless BCIB otherwise authorizes or directs in writing, the Contractor must not store Personal Information outside Canada or permit access to Personal Information from outside Canada.

3.7 Retention of Personal Information

Unless this Agreement otherwise specifies, the Contractor must retain Personal Information until authorized or directed by BCIB in writing to dispose of it or deliver it as specified in the authorization or direction.

3.8 Use of Personal Information

Unless BCIB otherwise authorizes or directs in writing, the Contractor may only use Personal Information if that use is for the performance of the Contractor's obligations, or the exercise of the Contractor's rights, under this Agreement, and for clarity in accordance with Section 3.6 of this Schedule 5.

3.9 Disclosure of Personal Information

The Contractor must not disclose Personal Information inside or outside Canada to any person other than BCIB or the Owner (and in the case of disclosure to the Owner, only to the extent the Personal Information to be disclosed is specifically required by the Owner pursuant to the Construction Contract) unless the disclosure is to an entity that can legitimately compel disclosure

under the laws of British Columbia or the disclosure is directed or authorized by BCIB or the disclosure is requested or authorized by the individual whose Personal Information is at issue or that individual's lawful representative. BCIB will not unreasonably withhold its authorization under this Section 3.9.

3.10 Inspection of Personal Information

In addition to any other rights of inspection BCIB may have under this Agreement or under statute, BCIB may, at any reasonable time and on reasonable notice to the Contractor, enter on the Contractor's premises to inspect any Personal Information in the possession of the Contractor or any of the Contractor's information management policies or practices relevant to its management of Personal Information or its compliance with this Schedule 5 and the Contractor must permit, and provide reasonable assistance in respect to, any such inspection.

4 COMPLIANCE WITH FOIPPA AND AUTHORIZATIONS

4.1 Service Provider

- (a) The Contractor understands and acknowledges that it is a service provider of a public body as defined in FOIPPA.
- (b) The Contractor acknowledges that it is familiar with the requirements of FOIPPA governing Personal Information that are applicable to it as a service provider.
- (c) The Contractor must in relation to Personal Information comply with:
 - (i) the requirements of FOIPPA applicable to the Contractor as a service provider, including any applicable order of the Information and Privacy Commissioner under FOIPPA; and
 - (ii) any direction given by BCIB under this Schedule 5.

4.2 Notice of Non-Compliance

If for any reason the Contractor does not comply, or anticipates that it will be unable to comply, with a provision in this Schedule 5 in any respect, the Contractor must promptly notify BCIB of the particulars of the non-compliance or anticipated non-compliance and what steps it proposes to take to address, or prevent recurrence of, the non-compliance or anticipated non-compliance.

**SCHEDULE 14
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**PART 1
COMPENSATION ON TERMINATION OTHER THAN FOR DESIGN-BUILDER DEFAULT**

1.1 Obligation to Pay Non-Default Termination Sum

If the Province terminates this Agreement pursuant to Section 8.7(b)(ii) or Section 14.1(a) of this Agreement, or if either the Design-Builder or the Province terminates this Agreement pursuant to Section 8.6(a) or 8.7(a)(iv) of this Agreement, or if the Design-Builder terminates this Agreement pursuant to Section 13.3(a) or Section 13.3(b) of this Agreement, the Province will pay to the Design-Builder the Non-Default Termination Sum as set out in Section 1.2 [Calculation of Non-Default Termination Sum] of this Schedule, subject to any adjustment in accordance with Part 3 [General Provisions] of this Schedule.

1.2 Calculation of Non-Default Termination Sum

The “**Non-Default Termination Sum**” will be an amount equal to the aggregate of the Design-Builder Breakage Costs.

1.3 Date for Payment of Non-Default Termination Sum

The Province will pay the Non-Default Termination Sum on or before the later of:

- (a) the date that is 60 Business Days after the Termination Date; and
- (b) the date that is 30 Business Days after the date on which the Non-Default Termination Sum is finally determined by agreement of the Province and the Design-Builder or in accordance with the Dispute Resolution Procedure;

provided that, if there is a dispute as to the calculation of the Non-Default Termination Sum, any undisputed amount will be paid on or before the payment date referred to in Section 1.3(a) of this Schedule and any remainder will be paid on or before the payment date referred to in Section 1.3(b) of this Schedule with interest on such remainder at a rate of interest per annum equal to the No Default Interest Rate calculated from the payment date referred to in Section 1.3(a) of this Schedule until the date of payment.

**PART 2
COMPENSATION ON TERMINATION FOR DESIGN-BUILDER DEFAULT**

2.1 Obligation to Pay Compensation on Design-Builder Default

If the Province terminates this Agreement pursuant to any of Sections 8.7(a)(iii), 12.3(a), 12.3(b), 12.3(c)(ii), 12.3(d) and 12.4 [Termination for Failure to Remedy According to Program] of this Agreement, the Design-Builder will pay to the Province or the Province will pay to the Design-Builder, as determined by this Part 2, the termination sum calculated in accordance with this Part 2 (the “**Design-Builder Default Termination Sum**”), subject to any adjustment in accordance with Part 3 [General Provisions] of this Schedule.

2.2 Components of Design-Builder Default Termination Sum

Subject to the other provisions of this Part 2, the Design-Builder Default Termination Sum will be an amount calculated by reference to the following amounts:

- (a) the aggregate, without duplication, of:

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- (i) the Contract Price; and
 - (ii) any sums not forming part of the Contract Price that have become due and payable from the Province to the Design-Builder prior to the Termination Date in accordance with this Agreement, but which remain unpaid as at the Termination Date, to the extent that such sums have not subsequently been paid; and
- (b) the aggregate, without duplication, of the following amounts:
- (i) all Progress Payments paid by the Province to the Design-Builder on or before the Termination Date;
 - (ii) the amount, if any, of the Deficiency Holdback paid by the Province to the Design-Builder pursuant to Section 4.1(c) of Schedule 10 [Payment] on or before the Termination Date, or treated as having been so paid pursuant to Section 3.2(d)(i) of this Schedule;
 - (iii) the amount, if any, of the Warranty Holdback paid by the Province to the Design-Builder pursuant to Section 4.2(c) of Schedule 10 [Payment] on or before the Termination Date;
 - (iv) the Province's estimate of all costs and expenses paid, payable or that will be payable by the Province associated with the termination of this Agreement including the cost of appointment, mobilisation and installation of a replacement contractor (or procuring the performance of the unfulfilled obligations of the Design-Builder by the Province);
 - (v) the Province's estimate of amounts paid, payable or that will be payable by the Province to any alternative contractor(s) for the performance of obligations equivalent to the unfulfilled obligations of the Province under this Agreement, including for the avoidance of doubt the cost of remedying any Project Work Defects and obtaining warranties for Work in place and to be performed equivalent to those provided for in this Agreement;
 - (vi) the Province's estimate of its costs in reinstating any of its assets or other equipment required for the performance of its obligations under this Agreement, to the extent that such reinstatement is required as a result of a breach by the Design-Builder of any of its obligations under this Agreement;
 - (vii) the Province's estimate of all other Direct Losses incurred or to be incurred by the Province associated with the termination of this Agreement and (to the extent that the Province has not previously been compensated for such Direct Losses) any breach by the Design-Builder of any of its obligations under this Agreement prior to the Termination Date; and
 - (viii) any sums that have become due and payable from the Design-Builder to the Province prior to the Termination Date in accordance with this Agreement but which remain unpaid as at the Termination Date, to the extent that such sums have not subsequently been paid.

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provided that:

- (c) to the extent that any costs, expenses or Direct Losses included in the calculation of the Design-Builder Default Termination Sum are based on estimates by the Province and the actual costs, expenses or Direct Losses incurred by the Province in respect of the relevant items differ from the estimates by a material amount, the Province and the Design-Builder will promptly adjust the amount of the Design-Builder Default Termination Sum or, if the Design-Builder Default Termination Sum has been paid in accordance with this Schedule prior to the date on which such difference has been established, make payment or repayment accordingly, without interest; and
- (d) if Section 4.1(e) of Schedule 10 [Payment] applies, the calculation of the Design-Builder Default Termination Sum will:
 - (i) treat any amount retained by the Province in accordance with Section 4.1(e) of Schedule 10 [Payment] (the “**Retained Deficiency Amount**”) as having been paid by the Province to the Design-Builder on or before the Termination Date; and
 - (ii) not take into account any costs or expenses that the Province has incurred or will incur in remedying any Final Deficiency List Deficiency in respect of which any such Retained Deficiency Amount applies.

2.3 Timing of Calculation of Design-Builder Default Termination Sum

The Design-Builder Default Termination Sum will be calculated as of the Termination Date.

2.4 Calculation of Design-Builder Default Termination Sum

If the aggregate amount calculated in accordance with:

- (a) Section 2.2(b) of this Schedule exceeds the aggregate amount calculated in accordance with Section 2.2(a) of this Schedule, the Design-Builder Default Termination Sum will be an amount equal to the excess and will be payable by the Design-Builder to the Province;
- (b) Section 2.2(a) of this Schedule exceeds the aggregate amount calculated in accordance with Section 2.2(b) of this Schedule, the Design-Builder Default Termination Sum will be an amount equal to the excess and will be payable by the Province to the Design-Builder; or
- (c) each of Sections 2.2(a) and 2.2(b) of this Schedule are equal, the Design-Builder Default Termination Sum will be zero and no amount will be payable by the Design-Builder to the Province by the Province to the Design-Builder pursuant to this Part 2.

2.5 Date for Payment of Design-Builder Default Termination Sum

The Design-Builder or the Province, as applicable, as determined by this Part 2, will pay the Design-Builder Default Termination Sum calculated in accordance with this Part 2 on or before the later to occur of:

- (a) the date that is 60 Business Days after the Termination Date; and

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- (b) the date that is 30 Business Days after the date on which the Design-Builder Default Termination Sum is finally determined by agreement of the Province and the Design-Builder or in accordance with the Dispute Resolution Procedure, provided that, if there is a dispute as to the calculation of the Design-Builder Default Termination Sum, any undisputed amount will be paid on or before the payment date referred to in Section 2.5(a) of this Schedule and any remainder will be paid on or before the payment date referred to in this Section 2.5(b), with interest on such remainder at a rate of interest per annum equal to the No Default Interest Rate, calculated from the payment date referred to in Section 2.5(a) of this Schedule until the date of payment.

PART 3 GENERAL PROVISIONS

3.1 No Compensation to Extent of Insurance

Notwithstanding anything to the contrary in this Schedule or this Agreement, the Design-Builder will not be entitled to be compensated by the Province under this Schedule, and any amounts payable by the Province under any provisions of this Schedule will be reduced, to the extent:

- (a) that:
 - (i) the Design-Builder recovers or is entitled to recover under any Required Insurance, or would have been able to recover under any Required Insurance if such Required Insurance had been taken out and maintained in accordance with this Agreement; or
 - (ii) there are insurance proceeds available to the Design-Builder in respect of the Project, or that would have been available to the Design-Builder in respect of the Project under any Required Insurance if such Required Insurance had been taken out and maintained in accordance with this Agreement;

whether or not such Required Insurance was in fact effected or, if effected, was vitiated, and whether vitiated as a result of any act or omission of the Design-Builder or of any person for whom the Design-Builder is in law responsible (including, but not limited to, by reason of non-disclosure or under-insurance or failure or insolvency of the insurer), or for any other reason, excluding only vitiation caused by any act or omission of the Province or any person for whom the Province is in law responsible, but only to the extent non-vitiation terms protecting against vitiation in the case of such act or omission are not required by the terms of this Agreement to be included in the applicable insurance policies, and any such insurance proceeds recovered by or available to the Design-Builder were not taken into account in the calculation of the compensation payable by the Province under this Schedule; or

- (b) that the Design-Builder recovers or is entitled to recover under any policy of insurance that is not Required Insurance but that the Design-Builder has in fact taken out and maintained, and any such insurance proceeds recovered by or available to the Design-Builder were not taken into account in the calculation of the compensation payable by the Province under this Schedule; or

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- (c) that the Province has made or authorized payment to or for the account of or on behalf of the Design-Builder or the Design-Builder is entitled to receive proceeds of insurance, under any of Sections 6.17(b), (c), (d) and (e) of this Agreement and such payments were not taken into account in the calculation of the compensation payable by the Province under this Schedule; or
- (d) of any amounts in respect of deductibles and waiting periods under any of the insurance referred to in either of Sections 3.1(a) and (b) of this Schedule for which the Design-Builder is responsible.

3.2 Adjustment for Net Balance

Any amount payable by the Province as compensation on termination under this Schedule will be:

- (a) increased by any net balance owing by the Province or BCTFA pursuant to Section 14.6(c) of this Agreement; or
- (b) reduced by any net balance owing by the Design-Builder to the Province or BCTFA pursuant to Section 14.6(c) of this Agreement.

3.3 Rights of Set-Off

- (a) Subject to Section 3.3(b) of this Schedule, any amount that is payable by the Province to the Design-Builder pursuant to this Schedule will be reduced by any amount the Province is entitled to set off under Section 1.4 [Province's Right of Set Off] of Schedule 10 (provided this right of set off will not apply to an amount payable by the Design-Builder to the Province pursuant to Section 14.6(c) of this Agreement where the amount payable by the Province as compensation on termination has been reduced pursuant to Section 3.2 [Adjustment for Net Balance] of this Schedule by the amount payable by the Design-Builder to the Province pursuant to Section 14.6(c) of this Agreement).
- (b) To any extent that:
 - (i) any amount the Province is entitled to set off referred to in Section 3.3(a) of this Schedule; or
 - (ii) any net balance owing by the Design-Builder referred to in Section 3.2(b) of this Schedule;

is not fully paid and satisfied by deduction from or reduction of any amounts payable by the Province to the Design-Builder under this Schedule because the amount referred to in Section 3.3(b)(i) or Section 3.3(b)(ii) of this Schedule is greater than the amount of compensation on termination payable by the Province under this Schedule, or because no compensation on termination is payable by the Province under this Schedule, or for any other reason, the Design-Builder will pay to the Province on demand the amount remaining unpaid and unsatisfied.

3.4 Full and Final Settlement

Notwithstanding any other provision of this Agreement or rule of law or equity to the contrary:

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- (a) either:
 - (i) payment of the amount payable by the Province pursuant to this Schedule in respect of a termination of this Agreement; or
 - (ii) a determination that neither the Province nor the Design-Builder has an obligation to make any payment to the other pursuant to this Schedule in respect of a termination of this Agreement;

will be in full and final satisfaction of all Claims that, in relation to any Supervening Events, or breaches or defaults under, or termination of, this Agreement, or any other cause, matter or thing whatsoever with respect to this Agreement, can be made or brought against the Province or BCTFA by the Design-Builder, whether under contract, tort, restitution or otherwise;

- (b) the right to compensation payable under this Schedule is the sole and exclusive remedy of the Design-Builder against the Province and BCTFA for any termination of this Agreement and the Design-Builder is excluded from all other rights or remedies in respect thereof; and
- (c) without limiting the generality of the foregoing Sections 3.4(a) and (b) of this Schedule, the Design-Builder will have no Claim against the Province or BCTFA in respect of any Project Work performed up to the Termination Date, or for any refund or repayment of all or any part of the Performance Incentive Payments, apart from any compensation payable by the Province pursuant to this Schedule,

except, in the case of each of Sections 3.4(a), (b) and (c) of this Schedule, for any liability of the Province or BCTFA to the Design-Builder that arose prior to the Termination Date (but not from the termination itself) and has not already been compensated for, or taken into account, in determining the relevant compensation amount and adjustments thereto payable by the Province pursuant to this Schedule, and except, in the case of Section 3.4(a) of this Schedule, any liability of the Province or BCTFA to make a payment pursuant to Section 4.2(c) of Schedule 10 [Payment].

The Design-Builder acknowledges and agrees that the provisions of this Schedule do not constitute or result in a penalty or forfeiture.

3.5 Calculation of Compensation

- (a) Promptly after the giving of any Notice of Intention to Terminate, or any notice of termination pursuant to a right to terminate the validity of which is or has been determined or accepted in accordance with Section 14.4(b) or Section 14.4(c) of this Agreement, in respect of a termination of this Agreement:
 - (i) to which Section 1.1 [Obligation to Pay Non-Default Termination Sum] of this Schedule applies, the Design-Builder will determine in accordance with the provisions of this Agreement the amount of compensation payable as of the actual Termination Date if known and as of an estimated Termination Date otherwise, and will provide to the Province's Representative notice of such amount and the details of the calculation of each component thereof; or

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- (ii) to which Section 3.1 [Obligation to Pay Compensation on Design-Builder Default] of this Schedule applies, the Province will give to the Design-Builder a statement setting out the Design-Builder Default Termination Sum,

together in each case with all such documents and information that the Province's Representative or the Design-Builder, as the case may be, may from time to time in a timely manner reasonably request for the purposes of calculating, confirming the calculation of, or verifying, the amount of compensation payable.

- (b) If the amount of compensation calculated pursuant to subsection (a) above was determined as of an estimated Termination Date, promptly after the actual Termination Date the applicable party will provide to the other party the calculation, information and documents referred to in subsection (a) above as of the actual Termination Date, together with an explanation (with supporting calculations, certificates and documents) of the difference between the amount of compensation calculated as of the estimated Termination Date and the amount of compensation calculated as of the actual Termination Date.
- (c) Within 30 days after the latest of:
 - (i) the date of receipt by the applicable party of a notice of a compensation amount from the other party under subsection (a) above with supporting details of the calculation of each component thereof, certificates and other documents as provided in subsection (a) above;
 - (ii) if applicable, the date of receipt by the applicable party of the additional explanation, calculations, information, certificates and documents referred to in subsection (b) above; and
 - (iii) the date of receipt by the applicable party of any other documents and information reasonably requested by the other party in a timely manner for the purposes of calculating, confirming the calculation of, or verifying, the amount of compensation payable;

the applicable party will by notice to the other party either:

- (iv) confirm its agreement with the calculation of amount of compensation payable; or
 - (v) confirm its disagreement with the calculation of the amount of compensation payable and provide an explanation and reasonable particulars as to the basis for such disagreement.
- (d) Where the applicable party confirms its disagreement with the calculation of the amount of compensation payable, the matter will be referred to and resolved according to the Dispute Resolution Procedure.

3.6 Condition Precedent to Payment

Notwithstanding any other provision of this Schedule or this Agreement, it will be a condition precedent to any payment by the Province to the Design-Builder of any compensation on termination that

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the Design-Builder will have complied in all material respects with its obligations under Sections 14.8 [Transfer of Assets], and 14.9(b) to (e) inclusive, of this Agreement.

**SCHEDULE 15
COMMUNICATIONS AND ENGAGEMENT**

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**PART 1
COMMUNICATIONS AND ENGAGEMENT**

1.1 Communications and Engagement Obligations

The Design-Builder will:

- (a) carry out Construction notification in accordance with Article 3 [Traffic Management Communications] of Part 3 of Schedule 4; and
- (b) support the Province with, in accordance with this Schedule:
 - (i) engagement with Interested Parties;
 - (ii) enquiry-response management;
 - (iii) crisis communications and issues management; and
 - (iv) media and government relations,

(together, the “**Communications and Engagement Obligations**”), all as required to ensure that the public communications and engagement for the Project achieves the desired outcome of involving and informing all Interested Parties concerning the value, benefits and progress of the Project and minimizing public impacts by considering the needs of Interested Parties and appropriately responding to questions and concerns about Construction, and with the Design-Builder’s activities in connection with such public communications and engagement being carried out under the control and with the oversight of the Province as set out in this Schedule.

1.2 Communications and Engagement Management

In carrying out the Communications and Engagement Obligations, the Design-Builder will:

- (a) maintain an appropriate level of resources to meet the Communications and Engagement Obligations, including having available throughout the Term resources with the following experience:
 - (i) managing traffic construction and operations communications for transportation construction projects comparable to the Project;
 - (ii) working with government communications processes and policies;
 - (iii) developing traffic and communications strategies with the input of multiple stakeholders;
 - (iv) working with issues management related to transportation construction projects; and
 - (v) planning and managing community and stakeholder engagement for transportation construction projects;
- (b) support and contribute to a positive working relationship between and among the Province and all Interested Parties; and

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- (c) exhibit a high degree of professionalism and courtesy.

1.3 Communications Deliverables

Table 1.3 sets out the plans which the Design-Builder is required to develop, implement, maintain and update in accordance with this Schedule and the due dates for production of each plan, and specifies whether the plans are required to be submitted to the Province's Representative under the Review Procedure or the Consent Procedure. In addition to the plans required in this Table 1.3, Parts 2, 3, 4 and 5 of this Schedule set out circumstances under which certain deliverables will be submitted to the Province's Representative in accordance with the requirements provided in such Parts, and the applicable performance measures.

Table 1.3

Plan	Section of this Schedule	Due Date	Review Procedure or Consent Procedure
Construction Communications and Engagement Plan (First Submission)	1.4	First submission no later than 60 days following the Effective Date	Consent Procedure
Construction Communications and Engagement Plan (Updates)	1.4	As needed. Required for annual review no later than June 1 until Total Completion Date	Review Procedure

1.4 Construction Communications and Engagement Plan

The Design-Builder will develop, implement, maintain and update in accordance with this Schedule a plan (the "**Construction Communications and Engagement Plan**") which will be in effect until the Total Completion Date. The Construction Communications and Engagement Plan will describe the Design-Builder's strategy for achieving the Communications and Engagement Obligations and will include, as a minimum, the following:

- (a) a description of the Design-Builder's team, including the number of personnel proposed, roles, responsibilities and experience of each team member, and how the personnel will be managed and utilized;
- (b) an organizational chart showing the proposed relationship among the Design-Builder's team, the Design-Builder's Representative and senior Design-Builder managers;
- (c) a description of how the Design-Builder will coordinate its activities with the Province, including responding to requests from the Province;
- (d) a description of the Design-Builder's enquiry-response activities outlining, as a minimum, how the Design-Builder will:
 - (i) manage and respond to enquiries, suggestions and complaints with respect to the Project;
 - (ii) electronically and accurately record, track and report out on enquiries and response with respect to the Project; and

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- (iii) meet any FOIPPA, CASL and Provincial privacy and security requirements;
- (e) a description of the Design-Builder's crisis communications activities outlining, as a minimum, the following information:
 - (i) the type and severity of potential crisis situations that could arise during the Construction;
 - (ii) how the Design-Builder will interface with and integrate with emergency responders and others as appropriate with respect to crisis communications;
 - (iii) the audiences, tactics and tools proposed to be used in responding to a crisis situation;
 - (iv) a list of key contacts and contact numbers, including contact information for the Design-Builder's media spokesperson;
 - (v) a preliminary work plan for initial triage in the event that a crisis occurs; and
 - (vi) how the crisis communications activities interface with the Incident Management Plan prepared in accordance with Section 4.2.2 [Incident Management Plan] of Part 3 of Schedule 4; and
- (f) a description of how the Design-Builder will meet its obligations for engagement with Interested Parties under this Agreement, including, as a minimum, how the Design-Builder will:
 - (i) coordinate communications and engagement activities with the Province, including responding to communications and engagement-related requests from the Province;
 - (ii) proactively manage regular contact with adjacent businesses and property owners regarding Construction to identify and minimize impacts arising from Construction and proactively manage and respond to day-to-day enquiries and concerns from Interested Parties on issues and concerns arising out of Construction, including notification and timing of Construction, noise, hours of work and construction updates;
 - (iii) plan and attend Province-directed Engagement Events as the Province deems necessary or desirable, and provide all meeting materials that may reasonably be required;
 - (iv) immediately notify the Province of any issues or potential issues to facilitate timely resolution;
 - (v) in consultation with the Province, develop and implement strategies to track, address, mitigate and minimize any issues or potential issues; and
 - (vi) respond to emerging issues or potential issues identified by the Province within the timeframe specified by the Province.

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1.5 Performance Measures

- (a) The Tables in each of Part 2 [Design-Builder Communications Performance Measures], Part 3 [Construction Communications Performance Measures], Part 4 [Interested Party Engagement Performance Measures] and Part 5 [Media and Government Relations Performance Measures] of this Schedule set out:
 - (i) performance measures to be met by the Design-Builder in relation to communications and engagement;
 - (ii) the timing for each such performance measure, where applicable; and
 - (iii) whether any deliverables included within such performance measures are required to be submitted under the Review Procedure or the Consent Procedure.
- (b) In respect of any performance measure set out in such Tables with a designation of “Major” or “Severe” in the column entitled “Performance Mechanism Index”, such designation will inform the basis on which NCE Points will be assigned in accordance with Appendix 9A [Assignment of NCE Points] to Schedule 9, and NCE Points may be assigned in accordance with Section 6.1 [Nonconformity Reporting Process] of Schedule 7 for any other performance measures set out in such Tables.
- (c) Any timing requirements in the tables in Part 2 [Design-Builder Communications Performance Measures], Part 3 [Construction Communications Performance Measures], Part 4 [Interested Party Engagement Performance Measures] and Part 5 [Media and Government Relations Performance Measures] of this Schedule will be in addition to, and will not replace, any other timing requirements provided in this Agreement.

PART 2 DESIGN-BUILDER COMMUNICATIONS PERFORMANCE MEASURES

Table 2

	Performance Measure	Timing	Performance Mechanism Index
2.1	Communications Working Group:		
	(a) The Design-Builder will convene, organize and maintain a group (the “ Communications Working Group ”) that will meet regularly with the Province in accordance with this Section 2.1. The Design-Builder representation on the Communications Working Group will comprise communications and engagement staff from the Design-Builder including the Design Manager, the Operations/Traffic Manager, the Construction Manager and others as appropriate to foster a positive working relationship between the Design-Builder and the Province with respect to communications and engagement activities and to build an Interested Party-focused approach to the Project and Construction management and mitigation of impacts due to Construction;		

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	Performance Measure	Timing	Performance Mechanism Index
	(b) The Design-Builder will convene an initial meeting of the Communications Working Group;	No later than 30 days following the Effective Date	
	(c) The Design-Builder will convene regular meetings of the Communications Working Group;	At a minimum, monthly up to the Total Completion Date	
	(d) the Design-Builder will present a 3-month look ahead calendar identifying planned Project activities that warrant action under this Schedule and proposed related communications and engagement actions, and with such calendar to be consistent with the schedule of proposed Closures provided by the Design-Builder pursuant to Section 4.1(i) of Part 3 of Schedule 4;	At every meeting (at least monthly)	
	(e) the Design-Builder will report on the status of enquiry-response activities for the Project, including as a minimum, the number of enquiries, the status of responses to enquiries, and the completeness and timeliness of content updates;	At every meeting (at least monthly)	
	(f) the Design-Builder will report on the status of the notification of Construction activities and traffic impacts for the Project, including notifications that have been sent, the date, the method for distribution, and the distribution area, as well as upcoming notifications including proposed timing, method for distribution and distribution area;	At every meeting (at least monthly)	
	(g) the Design-Builder will prepare an agenda for the meetings that will allow for information sharing, discussion of matters of interest to Interested Parties, and identification of and response to emerging issues; and	For each meeting (at least monthly)	
	(h) the Design-Builder will prepare and distribute meeting notes following each meeting.	Within 7 days of each meeting	
2.2	Evaluation and Reporting		
	The Design-Builder's Quality Audits of the Communications and Engagement Obligations will include audits of the Design-Builder's performance, which will include, among other audit items, the following information:	In accordance with the Design-Builder's Quality Audit Plans and as indicated below	
	(a) assessment of performance in relation to the following plans and associated activities, including recommendations for how the Design-Builder will incorporate improvements into the annual updates of the Construction Communications and Engagement Plan.	Annually, no later than March 1	

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**PART 3
CONSTRUCTION COMMUNICATIONS PERFORMANCE MEASURES**

Table 3

	Performance Measure	Timing	Performance Mechanism Index
3.1	General Communication		
3.1.1	Project Identity and Graphic Design: The Design-Builder will use and apply to all informational materials the visual identity and graphic standards provided for the Project to the Design-Builder by the Province.	For all materials submitted in accordance with all Schedules	Major
3.1.2	Website: At all times, the Design-Builder will:		
	(a) provide to the Province up-to-date traffic advisories with current traffic information in the template provided by the Province that can be applied to the Project website maintained by the Province (the “ Website ”);	Weekly	Major
	(b) provide to the Province Construction updates, in a format that can be applied to the Website;	Weekly	
	(c) provide to the Province Construction Schedule updates, including key milestones, in the template provided by the Province that can be applied to the Website;	Monthly	
	(d) provide to the Province photos and videos demonstrating Project activities in relation to Section 3.1.9 of this Schedule;	As requested by the Province	
	(e) submit such content described in Section 3.1.2(a) through 3.1.2(c) of this Schedule to the Province pursuant to the Consent Procedure; and		
	(f) ensure that material provided considers and appropriately accommodates the needs of users with visual, hearing and motor skill challenges.	For each submission	
3.1.3	Social Media: At all times, the Design-Builder will:		
	(a) provide text and multimedia content to the Province to support the Province’s social media strategy for the Project, which may include Twitter, Facebook, YouTube, Flickr and that may be expanded to include other tools and techniques; and	As requested by Province	
	(b) submit such content described in Section 3.1.3(a) of this Schedule to the Province pursuant to the Review Procedure.		
3.1.4	Enquiry-Response: The Design-Builder will:		
	(a) respond to enquiries by telephone, e-mail or other written correspondence (where appropriate) within targeted response times as follows:		
	(i) calls related to traffic safety, traffic incidents or emergencies;	Within 5 minutes	Major

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	Performance Measure	Timing	Performance Mechanism Index
	(ii) urgent calls (at all times) and emails (during business hours) related to Construction impacts, traffic disruption/impacts; and	As soon as possible, but in no event later than 1 hour after receipt of the enquiry	Major
	(iii) other enquiries related to Construction;	98% within 3 days; 100% within 5 days	
	(b) forward enquiries other than those described in Section 3.1.4(a) of this Schedule to the Province;	Within 1 day	
	(c) ensure that responses provided by the Design-Builder explain how the subject matter of the enquiry will be addressed;		
	(d) implement a live electronic tracking system using an online database, to track enquiry response activities, including all contact by telephone, email, at meetings and Engagement Events, in person and written correspondence (including enquiries, suggestions, concerns and compliments) and responses provided/actions taken (the system will provide live access to the current status to both the Design-Builder and the Province);	Within 30 days of the Effective Date	Major
	(e) keep updated in the electronic tracking system, all fields required to satisfy all tracking and reporting requirements, which will include, as a minimum, a description of the enquiry/concern, response time, time to meet on site if required, meeting location and attendees, the time to complete the appropriate action, follow up on responses or actions, tracking of repeat enquiries/issues, and where a concern may not be justified or satisfaction is not possible, a record of the steps taken and advice given must be recorded;	Current to within 1 Business Day	
	(f) ensure the electronic tracking system stores data only in Canada, provides secure, live access to the current status of enquiry-response activities and tracking to both the Design-Builder and the Province; and		
	(g) submit such information described in Section 3.1.4(a) of this Schedule to the Province pursuant to the Review Procedure.		
3.1.5	Project Construction Phone Line: The Design-Builder will:		
	(a) establish, manage and maintain a 24/7 traffic information Project phone line with a live operator at all times to:	Launch within 30 days of the Effective Date	Major
	(i) provide, without limitation, 24/7 site contact information and specific provisions for priority access in the event of a Code 3 Response (B.C. Ambulance Service Radio Code 3 emergency vehicle response to a call using lights and siren) or public emergency as warranted by emergency response agencies; and	At all times	Severe

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	Performance Measure	Timing	Performance Mechanism Index
	(ii) forward public enquiries about the Project to the Province in accordance with the timeframes specified in Section 3.1.4(b) of this Schedule;		
	(b) develop, implement, and maintain, a proposed training protocol for operators, including process flow charts for action with respect to different types of calls; and	Within 30 days of the Effective Date and as soon as updated	
	(c) submit the proposed training protocol described in Section 3.1.5(b) of this Schedule to the Province pursuant to the Review Procedure.		
3.1.6	Information Signs: The Design-Builder will:		
	(a) submit to the Province pursuant to the Consent Procedure prior to installation, erection or removal, the location, content and format of all permanent signs and notices to be installed or erected on the Project Site, and any signs proposed to be removed; and	Minimum of 14 days prior to scheduled installation, erection or removal	
	(b) install Provincial funding signs in a location specified by the Province; provide personnel to install, remove and relocate signs on an expedited basis as required.	Within 1 week of Province request	
3.1.7	Photography and Videography: To record and demonstrate progress of the Project from start of Construction to the Substantial Completion Date, the Design-Builder will provide to the Province, on a royalty-free basis:		
	(a) high resolution photos for shared, royalty-free use by the Province, in publications, advertising, presentations and on public websites;	At least monthly	
	(b) professional quality, high resolution photos, graphics and images for shared and royalty-free use by the Province, in publications, advertising, presentations and on public websites;	For all major Project milestones	
	(c) aerial photography to demonstrate progress of construction along the entire Project Site	At least quarterly	
	(d) professional quality, high resolution video clips for shared and royalty-free use by the Province, in publications, advertising, presentations and on public websites;	For all major Project milestones	
	(e) access and assistance for the Province and its sub-contractors to collect time-lapse videos of construction in key locations on the Project Site as may be determined by the Province; and	From start of Construction to all major Project milestones and to Substantial Completion Date	Major
	(f) access and assistance for any photographers, videographers or media personnel designated by the Province.	On request of Province	

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	Performance Measure	Timing	Performance Mechanism Index
3.2	Issues Management		
	At all times until the Total Completion Date, the Design-Builder will:	As identified	
	(a) immediately notify the Province of any issues or potential issues to facilitate timely resolution;		
	(b) consult with and provide reasonable assistance to the Province with respect to identifying emerging issues;	As identified	
	(c) in consultation with the Province and pursuant to the Review Procedure, develop and implement strategies to:		
	(i) track, address, mitigate and minimize any issues or potential issues;		
	(ii) share information about any issues or potential issues with emergency responders or Interested Parties;		
	(iii) work with the Province to develop messages regarding the Design-Builder's response to any issues or potential issues and communicate them to Interested Parties; and		
	(iv) report to the Province on progress/success of mitigation measures with respect to any issues or potential issues;		
	(d) respond to emerging issues or potential issues identified by the Province within the timeframe specified by the Province, acting reasonably; and	As determined by the Province	
	(e) keep current and available to the Province at all times, a list of key contact names and cell phone numbers that the Province can access to support issues management response.	Within 5 Business Days of the Effective Date and thereafter within 1 day of any change	
3.3	Crisis Communication		
	At all times until the Total Completion Date the Design-Builder will:		
	(a) provide assistance to the Province in the Province's development of any supplemental communication plans and strategies;		
	(b) during a crisis situation, make available sufficient and appropriate Project personnel to effectively manage and perform the Design-Builder's responsibilities; and	Within 30 minutes of request by Province	Severe

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	Performance Measure	Timing	Performance Mechanism Index
	(c) draft and submit to the Province pursuant to the Consent Procedure, proactive and responsive content for crisis situations when a crisis arises.	No later than 2 hours after the Design-Builder or the Province becomes aware of a crisis situation	

**PART 4
INTERESTED PARTY ENGAGEMENT PERFORMANCE MEASURES**

Table 4

	Performance Measure	Timing	Performance Mechanism Index
4.1	Engagement Events		
	The Design-Builder will participate in activities and events held by the Province with Interested Parties (together, “ Engagement Events ”), which will include the following matters: (a) participate in Engagement Events which will include sharing of design and substantive design changes, traffic-related Construction and measures to mitigate impacts of Construction;	Until the Total Completion Date	
	(b) support and attend Province-sponsored open house Engagement Events to: (ii) inform interested parties about Project designs (minimum of two Engagement Events); and	As required by the Province	
	(iii) engage communities to seek input on the Design-Builder’s design process using materials developed in accordance with Section 4.1(a) of this Schedule (total number to be determined based on Design-Builder’s Interim Design and Final Design);	Based on Design Schedule	
	(c) for each open house Engagement Event described in Section 4.1(a) of this Schedule, the Design-Builder will:	As required by the Province	
	(i) provide content for Engagement Event materials including information and high-quality renderings and graphics about Project designs; and information and high-quality graphics regarding Construction activities and traffic impacts;	No later than 4 weeks prior to each Engagement Event	
	(ii) provide appropriate personnel to support planning and to attend all Engagement Events, including technical staff, subject matter experts and community relations personnel;		
	(iii) provide any other Engagement Event logistics required;		

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	Performance Measure	Timing	Performance Mechanism Index
	(iv) consider all concerns, issues and matters raised by Interested Parties and prepare a report for future meetings which must: (A) demonstrate in detail how the Design-Builder considered the concerns, issues and matters raised by Interested Parties and how the Design-Builder proposes to address and remedy each of the concerns, issues and matters raised; and	Within 4 weeks of any Engagement Event	
	(B) if, in the report in paragraph (A) above, the Design-Builder proposed not to address or remedy in whole or in part any concern, issue or matter raised by Interested Parties, provide reasons why it proposes not to address or remedy in whole or in part any concern, issue or matter raised by these groups;		
	(d) submit all Engagement Event summary reports described in Section 4.1(c) of this Schedule to the Province pursuant to the Consent Procedure; and	Within 30 days following the Engagement Event	
	(e) track all meetings and events using the electronic tracking system.	Within 1 day of scheduling or rescheduling	
4.2	General Interested Party Engagement		
	The Design-Builder will, until the Total Completion Date prepare content for a quarterly Project update which the Province may send by direct mail to Interested Parties, and an electronic copy of which may be posted to the Website.	Initially no later than 90 days after start of Construction, then every 90 days	

**PART 5
MEDIA AND GOVERNMENT RELATIONS PERFORMANCE MEASURES**

Table 5

	Performance Measure	Timing	Performance Mechanism Index
5.1	No Media Relations Activities		
	The Design-Builder will not undertake any activities relating to media relations except where requested by the Province.		Severe

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	Performance Measure	Timing	Performance Mechanism Index
5.2	Media Relations Support		
	The Design-Builder must, at all times until the Total Completion Date, support the Province for the following activities relating to media relations: (a) direct all media enquiries and interview requests to the Province's Representative so that the Province can determine the organization/individual that is most suitable to respond to the enquiry;	Within 1 hour of receiving request from Province	
	(b) support the Province's communications and media relations activities by supplying accurate information about the Project to the Province within the timeframes specified;	On request by Province	
	(c) provide all information and data regarding the status of the Project, any traffic incidents, emergencies or other occurrences and any other information and data the Province may request in order to appropriately respond to media enquiries;	Within the timeframes requested by Province	
	(d) make available a designated media spokesperson as requested by the Province;	Within the timeframes requested by Province	
	(e) provide 24/7 availability of media communications staff to monitor, draft messaging, and 24/7 access to subject matter experts to support response to media enquiries as requested by the Province; and	Continually	
	(f) make technical and subject matter experts available to the Province's media relations personnel as required for the purposes of responding to technical matters related to media requests.	Within the timeframes requested by Province	
5.3	Media Releases		
	The Province, in its sole discretion, will determine when media releases are required and will distribute them. At all times until the Total Completion Date, the Design-Builder will, as requested by the Province, prepare material for such notices.	As requested by Province	Major
5.4	Governmental Authority Liaison Support		
	Without limiting any and all other obligations to proactively liaise with Governmental Authorities in accordance with this Agreement, the Design-Builder will: (a) proactively support the Province in liaising with affected Governmental Authorities, by providing information about the Project status, upcoming milestones and issues that may affect the Project and reviewing, within the timeframes specified by the Province, any materials produced by the Province for such liaison activities; and	As requested by Province	
	(b) participate in meetings as and when requested by the Province.	As requested by Province	

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	Performance Measure	Timing	Performance Mechanism Index
5.5	No Public Announcements		
	Neither the Design-Builder nor any of its Subcontractors will issue or disseminate any media release, public announcement or public disclosure relating to the Project without the Province's prior written consent.		Severe

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DISPUTE RESOLUTION PROCEDURE**

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Appendix 16A Expert Referee Agreement

**PART 1
GENERAL**

1.1 Confidentiality

Any disagreement, claim or Dispute arising under this Agreement and any Dispute Resolution Procedure carried out in accordance with this Schedule and all information relating to each will be kept private and confidential and will be treated as Confidential Information.

1.2 No Joinder

No proceedings to resolve any Dispute arising out of or relating to this Agreement in accordance with this Schedule will include, by consolidation or joinder or in any other manner, any additional person not a party to this Agreement, including any Subcontractor, except with the written consent of the parties to this Agreement and any other person sought to be so joined.

1.3 Limitation Defences

The parties acknowledge and agree that the running of time in relation to a particular disagreement or claim as it may apply to any and all defences that are based on the lapse of time, including those prescribed by the *Limitation Act* (British Columbia), will be suspended from the date a Dispute Notice is issued in accordance with Section 2.1 [Notice of Dispute] of this Schedule until such time as the Dispute Resolution Procedure pursuant to this Schedule has concluded provided that the running of time in relation to prescribed time periods and limits under the Dispute Resolution Procedure will not be suspended.

1.4 Evidence of No Double Recovery

Upon request by the Province, the Design-Builder will disclose and certify to the Province in relation to any disagreement, claim or Dispute:

- (a) all amounts recovered or to which the Design-Builder is entitled to recover under Required Insurance or other insurance that is not Required Insurance but that the Design-Builder has in fact taken out and maintained, including amounts held by the Province; and
- (b) all amounts recovered or to which the Design-Builder is entitled to recover under Material Subcontracts, and to which Material Subcontractors have recovered or are entitled to recover from Subcontractors.

**PART 2
COMMENCEMENT OF DISPUTE RESOLUTION PROCEDURE**

2.1 Notice of Dispute

- (a) Any party (the “**Initiating Party**”) may initiate the Dispute Resolution Procedure with respect to a claim or disagreement (a “**Dispute**”) relating to or in connection with this Agreement by delivering to the other party or parties a notice of Dispute (the “**Dispute Notice**”) subject to the terms set out in this Schedule.

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- (b) The Dispute Notice will contain a summary of the matter in dispute, including the particulars of the matter in dispute, the relief sought, a breakdown of any costs or delay impacts claimed, if applicable, the provisions of this Agreement relied upon and a request that the Dispute Resolution Procedure of this Schedule be commenced.
- (c) If there is any information or evidence that the party delivering the Dispute Notice intends to rely on in support of its position that has not previously been provided to the other party, such information will be provided with the Dispute Notice.

2.2 Limitation for Initiating a Dispute

Subject to any other shorter time or limitation period set out in this Agreement, if the Design-Builder wishes to contest, dispute or challenge any matter arising out of or in relation to any claim, request or submission by the Design-Builder, including in relation to any Province Change, Supervening Event, any matter relating to payment or extension of time or any determination by the Province that the Design-Builder is not prohibited by this Agreement from contesting, disputing or challenging, and the Province has given written notice denying or refusing such claim, request, or submission, the Design-Builder will deliver a Dispute Notice within 90 days after such written notice by the Province and if the Design-Builder fails to deliver a Dispute Notice within such 90 days, the Design-Builder hereby waives its rights in relation to such claim, request or submission and is deemed to accept the Province's denial or refusal of such claim, request or submission and is deemed to release the Province from and against all liability in relation thereto.

2.3 Ongoing Disclosure Obligations

- (a) Each of the Province and the Design-Builder agrees that it will at all times, provide frank, candid and timely disclosure of all relevant facts, information and documents to facilitate the evaluation and resolution of any disagreement, claim or Dispute, both before and after initiation of the Dispute Resolution Procedure.
- (b) If a party in receipt of a Dispute Notice, believes in its sole discretion, that it requires additional documents or other information from the Initiating Party to consider the Dispute, it may at any time require the Initiating Party to provide classes or categories of documents or other information, and the Initiating Party will provide those documents or other information as soon as reasonably possible upon request.

PART 3 NEGOTIATIONS

3.1 Negotiations by Senior Management Executives

Upon receipt of a Dispute Notice pursuant to Section 2.1 [Notice of Dispute] of this Schedule each of the parties will refer such Dispute to a senior management executive with the authority to negotiate a settlement of such Dispute for that party (the "**Senior Management Executives**"). The parties' Senior Management Executives will make bona fide efforts to resolve by negotiation such Dispute within 45 days of receipt of the Dispute Notice. If the Senior Management Executives agree upon a resolution of the Dispute, such resolution will be memorialized in a written settlement agreement mutually acceptable to the parties and will be binding on the parties.

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3.2 Referral of Dispute to Expert Referee or Arbitration Following Negotiations

- (a) If the parties are unable to resolve a Dispute by negotiation pursuant to Section 3.1 [Negotiations by Senior Management Executives] of this Schedule within 30 days of the submission of a Dispute Notice (the “**Negotiation Period**”), then such Dispute will be resolved by an Expert Referee pursuant to Part 4 [Expert Referee Procedure] of this Schedule or by arbitration pursuant to Part 5 [Arbitration Procedure] of this Schedule in accordance with the following terms:
 - (i) where the parties have each waived in writing their right to have a Dispute resolved by an Expert Referee, the Dispute will be resolved by arbitration pursuant to Part 5 [Arbitration Procedure] of this Schedule; and
 - (ii) in all other cases, the Dispute will be resolved in the first instance by the Expert Referee pursuant to Part 4 [Expert Referee Procedure] of this Schedule, subject to the parties’ right to have the matter reconsidered by an arbitrator pursuant to Part 5 [Arbitration Procedure] of this Schedule.
- (b) Any of the parties may refer a Dispute for resolution to the Expert Referee or to arbitration, if applicable, in accordance with this Section 3.2 by issuing an Expert Referee Dispute Notice pursuant to Part 4 [Expert Referee Procedure] of this Schedule or an Arbitration Notice pursuant to Part 5 [Arbitration Procedure] of this Schedule, as applicable.

PART 4 EXPERT REFEREE PROCEDURE

4.1 Commencement of Expert Referee Procedure

If the parties are unable to resolve a Dispute in the manner contemplated in Section 3.1 [Negotiations by Senior Management Executives] of this Schedule then a party may by written notice to the other party (the “**Expert Referee Dispute Notice**”) require the Dispute to be resolved on, an expedited basis by a single qualified Expert Referee in accordance with the procedure set out in this Part 4 [Expert Referee Procedure] of this Schedule (the “**Expert Referee Procedure**”). The Expert Referee Dispute Notice:

- (a) will contain a brief summary of the matter in Dispute, the relief being sought, any cost and schedule impacts claimed, and the relevant provisions of the Agreement in issue; and
- (b) may not include reference to any matter or issue not set out or contemplated in the Dispute Notice or otherwise provided in writing to the other party during the Negotiation Period.

4.2 Appointment of Expert Referee

- (a) Disputes referred to the Expert Referee Procedure for resolution will be resolved by a referee (the “**Expert Referee**”) who is independent of the parties and experienced in the resolution of disputes that may arise between the parties under this Agreement. It is intended that the Expert Referee will serve for the duration of the Project and determine

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disputes as they are referred in accordance with Section 4.1 [Commencement of Expert Referee Procedure] of this Schedule.

- (b) Within 90 days of the Effective Date, the parties will jointly appoint the Expert Referee in the following manner:
 - (i) within 30 days of the Effective Date, each party will submit in writing to the other party, the names of no more than three candidates for the Expert Referee who are immediately available to perform the role of the Expert Referee; and
 - (ii) the parties will make *bona fide* efforts to agree on the appointment of an Expert Referee and if for any reason the Expert Referee has not been appointed within 120 days of the Effective Date, then either party may apply to VanIAC to appoint the Expert Referee from the lists of potential Expert Referees submitted by each of the parties or, if a party fails to submit a list of potential Expert Referees within 10 Business Days of such application, VanIAC will appoint an Expert Referee who will meet the qualifications set out in Section 4.2(a) of this Schedule.
- (c) If the Expert Referee resigns, dies, becomes conflicted, or whose appointment to act as the Expert Referee has otherwise ceased, the parties will in good faith and in a reasonable manner agree on a replacement Expert Referee with the same or similar qualifications and professional expertise to that of the Expert Referee who has resigned, died, become conflicted or whose appointment has otherwise ceased.
- (d) If the parties cannot agree on a replacement Referee pursuant to Section 4.2(c) of this Schedule within a reasonable time, either party may apply to VanIAC for appointment of such replacement Expert Referee, in which case VanIAC will appoint a replacement Expert Referee member from lists of potential replacement Expert Referees submitted by each of the parties or, if a party fails to submit a list of potential replacement Expert Referees within 10 Business Days of such application, VanIAC will appoint a replacement Expert Referee with similar qualifications and professional experience as the Expert Referee who has resigned, died, become conflicted or whose appointment has otherwise ceased.
- (e) The parties will enter into an agreement (an “**Expert Referee Agreement**”) with the Expert Referee, engaging the specified individual to act as the Expert Referee generally in the form attached as Appendix 16A [Expert Referee Agreement] to this Schedule, such agreement to be entered into no later than 10 Business Days after the Expert Referee’s appointment and the appointment will be subject to the terms of the Expert Referee Agreement.
- (f) If VanIAC refuses, or is unable or unwilling to make an appointment under this Section 4.2, the appointment will be made by a Justice of the Supreme Court of British Columbia upon the application of any of the parties.

4.3 Expert Referee Project Site Visits

The Expert Referee will complete an initial Project Site visit within 30 days of the appointment of the Expert Referee and every six months thereafter, or such other frequency as agreed by the parties. The

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Expert Referee will not attend at the Project Site unless accompanied by the Province's Representative and the Design-Builder's Representative.

4.4 No Conflict for Expert Referee

- (a) Unless the parties otherwise agree, no person will be nominated, appointed, or continue to act as an Expert Referee who, or any of whose partners, shareholders, unitholders, or Affiliates, is or at any time has been involved or interested in the conduct of:
 - (i) any of the Project Work on behalf of the Design-Builder or any of its Subcontractors; or
 - (ii) the Project on behalf of the Province.
- (b) The parties will cause the Expert Referee appointed pursuant to this Agreement, as part of the documentation required to engage the Expert Referee, to sign a statement declaring that the Expert Referee knows of no circumstance likely to give rise to justifiable doubts as to their independence or impartiality and that the Expert Referee agrees to disclose any such circumstance to the parties should such circumstance arise after that time.

4.5 Written Submissions

Within 15 Business Days of receipt of an Expert Referee Dispute Notice, the Initiating Party will issue a written submission (the "**Claim Submission**") to the other party (the "**Responding Party**") and to the Expert Referee. The Claim Submission:

- (a) will not exceed 15 single-sided letter sized pages, single-spaced and printed in no less than 11 point font, provided that such limits will not apply to:
 - (i) any factual appendices or exhibits reasonably required in support of the Claim Submission, provided that such appendices or exhibits do not exceed 120 pages in the aggregate; or
 - (ii) any Claim Submission in respect of which the Expert Referee or the Responding Party has expressly agreed to be exempt from such limits;
- (b) will contain a summary of the matters in Dispute and the position of the Initiating Party with respect to those matters, provided that all such matters and positions were set out in the Dispute Notice or provided in writing to the Responding Party during the Negotiation Period;
- (c) will contain the remedy or relief sought by the Initiating Party, particulars of any impacts claimed, including a detailed breakdown of any costs or schedule delay impacts claimed, if applicable, provided that any such detailed breakdowns were set out in the Dispute Notice or provided in writing to the Responding Party during the Negotiation Period;
- (d) will contain reference to the specific provision(s) of this Agreement relied on by the Initiating Party in relation to its position, provided all such positions and provisions were included in the Dispute Notice or provided in writing to the Responding Party during the Negotiation Period; and

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- (e) will be accompanied by all documentary evidence and legal authorities on which the Initiating Party relies in support of its position, provided that the Claim Submission does not include any documentary evidence, legal authorities or positions not raised in the Dispute Notice or provided to the Responding Party during the Negotiation Period.

4.6 Response to the Written Submission

Within 15 Business Days following receipt of the Claim Submission, the Responding Party will submit a submission in response to the Claim Submission to the Initiating Party and the Expert Referee (the “**Response Submission**”). The Response Submission:

- (a) will not exceed 15 single-sided letter sized pages, single-spaced and printed in no less than 11 point font, provided that such limits will not apply to:
 - (i) any factual appendices or exhibits reasonably required in support of the Response Submission, provided that such appendices or exhibits do not exceed 120 pages in the aggregate; or
 - (ii) any Response Submission in respect of which the Expert Referee or the Initiating Party has expressly agreed to be exempt from such limits;
- (b) will include a summary of the Responding Party’s position in response to the Disputing Party’s Claim Submission;
- (c) will contain the remedy or relief sought by the Responding Party or, where applicable, the Responding Party’s position with respect to any costs, schedule adjustments, or other remedy or relief claimed by the Initiating Party;
- (d) will contain reference to any provision(s) of this Agreement relied on by the Responding Party in relation to its position; and
- (e) will be accompanied by all documentary evidence and legal authorities on which the Responding Party relies in support of its position.

Where the Responding Party is in receipt of more than one Claim Submission from the same Initiating Party within a 15 Business Day period, the 15 Business Days for providing a Response Submission in respect of each subsequent Claim Submission received will not start to run until the Response Submission to the previous Claim Submission has been submitted by the Responding Party.

4.7 Expert Referee Review

- (a) Subject to Section 4.7(b) of this Schedule, within 15 Business Days following receipt of the Response Submission, the Expert Referee will:
 - (i) determine the matters to be resolved;
 - (ii) determine what further documents will need to be produced and by what date;
 - (iii) determine if any additional evidence will be required and, if required, how such evidence will be obtained and a date for submission, provided that the Expert

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Referee process will not include the provision of any oral evidence or any expert evidence, whether written or oral, unless agreed by the parties; and

- (iv) make any other determinations required to allow the Expert Referee to conduct an investigation and render a decision with respect to the Dispute, in accordance with the terms in this Part 4 [Expert Referee Procedure] of this Schedule.
- (b) The Expert Referee will determine the appropriate process for the timely and cost effective resolution of the Dispute and, without limiting the generality of the foregoing, have discretion to, among other things:
 - (i) solicit additional submissions and documents from the parties, and impose deadlines for the receipt of such submissions or documents;
 - (ii) require a party to supply or prepare for examination by the Expert Referee and the other parties any additional document or written information or evidence the Expert Referee considers necessary and provide any process associated therewith;
 - (iii) proceed with the Expert Referee Procedure notwithstanding any failure or refusal of a party to comply with the provisions of this Part 4 [Expert Referee Procedure] or with the Expert Referee's directions or determinations or to attend any meeting or hearing, but only after giving such party reasonable notice that the Expert Referee intends to do so;
 - (iv) convene meetings of the parties to have the parties discuss the matters in Dispute in the presence of the Expert Referee;
 - (v) provide a process for the parties to communicate with the Expert Referee;
 - (vi) undertake one or more site visits in connection with a Dispute, which site visits will be undertaken in the presence of the parties; and
 - (vii) seek advice from any other qualified independent professional advisors in respect of the Dispute,

all with the objective of devising and adopting the simplest, least expensive, and most expeditious manner of determining the Dispute and so as to comply with the period for determination set out in Section 4.7(c) of this Schedule.
- (c) The parties will request that the Expert Referee complete its investigation and determination of the Dispute within 10 weeks of its receipt of the Response Submission.
- (d) The parties agree they will not unreasonably delay or impede the Expert Referee in completing the investigation and determination with respect to any Dispute and the parties acknowledge that the resolution process by the Expert Referee is intended to be based on an investigative process directed by the Expert Referee.

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4.8 Decision of Expert Referee

- (a) The Expert Referee will render a decision as soon as possible and, in any event but subject to Section 4.8(b) of this Schedule, will render a decision no later than 10 weeks after the Expert Referee has received the Response Submission.
- (b) If the Expert Referee reasonably believes that additional time is required to make a determination, the Expert Referee will notify the parties within 15 Business Days of the Response Submission that it requires a specified extension of time beyond the period set out in Section 4.8(a) of this Schedule to make a determination and the reason the extension is required. If the Expert Referee gives notice of an extension in accordance with this Section, the Expert Referee will render a decision within the extension period stipulated.
- (c) The Expert Referee will give written reasons or a written summary of reasons for the Expert Referee's decision.

4.9 Confidentiality of Expert Referee

The parties will cause the Expert Referee, as part of the documentation required to retain the Expert Referee, to agree to keep all information about a Dispute confidential and to not disclose that information to anyone other than the parties and, as required, representatives and advisors of each of them or as required by the Expert Referee in accordance with Section 4.7(b)(vii) of this Schedule, on an as-needed basis.

4.10 Costs of Expert Referee Review

Notwithstanding any other provision of this Agreement, the parties will each bear their own costs of the Expert Referee Procedure, including all legal fees and expenses and their respective share of all fees and expenses of the Expert Referee in accordance with the terms of the Expert Referee Agreement.

4.11 Expert Referee Decision Final and Binding

The Expert Referee's award or determination will be final and binding on the parties, and the parties will comply with the award or determination, unless the Dispute is referred to arbitration in accordance with this Schedule, and each of the parties expressly waive all rights of appeal in connection with an Expert Referee's decision except as expressly provided in this Schedule.

PART 5 ARBITRATION PROCEDURE

5.1 Referral to Arbitration

- (a) A party may commence arbitration proceedings in respect of a Dispute by giving a written notice (the "**Arbitration Notice**") to the other party requiring that the Dispute be resolved by arbitration proceedings pursuant to this Part 5 in one of the following circumstances:
 - (i) if a Dispute is not resolved by negotiation within the Negotiation Period in the manner contemplated in Section 3.1 [Negotiations by Senior Management

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Executives] of this Schedule and the parties have each waived in writing their right to have a Dispute resolved by an Expert Referee; or

(ii) within 30 days of a decision by the Expert Referee pursuant to Section 4.8 [Decision of Expert Referee] of this Schedule and:

(A) the amount in Dispute awarded or not awarded by the Expert Referee is more than \$2 million; or

(B) the determination of the Expert Referee involves issues of contract interpretation that will in the reasonable view of a party have a material impact on that party in excess of \$2 million.

(b) The parties agree that any Dispute referred to arbitration by any party pursuant to Section 5.1(a) of this Schedule will be resolved by binding arbitration administered by VanIAC pursuant to the VanIAC Rules, except to the extent of conflicts between the VanIAC Rules and the provisions of this Agreement, in which case the provisions of this Agreement will prevail.

5.2 Arbitration Procedure

(a) An arbitration may be commenced by any of the parties in the circumstances set out in Section 5.1(a) of this Schedule by issuing a Notice to Arbitrate in accordance with the VanIAC Rules. The Notice to Arbitrate will contain all of the information required by the VanIAC Rules. In addition, the Notice to Arbitrate will, to the extent relevant to a Dispute be accompanied by the parties' written waiver of their right to have the applicable Dispute resolved by the Expert Referee Procedure pursuant to Section 3.2(a)(i) of this Schedule.

(b) Within 20 Business Days of the commencement of the arbitration in accordance with Section 5.1(a) of this Schedule, the parties will make bona fide efforts to agree on a single arbitrator. If the parties are unable to do so, a single arbitrator will be appointed by VanIAC at the request of any of the parties in accordance with the VanIAC Rules.

(c) The parties agree and acknowledge that the place and legal seat of any arbitration will be Vancouver, British Columbia, Canada.

(d) Any award issued by the arbitrator will be final and binding on the parties, may be filed in any Court, and may be enforced by a party as a final judgment in such Court. The parties expressly waive, to the maximum extent permitted by law, any right of appeal of any award, including appeals based on questions of law, questions of fact, questions of mixed law and fact, or otherwise.

(e) The parties will request that the arbitrator render a final award as soon as reasonably practicable after the commencement of an arbitration, taking into consideration the size, nature and complexity of the matters in issue and the parties' intent to achieve a just, timely and cost effective determination.

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- (f) Unless the parties otherwise agree, no person may be nominated, appointed or continue to act as arbitrator who, or any of whose partners, shareholders, unitholders or Affiliates, is or at any time has been involved or interested in the conduct of:
 - (i) any of the Project Work on behalf of the Design-Builder or any of its Subcontractors;
 - (ii) the Project on behalf of the Province; or
 - (iii) is a present or former Expert Referee.

5.3 Inadmissibility of Prior Decisions

If a party is entitled to refer a Dispute pursuant to Section 5.1 [Referral to Arbitration] of this Schedule, then all decisions and determinations of the Expert Referee will be confidential and inadmissible in an arbitration of such Dispute.

PART 6 COURT PROCEEDINGS

6.1 Court Proceedings

Notwithstanding any other provision of this Schedule, no party will be precluded from initiating a proceeding in a Court for the purpose of obtaining any emergency or provisional remedy to protect its rights that may be necessary and that is not otherwise available under this Agreement, including temporary and preliminary injunctive relief and restraining orders and the appointment of a receiver or receiver and manager or any remedy or relief as expressly contemplated by Sections 14.4(b)(ii) or 15.1(c) of this Agreement. In the event that a party initiates such a proceeding, it will not be deemed to be an infringement or a waiver of the Dispute Resolution Procedure set forth in this Schedule and will not affect the relevant powers reserved to a Expert Referee or arbitrator, as applicable. Any proceeding initiated pursuant to this Section 6.1 will be notified without delay to the Expert Referee, arbitrator, and VanIAC, as applicable.

**APPENDIX 16A
EXPERT REFEREE AGREEMENT**

BETWEEN:

**[NAME AND ADDRESS OF EXPERT REFEREE]
(the “Expert Referee”)**

AND:

**HIS MAJESTY THE KING IN RIGHT OF THE PROVINCE OF BRITISH
COLUMBIA
(the “Province”)**

AND:

**EMIL ANDERSON CONSTRUCTION (EAC) INC.
(the “Design-Builder”)**

We write to confirm your appointment as the Expert Referee under the Design-Build Agreement (the “**Design-Build Agreement**”) dated July 31, 2024 among the Province, BC Transportation Financing Authority and the Design-Builder. The terms of your appointment are as contained in Part 4 [Expert Referee Procedure] of Schedule 16 to the Design-Build Agreement and as attached in Schedule A hereto (the “**Agreement**”). All capitalized terms have the meaning given to them in the Design-Build Agreement unless otherwise defined in this Agreement.

We confirm our agreement for you to review the Dispute(s) described in any Expert Referee Dispute Notice in accordance with the provisions of the Design-Build Agreement, and to perform the functions of the Expert Referee as described in Part 4 [Expert Referee Procedure] of Schedule 16 to the Design-Build Agreement. A copy of the Design-Build Agreement is enclosed for reference.

We confirm that your daily/hourly rate for fees is as set out in Schedule B to this Agreement. In addition to your invoiced fees, approved travel expenses will be reimbursed at the rates described in Schedule C to this Agreement.

Please confirm your agreement to the terms as set out in this letter by signing a copy of the enclosed letter and returning copies to each of the undersigned representatives of the Province and the Design-Builder.

Yours truly,

Authorized Signatory of the Province

Date

Authorized Signatory of the Design-Builder

Date

Expert Referee

Date

SCHEDULE A
EXPERT REFEREE AGREEMENT SERVICE TERMS

THE PROVINCE, THE DESIGN-BUILDER AND THE EXPERT REFEREE AGREE AS FOLLOWS:

1. Appointment

- 1.1. The Province and the Design-Builder hereby appoint the Expert Referee to act as the Expert Referee in accordance with the terms of this Agreement and to fulfill the role of an expert referee as set out in Part 4 [Expert Referee Procedure] of Schedule 16 to the Design-Build Agreement.
- 1.2. The Expert Referee hereby accepts the appointment and acknowledges receipt of a complete copy of the Design-Build Agreement.
- 1.3. The Expert Referee will designate [●] (the “**Expert Referee Designate**”) to perform the responsibilities and obligations of the Expert Referee as set forth in this Agreement.
- 1.4. The appointment of the Expert Referee and the Expert Referee Designate and any rights, responsibilities and obligations arising out of the Design-Build Agreement, or this Agreement may not be assigned, re-designated, or transferred in any way.

2. Conflict of Interest and Bias

- 2.1. The Expert Referee has disclosed to the Province and the Design-Builder and will promptly disclose on a continuing basis throughout the term of this Agreement any facts or circumstances that may give rise to any actual conflict of interest or any perception of a conflict of interest on the part of the Expert Referee or any other facts or circumstances which may call into question the independence of the Expert Referee or raise any risk of perception on the part of either the Province or the Design-Builder that the Expert Referee is not free from potential conflict of interest or bias.
- 2.2. If the Expert Referee becomes aware of facts or circumstances that the Expert Referee believes may impact the Expert Referee’s ability to perform the Expert Referee’s obligations independently and free of conflict of interest or bias, whether real or perceived, the Expert Referee will request the parties terminate the Expert Referee’s appointment under this Agreement and the Design-Builder and Province agree to terminate the appointment of the Expert Referee pursuant to Section 11.1(c) of this Agreement.
- 2.3. If either the Design-Builder or the Province become aware of facts or circumstances that the Design-Builder or Province, as applicable, reasonably believes may impact the independence of the Expert Referee or may give rise to a real or perceived conflict of interest or bias (the “**Concerned Party**”), the Concerned Party will give notice to the other parties, and subject to both of the other parties to this Agreement raising an objection within three Business Days of the notice, the Expert Referee appointment will be terminated in accordance with Section 11 [Termination] of this Agreement. If both of the other parties to this Agreement raise an objection to the notice provided by the Concerned Party, then the Concerned Party may apply to a neutral third party, to be agreed upon by all parties, for a determination as to whether the Concerned Party’s concerns are reasonably held, and the parties agree to be bound by the determination of

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such third party and if the concerns are found to be reasonably held, the Concerned Party may terminate the Expert Referee's appointment.

3. Duties

- 3.1. The Expert Referee will promptly, professionally, faithfully and diligently perform all duties and discharge all responsibilities and obligations assigned to the Expert Referee as specified in this Agreement and in Part 4 [Expert Referee Procedure] of Schedule 16 to the Design-Build Agreement.
- 3.2. Without prejudice to the generality of Section 3.1 of this Agreement, the Expert Referee will determine the process for the resolution of any dispute referred to it in accordance with the provisions set out in Section 4.7(b) of Schedule 16 [Dispute Resolution Procedure] to the Design-Build Agreement.
- 3.3. The Expert Referee will, upon the written request of either party, attend or facilitate meetings between the Province and the Design-Builder and/or third parties as may be required and take such other steps as may be agreed between the Province and the Design-Builder and reasonably required of the Expert Referee in connection with the functions of the Expert Referee pursuant to this Agreement.
- 3.4. If the Expert Referee or Expert Referee Designate is a member of a professional or regulatory body, the Expert Referee or Expert Referee Designate will comply with its obligations as a member of such professional or regulatory body in the performance by the Expert Referee of its obligations pursuant to this Agreement.
- 3.5. The Expert Referee represents and warrants to each of the Province and the Design-Builder that it has the necessary time, resources, professional qualifications, skill, expertise and experience in order to fulfill the obligations undertaken by the Expert Referee as set out in or as contemplated by this Agreement.

4. Cooperation

- 4.1. The Province and the Design-Builder will cooperate with each other and with the Expert Referee in order to facilitate the efficient and timely performance by the Expert Referee of the obligations of the Expert Referee under this Agreement.

5. Communications

- 5.1. Except for matters of a purely administrative nature, the Expert Referee will not communicate orally with either the Province or the Design-Builder, or their representatives, respecting any matters arising out of this Agreement unless both parties or their respective representatives are a party to the communication.
- 5.2. The Expert Referee will provide copies of any written communications sent to a party or received by the Expert Referee from a party, to the other party.

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6. Notices

- 6.1. Any notices or other documentation required to be given under this Agreement will be given in writing to the respective parties by delivery to the addresses for service shown in this Agreement or such other addresses as notified by the parties from time to time.

7. Evidence

- 7.1. The parties acknowledge that the Expert Referee is not bound by the strict rules of evidence.

8. Confidentiality

- 8.1. The Expert Referee will hold in strict confidence and will not publish, release, use or disclose (or permit any of the foregoing) to any person, any documents, information or material in whatever form provided to or received by the Expert Referee or to which the Expert Referee gains access in the course of performing the duties or discharging the responsibilities of the Expert Referee under or in connection with this Agreement, without the prior written consent of both the Province and the Design-Builder, unless such disclosure is required by court order or otherwise required by law.
- 8.2. Without prejudice to any other rights or remedies that the Province and/or the Design-Builder may have, the Expert Referee agrees that damages may not be an adequate remedy for a breach of this Section 8 and that the Province and the Design-Builder will each be entitled to the remedies of injunction, specific performance or other equitable relief for any threatened or actual breach of the terms of this Section 8.
- 8.3. The Expert Referee will implement and maintain procedures to ensure that any information supplied to, obtained by, produced, or which comes to the knowledge of the Expert Referee as a result of this Agreement is kept and maintained in strictest confidence.
- 8.4. Without restricting the generality of this Section 8, the Expert Referee will comply with such reasonable directions as the Province and the Design-Builder may, from time to time, jointly make and implement with respect to ensuring confidentiality.

9. Conflict

- 9.1. The Expert Referee will not, before or after the expiration or sooner termination of this Agreement, perform a service for or provide advice to any person, firm or corporation, or engage in any activity, where the performance of the service, the provision of the advice or the performance of the activity, in the reasonable opinion of the Province or the Design-Builder, gives rise to or may give rise to an actual or perceived conflict of interest with the obligations of the Expert Referee to either the Province or the Design-Builder under this Agreement, including without limitation, where the performance of the service, the provision of the advice, or the performance of the activity, will or may:
- (a) undermine or compromise, in the reasonable opinion of either the Province or the Design-Builder, the ability of the Expert Referee to discharge its obligations under and in accordance with the terms of this Agreement; or

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- (b) call into question, during the term of this Agreement, the independence of the Expert Referee or raise any risk of perception on the part of either the Province or the Design-Builder that the Expert Referee is not free from potential conflict of interest or bias.

10. Fees and Disbursements

- 10.1. The Province and the Design-Builder will each pay the Expert Referee for performing the Expert Referee services under this Agreement in accordance with Schedule B [Fee Schedule] to this Agreement.
- 10.2. In the event of termination of this Agreement, the Province and the Design-Builder will each promptly reimburse the Expert Referee for one half of all reasonable fees and disbursements of the Expert Referee incurred prior to the effective date of termination of this Agreement.
- 10.3. Total payments to the Expert Referee under this Agreement will not exceed \$[●].

11. Termination

- 11.1. This Agreement, and the appointment of the Expert Referee may be terminated:
 - (a) by a Concerned Party pursuant to the terms set out in Section 2.3 of this Agreement;
 - (b) pursuant to a non-renewal in accordance with Section 12.3 of this Agreement;
 - (c) by agreement of the Province and the Design-Builder immediately upon notice in writing to the Expert Referee at any time or in accordance with the circumstances set out in Section 2.1 of this Agreement;
 - (d) by the Expert Referee by giving thirty days written notice to the Province and the Design-Builder.
- 11.2. The Expert Referee will not be entitled to any payment or other compensation whatsoever as a result of or in connection with the termination of this Agreement in any of the cases under Section 11.1 of this Agreement and the Expert Referee's entitlement as a result of any such termination will be limited to payment in accordance with the terms of Section 10.2 of this Agreement.

12. Term of Agreement

- 12.1. Subject to the terms of this Agreement, the term of this Agreement will commence on the latest date of execution on the first page of this letter Agreement and expire on [●].
- 12.2. This Agreement may be renewed at the option of the Province and the Design-Builder, in their sole discretion, for up to **[number and length of terms to be confirmed]** by notice in writing to the Expert Referee with such renewal to be upon the same terms as this Agreement except for this provision for renewal.

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- 12.3. Unless the option to renew is exercised, this Agreement and the appointment of the Referee is and is deemed to be terminated on the expiry date and the Expert Referee's entitlement as a result of this termination is limited to payment in accordance with Section 10.2 of this Agreement.

13. Several Obligations

- 13.1. The obligations of the Province and the Design-Builder pursuant to this Agreement are several only.

14. General

- 14.1. References and Headings – The references “hereunder”, “herein” and “hereof” refer to the provisions of this Agreement and references to Sections and herein refer to Sections of this Agreement. The division of this Agreement and the headings of the Sections, and any other headings, captions or indices herein are inserted for convenience of reference only and will not be used in any way in construing or interpreting any provision hereof.
- 14.2. Singular/Plural and Derivatives – Whenever the singular or masculine or neuter is used in this Agreement, it will be interpreted as meaning the plural or feminine or body politic or corporate, and vice versa, as the context requires. Where a term is defined herein, a derivative of such term will have a corresponding meaning unless the context otherwise requires.
- 14.3. Including – The word “including”, when following any general term or statement, and whether or not it is followed by such words as “without limitation”, is not to be construed as limiting the general term or statement to the specific items or matters set forth or to similar items or matters, and the general term or statement will be interpreted to refer to all other items or matters that could reasonably fall within the broadest possible scope of the general term or statement.
- 14.4. Mandatory Provisions – The words “will” and “shall” as used in this Agreement are synonymous with each other and used interchangeably herein to designate a mandatory requirement or obligation, as applicable.
- 14.5. Statutory References – Any reference to a statute of any governmental authority will include and will be deemed to be a reference to such statute and to the regulations or orders made pursuant thereto and all amendments made thereto and in force from time to time, and to any statute, regulation or order that may be passed which has the effect of supplementing the statute so referred to or the regulations or orders made pursuant thereto.
- 14.6. Date for Performance – If the date for the performance of any obligation hereunder or the date for the delivery of any notice or the provision of any approval or consent contemplated hereunder falls on a day that is not a Monday to Friday inclusive excluding days which are statutory holidays in the Province of British Columbia (“**Business Day**”) then such date will be deemed to be the next following Business Day.
- 14.7. Waiver of *Contra Proferentum* – The parties waive the application of any rule of law which otherwise would be applicable in connection with the construction of this Agreement that ambiguous or conflicting terms or provisions should be construed against the party who (or

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whose counsel) prepared the executed agreement or any earlier draft of the same, or against the party benefiting from such terms or provisions.

- 14.8. Currency – All dollar amounts referred to in this Agreement are in Canadian dollars.
- 14.9. Jurisdiction of the Province – Nothing in this Agreement will be construed as an agreement by the Province to restrict, limit or otherwise fetter in any manner the Province's ability to introduce, pass, amend, modify, replace, revoke or otherwise exercise any rights or authority regarding legislation, regulations, policies or any other authority of the Province.
- 14.10. No Derogation from Laws – No provision of this Agreement is intended to derogate from or be inconsistent with or in conflict with any laws and no provision of this Agreement will be interpreted in a manner which results in any such derogation, inconsistency or conflict and, if any such provision is found by a court of competent jurisdiction to be inconsistent with or in conflict with any laws, the applicable laws will prevail and such provision will be read down or rendered inoperative (either generally or in such particular situation, as appropriate), to the extent of such conflict or inconsistency, as the case may be and, if any such provision is found by a court of competent jurisdiction to derogate from any laws, then such provision will be read down or rendered inoperative (either generally or in such particular situation, as appropriate) to the extent of the derogation.
- 14.11. Severability – Each provision of this Agreement will be valid and enforceable to the fullest extent permitted by law. If any provision of this Agreement is held to be invalid, unenforceable or illegal to any extent, such provision may be severed and such invalidity, unenforceability or illegality will not prejudice or affect the validity, enforceability and legality of the remaining provisions of this Agreement. If any such provision of this Agreement is held to be invalid, unenforceable or illegal, the parties will promptly endeavour in good faith to negotiate new provisions to eliminate such invalidity, unenforceability or illegality and to restore this Agreement as nearly as possible to its original intent and effect.
- 14.12. Time of Essence – Time is of the essence of this Agreement, provided that the time for doing or completing any matter provided for herein may be extended or abridged by an agreement in writing signed by the parties or by their respective solicitors who are hereby expressly appointed in this regard.
- 14.13. Entire Agreement – This Agreement is the entire agreement between the parties pertaining to the matters provided herein, and supersedes all prior agreements, negotiations and discussions, whether oral or written, of the parties. This Agreement will not be amended except in a written instrument executed by all of the parties or their solicitors on their behalf and stated to be an amendment to this Agreement.
- 14.14. Governing Law – This Agreement will be governed by and construed in accordance with the laws of the Province of British Columbia and the laws of Canada applicable therein. The parties agree to submit to the exclusive jurisdiction of the courts of the Province of British Columbia with respect to any dispute relating to this Agreement.
- 14.15. No Implied Waiver – The failure of any party to insist at any time upon the strict performance of any covenant or agreement herein or to exercise any option, right, power or remedy contained in

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this Agreement will not be construed as a waiver or a relinquishment thereof for the future. No payment or receipt by a party of a lesser amount than due under this Agreement will be deemed to be other than on account of the earliest payment due hereunder, nor will any endorsement or statement on any cheque or any letter accompanying any cheque or payment due under this Agreement be deemed an accord and satisfaction, and the parties may accept such cheque or payment without prejudice to the party's right to recover the balance of such payment or pursue any other remedy permitted herein.

- 14.16. Execution – This Agreement may be executed by the parties and transmitted by facsimile or other electronic means and if so executed and transmitted, this Agreement will be for all purposes as effective as if the parties had delivered an executed original Agreement.
- 14.17. Financial Administration Act – The Design-Builder and the Expert Referee acknowledge that they are aware of the provisions of the *Financial Administration Act* (British Columbia).
- 14.18. Counterparts – This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original, but all of which together will constitute one and the same document.

JUMPING CREEK TO MACDONALD SNOWSHED PROJECT
DESIGN-BUILD AGREEMENT
SCHEDULE 16: DISPUTE RESOLUTION PROCEDURE
Appendix 16A: Expert Referee Agreement

Commercial in Confidence
Execution

SCHEDULE B
FEE SCHEDULE

Payments to the Expert Referee will be based on the following:

Expert Referee Name	Hourly Rate (\$)
[●]	[\$[●]]

Approved travel expenses will be reimbursed at the rates described in the Schedule of Reimbursable Travel attached to Schedule C.

The Province and the Design-Builder will each pay half of all fees and reasonable disbursements incurred by the Expert Referee for performing the services under this Agreement and in accordance with the terms of the Design-Build Agreement.

Following engagement of the Expert Referee by delivery of an Expert Referee Dispute Notice by either the Province or the Design-Builder, the Expert Referee will submit a monthly invoice to each of the Province and the Design-Builder at the addresses set out below. Each invoice will be for half of the fees and disbursements incurred by the Expert Referee in relation to the services performed under this Agreement in the preceding month. The invoices will include all relevant backup including reports on tasks completed, hourly rates and hours and dates worked.

Payment will be due within 30 (thirty) days of receipt and acceptance of an invoice by the Province and the Design-Builder, respectively.

Invoices will be submitted electronically to the below email addresses.

Province Email: [●]

and

Design-Builder Email: [●]

JUMPING CREEK TO MACDONALD SNOWSHED PROJECT
DESIGN-BUILD AGREEMENT
SCHEDULE 16: DISPUTE RESOLUTION PROCEDURE
Appendix 16A: Expert Referee Agreement

Commercial in Confidence
Execution

SCHEDULE C
SCHEDULE OF REIMBURSABLE TRAVEL EXPENSES

[NTD: Insert reimbursable travel expenses.]

**SCHEDULE 17
RECORDS AND REPORTS**

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**PART 1
RECORDS**

1.1 Design-Builder Records

The Design-Builder will produce, maintain and update in accordance with this Agreement and the Records Management Protocol all records, both master copies and backup copies, whether in hard copy or electronic, required by this Agreement (including by Good Industry Practice) to be produced, maintained and updated by the Design-Builder, including all records specified or referred to in the Project Requirements or otherwise in connection with the Project, the Project Work, the Project Infrastructure and the Project Site (collectively, the “**Records**”).

1.2 Management of Records

- (a) The requirements set out in this Schedule and the Records Management Protocol include the minimum requirements to be complied with, and are without prejudice to any Laws or Good Industry Practice which require the keeping of specified Records for a longer period or the production and maintenance of additional Records.
- (b) All Records produced and maintained by the Design-Builder in accordance with this Agreement must be:
 - (i) accurate, complete, legible, readily identifiable, readily retrievable, reliable, authentic, secure;
 - (ii) uploaded and preserved in electronic form in the Province's electronic documents and records management system; and
 - (iii) in English.
- (c) The financial Records produced and maintained by the Design-Builder in accordance with this Agreement must provide sufficient detail to identify all revenue and expenditures in respect of the Project on a gross basis.
- (d) The text of all documents will be prepared and recorded using software systems agreed to by the Province.
- (e) The Design-Builder will comply promptly and at its expense with:
 - (i) all Laws relating to information, records and other documentation relating to or acquired, obtained or produced in connection with the Project, the Project Work, the Project Infrastructure or the Project Site or any part thereof; and
 - (ii) all requests or requirements of the Province from time to time for the purpose of enabling the Province or any other Governmental Authority to comply with its obligations under any Laws relating to information, records and other documentation relating to or acquired, obtained or produced in connection with the Project, the Project Work, the Project Infrastructure or the Project Site or any part thereof.
- (f) The Design-Builder, the Province and BCTFA will cooperate to develop documentation to support each party's compliance requirements under Laws, including the *Excise Tax Act* (Canada).

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- (g) The Design-Builder will maintain proper, accurate and complete financial accounts and records, including Subcontracts, invoices, statements, receipts and vouchers, and supporting documentation, in respect of the Project and all expenditures related to the Project, and will permit the Province, the Federal Government, the Auditor General of Canada and their designated representatives, to the extent permitted by Law, to at all times be permitted to inspect, review, copy and audit any records and accounts respecting the Project and to have reasonable and timely access to the Project Site and to any documentation, files, systems and programs relevant for the purpose of audit.

1.3 Records Management Protocol

- (a) Within 90 days following the Effective Date, the Design-Builder will submit to the Province's Representative, for acceptance, acting reasonably, in accordance with the Consent Procedure, an initial protocol (the "**Records Management Protocol**") which complies with all requirements set forth in this Agreement (including compliance with Good Industry Practice and Laws) and any other policies, requirements and information schedules approved under the *Information Management Act* (British Columbia) that would from time to time be applicable to the creation, maintenance, management, holding, transfer, retention, preservation and disposal of the Records if they were maintained by the Province, including that:
 - (i) the Records Management Protocol must be consistent with and comply with the Design-Builder's Quality Management System and Quality Documentation and Schedule 7 [Quality Management];
 - (ii) the Records Management Protocol will set forth minimum retention periods consistent with Section 1.4 [Retention of Records] of this Schedule and otherwise satisfactory to the Province for each class of Records produced and maintained by the Design-Builder;
 - (iii) the Records Management Protocol will set forth records management practices and procedures sufficient to ensure that the Records are organized, classified and retained in formats that enable the Design-Builder to meet all of its obligations in respect of the management of the Records under this Agreement, including the requirements set out in Section 1.2 [Management of Records] of this Schedule;
 - (iv) the Records Management Protocol will include procedures (consistent with the Project Requirements and in accordance with Good Industry Practice) for backing-up and storage in safe custody of all Records that are generated by or maintained on a computer or in any other machine readable format;
 - (v) the Design-Builder will keep all Records in safekeeping in such a manner as to ensure the integrity of the Records and at a location within Canada that is satisfactory to and approved by the Province;
 - (vi) any warehouse or other facility used to store Records must meet any storage and security standards established by the Province's Corporate Information and Records Management Office;
 - (vii) notwithstanding any other terms of this Agreement, no Records will be destroyed or otherwise disposed of without the express written consent of the Province or as

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authorized under an information schedule approved under the *Information Management Act* (British Columbia);

- (viii) any Records authorized for disposition will be disposed of only in accordance with disposition standards for secure disposal established by the Province, the Ministry or by the Province's Corporate Information and Records Management Office;
 - (ix) the Design-Builder will ensure that there is a designated and appropriately qualified person at all times responsible for the management of the Records and for liaison with the Province in connection with all matters relating thereto;
 - (x) the Design-Builder will keep on the Project Site at all times during Construction one copy of all drawings for such Construction;
 - (xi) the Design-Builder will not sell, transfer or relocate any Records to the custody, physical or otherwise, of another jurisdiction, or person other than to the Subcontractors; and
 - (xii) the Design-Builder will not disclose any of the Records or contents thereof except subject to and in accordance with the provisions of this Agreement, including Section 15.1 [Confidentiality].
- (b) The Design-Builder will:
- (i) where necessary; and
 - (ii) as otherwise required by the Province from time to time,
- submit updates to the Records Management Protocol to the Province's Representative from time to time, for review, acting reasonably, in accordance with the Review Procedure to ensure that the Records Management Protocol continues to meet the requirements of this Part 1 and Good Industry Practice.
- (c) The Design-Builder will comply with, and will cause the Subcontractors to comply with, the Records Management Protocol, as submitted and updated from time to time in accordance with this Part 1, in connection with all Records maintained or required to be maintained under this Agreement.

1.4 Retention of Records

- (a) Without prejudice to any longer retention periods required under Laws (which will be complied with by the Design-Builder), all Records will be retained in accordance with the retention policies of the Province, Good Industry Practice and Laws, and in any event for no less than the following periods:
 - (i) all as-built drawings will be retained for at least ten years following Total Completion; and
 - (ii) all Records relating to the subject matter of any dispute between the parties must be retained for at least ten years after the resolution of such dispute.

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- (b) Where the required period set out in the Records Management Protocol for the retention of any Records has expired, the Design-Builder will notify the Province as to what it intends to do with such Records. If the Design-Builder intends then or subsequently to dispose of such Records, the Design-Builder will so notify the Province and, if the Province elects within 40 days of receipt of notice from the Design-Builder to receive such Records or any part thereof, then the Design-Builder, at its own cost, will deliver such Records to the Province in the manner and at such location in British Columbia as the Province specifies.

1.5 Procedure on Termination

- (a) As and when required by Section 14.8(a)(vii) of this Agreement, the Design-Builder will, at its own cost, deliver up to the Province, in the manner and at such location in British Columbia as the Province specifies, such Records as are in existence at the Termination Date or, where any such Records are required by Law to remain with the Design-Builder, copies thereof.
- (b) The Province, so long as it retains possession thereof, will allow the Design-Builder to inspect all Records delivered to the Province pursuant to Section 1.5(a) of this Schedule on reasonable notice.

1.6 Province Access to Records

- (a) The Design-Builder will provide live, internet-based access to all current, up-to-date Records (with the exception only of financial records) to the Province, the Province's Representative and the Province's authorized representatives. The means by which such access is provided will enable efficient "read-only" access to and retrieval of specific records when performing record searches.
- (b) All Records will be kept in good order and in such form as to be capable of audit and inspection (including by electronic means to the extent that such Records were delivered by the Province or otherwise are maintained in an electronic format) by the Province. the Design-Builder will make all Records available at all reasonable times for audit or inspection by or on behalf of the Province, the Province's Representative, BCTFA or any of the Province's authorized representatives.

1.7 Copies

The Province, BCTFA and the Province's Representative and any of their authorized representatives will be entitled to take copies of the Records or any part thereof at the Design-Builder's cost and for that purpose to use such copying facilities as are maintained at the place where the Records are kept.

PART 2 REPORTS AND INFORMATION

2.1 Required Reports

The Design-Builder will submit to the Province, in accordance with this Agreement, all reports (collectively, the "**Reports**") provided for or specified in or required under the provisions of this Agreement and the Project Requirements.

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2.2 Number and Time

All Reports will be submitted in such number and by such times as required by this Agreement or the applicable Project Requirements or, where no such number or time is so specified, in such number and by such time as may be reasonably required by the Province.

2.3 Form

- (a) Unless otherwise specified in this Agreement, including the applicable Project Requirements, the Reports will be in such form as reasonably required by the Province or, where a Report is required to be submitted periodically, in the same form as such Report was previously submitted until otherwise required by the Province.
- (b) At the request of the Province, each Report will be accompanied by a copy of such Report or any part thereof for electronic storage in such form and compatible with such software as the Province reasonably requires.

2.4 Further Information

The Design-Builder will at any time and from time to time provide the Province with such further or other information with respect to the Project, the Project Work, the Project Infrastructure and the Project Site as the Province may reasonably require.

2.5 Objections to Reports

- (a) If the Province considers that any Report either has not been compiled in accordance with the provisions of this Agreement or has been based on erroneous information or data, then the Province may serve a notice objecting to such Report on the Design-Builder within 30 days of receipt of such Report.
- (b) If any objection under Section 2.5(a) of this Schedule has not been resolved by agreement between the Province and the Design-Builder within 14 days after the service of such notice, then either of the Province or the Design-Builder may refer the matter to the Dispute Resolution Procedure for determination.

2.6 Revisions to Reports

If the resolution (whether by agreement or determination under the Dispute Resolution Procedure) of any objection made by the Province pursuant to Section 2.5(a) of this Schedule requires any revision or adjustment to any Report, then the Design-Builder will as soon as practicable issue revised versions of each affected Report and such revised Report will for all purposes of this Agreement take the place of the original Report.

2.7 Tax Verification Letter

At any time and from time to time upon the Province's request, the Design-Builder will provide a current tax verification letter issued by the Province of British Columbia's Ministry of Finance verifying that the Design-Builder meets its applicable British Columbia corporate income tax filing obligations and provincial sales tax filing and payment obligations.

**SCHEDULE 18
PRIVACY PROTECTION**

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**PART 1
GENERAL PROVISIONS**

1.1 Definitions

In this Schedule:

- (a) “**access**” means disclosure by the provision of access;
- (b) “**contact information**” means information to enable an individual at a place of business to be contacted and includes the name, position name or title, business telephone number, business address, business email or business fax number of the individual;
- (c) “**Privacy Impact Assessment**” means an assessment to determine if a current or proposed system, project, program or activity meets or will meet the requirements of Part 3 - Protection of Privacy of FOIPPA.
- (d) “**service provider**” means a person retained under a contract to perform services for a public body; and
- (e) “**Third Party Hosting Provider**” means a third party that provides a platform or hosting service through which the Design-Builder delivers the services under this Agreement and to whom Personal Information is not accessible and as such, for the purposes of this Schedule, is not considered a subcontractor.

1.2 Interpretation

- (a) In this Schedule, references to sections by number are to sections of this Schedule unless otherwise specified in this Schedule.
- (b) Any reference to the “Design-Builder” in this Schedule includes any subcontractor or agent retained by the Design-Builder to perform obligations under this Agreement and the Design-Builder must ensure that any such subcontractors and agents comply with the requirements of FOIPPA applicable to them.
- (c) This Schedule will supersede and replace any Privacy Protection Schedule attached to any previous agreement between the Province and the Design-Builder dealing with the same subject matter as this Agreement.
- (d) The obligations of the Design-Builder in this Schedule will survive the termination of this Agreement.
- (e) If a provision of this Agreement (including any direction given by the Province under this Schedule) conflicts with a requirement of FOIPPA, including any regulation made under FOIPPA, the conflicting provision of this Agreement (or direction) will be inoperative to the extent of the conflict.
- (f) The Design-Builder must comply with the provisions of this Schedule despite any conflicting provision of this Agreement or the law of any jurisdiction outside Canada.

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1.3 Purpose

The purpose of this Schedule is to:

- (a) enable the Province to comply with the Province's statutory obligations under FOIPPA with respect to Personal Information; and
- (b) ensure that, as a service provider, the Design-Builder is aware of and complies with the Design-Builder's statutory obligations under FOIPPA with respect to Personal Information.

1.4 Acknowledgements

The Design-Builder acknowledges and agrees that:

- (a) it is a service provider and, as such, the requirements and restrictions established by Part 3 of FOIPPA apply to the Design-Builder in respect of Personal Information; and
- (b) unless this Agreement otherwise specifies, all Personal Information in the custody of the Design-Builder or a Third Party Hosting Provider is and remains under the control of the Province.

1.5 Privacy Training

- (a) The Design-Builder must ensure that each person in a management role working on or delivering services to the Project will complete, at the Design-Builder's expense, the Privacy Course prior to that individual commencing the performance of work or delivery of services related to the Project.
- (b) The Design-Builder will ensure that each person required to complete the Privacy Course in accordance with Section 1.5(a) of this Schedule will re-take the Privacy Course within two months of the individual's two-year anniversary of their last completion of the Privacy Course so long as the person is engaged to perform work on or deliver services to the Project.

1.6 Inspection of Personal Information

In addition to any other rights of inspection the Province may have under this Agreement or under statute, the Province may, at any reasonable time and on reasonable notice to the Design-Builder, enter on the Design-Builder's premises to inspect any Personal Information in the possession of the Design-Builder or any of the Design-Builder's information management policies or practices relevant to the Design-Builder's management of Personal Information or the Design-Builder's compliance with this Schedule and the Design-Builder must permit, and provide reasonable assistance to, any such inspection at no cost to the Province.

1.7 Compliance with FOIPPA and Directions

- (a) The Design-Builder must in relation to Personal Information comply with:
 - (i) the requirements of FOIPPA applicable to the Design-Builder as a service provider, including any regulation made under FOIPPA; and

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- (ii) any direction given by the Province under this Schedule.
- (b) The Design-Builder acknowledges that it is familiar with the requirements of FOIPPA governing Personal Information that are applicable to it as a service provider.
- (c) The Design-Builder will cooperate with the Province and will provide the Province with such information as may be reasonably requested by the Province to:
 - (i) assist the Province in confirming the Design-Builder's compliance with this Schedule; and
 - (ii) address privacy-related issues or concerns identified by the Province, including providing information with respect to Privacy Impact Assessments.
- (d) The Design-Builder will ensure that there is a designated and appropriately qualified person at all times responsible for the management of all obligations set out in this Schedule and for liaison with the Province in connection with all matters relating thereto.

1.8 Termination of Agreement

In addition to any other rights of termination which the Province may have under this Agreement or otherwise at law, the Province may, pursuant to and in accordance with Section 13.1(g) of this Agreement, terminate this Agreement upon any failure of the Design-Builder to comply with this Schedule in a material respect.

PART 2 PERSONAL INFORMATION REQUIREMENTS

2.1 Personal Information – Access and Collection

- (a) Unless this Agreement otherwise specifies or the Province otherwise directs in writing, the Design-Builder may only access, collect or create Personal Information that relates directly to and is necessary for the performance of the Design-Builder's obligations, or the exercise of the Design-Builder's rights, under this Agreement.
- (b) The Design-Builder must collect Personal Information directly from the individual the information is about unless:
 - (i) the Province provides Personal Information to the Design-Builder;
 - (ii) this Agreement otherwise specifies; or
 - (iii) the Province otherwise directs in writing.
- (c) Where the Design-Builder collects Personal Information directly from the individual the information is about, the Design-Builder must tell that individual:
 - (i) the purpose for collecting it;
 - (ii) the legal authority for collecting it; and

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- (iii) the title, business address and business telephone number of the individual designated by the Province to answer questions about the Design-Builder's collection of Personal Information.

2.2 Accuracy of Personal Information

Where Personal Information is collected by the Design-Builder directly from the individual the information is about, the Design-Builder must make every reasonable effort to ensure the accuracy and completeness of any such information to be used by the Design-Builder or the Province to make a decision that directly affects that individual.

2.3 Requests for Access to Personal Information

If the Design-Builder receives a request for access to Personal Information from a person other than the Province, the Design-Builder must promptly advise the person to make the request to the Province unless this Agreement expressly requires the Design-Builder to provide such access, and, if the Province has advised the Design-Builder of the name or title and contact information of an official of the Province to whom such requests are to be made, the Design-Builder must also promptly provide that official's name or title and contact information to the person making the request.

2.4 Correction of Personal Information

Where Personal Information is collected by the Design-Builder directly from the individual the information is about, the Design-Builder will comply with Sections 2.4(a) to (d), inclusive, of this Schedule, as applicable:

- (a) Within 5 Business Days of receiving a written direction from the Province to correct or annotate any Personal Information, the Design-Builder must annotate or correct the information in accordance with the direction at the Design-Builder's cost.
- (b) When issuing a written direction under Section 2.4(a) of this Schedule, the Province must advise the Design-Builder of the date the correction request was received by the Province in order that the Design-Builder may comply with Section 2.4(c) of this Schedule.
- (c) Within 5 Business Days of correcting or annotating any Personal Information under Section 2.4(a) of this Schedule, the Design-Builder must provide the corrected or annotated information to any party to whom, within one year prior to the date the correction request was received by the Province, the Design-Builder disclosed the information being corrected or annotated.
- (d) If the Design-Builder receives a request for correction of Personal Information from a person other than the Province, the Design-Builder must promptly advise the person to make the request to the Province unless this Agreement expressly requires the Design-Builder to provide such access, and provide the name or title and contact information of an official of the Province to whom such requests are to be made to the person making the request.

2.5 Protection of Personal Information

Without limiting any other provision of this Agreement, the Design-Builder must protect Personal Information by making reasonable security arrangements against such risks as unauthorized access,

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collection, use, disclosure or disposal, including without limitation by ensuring that the integrity of the Personal Information is preserved. Without limiting the general nature of the foregoing sentence, the Design-Builder will ensure that all Personal Information is securely segregated from any information owned by the Design-Builder or third parties to prevent unintended mixing of Personal Information with other information or access to Personal Information by unauthorized persons and to enable Personal Information to be identified and separated from the information of the Design-Builder or third parties.

2.6 Storage of and Access to Personal Information

- (a) Unless the Province otherwise directs in writing or as otherwise set out in this Schedule, the Design-Builder must not store Personal Information outside Canada or permit access to Personal Information from outside Canada.
- (b) The Design-Builder will not authorize or assist a Third Party Hosting Provider to access any Personal Information without the prior written approval of the Province.
- (c) Without limiting any other provision of this Agreement, the Design-Builder will implement and maintain an access log documenting all access to Personal Information, including a list of all persons that access any Personal Information. The Design-Builder will provide a copy of the access log to the Province upon request.

2.7 Retention of Personal Information

Unless this Agreement otherwise specifies, the Design-Builder must retain Personal Information until directed by the Province in writing to dispose of it or deliver it as specified in the direction.

2.8 Use of Personal Information

Unless the Province otherwise directs in writing, the Design-Builder may only use Personal Information if that use is for the performance of the Design-Builder's obligations, or the exercise of the Design-Builder's rights, under this Agreement. For clarity, unless this Agreement otherwise specifies or the Province otherwise directs in writing, the Design-Builder must not anonymize, aggregate or otherwise alter or modify Personal Information, including by converting Personal Information into non-Personal Information, or analyze Personal Information (whether by manual or automated means) for any purpose, including for the purpose of developing insights, conclusions or other information from Personal Information.

2.9 Disclosure of Personal Information

Unless the Province otherwise directs in writing, the Design-Builder may only disclose Personal Information inside Canada to any person other than the Province if the disclosure is for the performance of the Design-Builder's obligations, or the exercise of the Design-Builder's rights, under this Agreement.

2.10 Metadata

Where the Design-Builder has or generates metadata as a result of services provided to the Province, and where that metadata is Personal Information, the Design-Builder will:

- (a) not use it or disclose it to any other party except where this Agreement otherwise specifies; and

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- (b) remove or destroy individual identifiers from the metadata, if practicable.

**PART 3
NOTICE REQUIREMENTS**

3.1 Notice of Third-Party Requests for Disclosure

- (a) In this Section, "third-party request for disclosure" means a subpoena, warrant, order, demand or request from an authority inside or outside of Canada for the unauthorized disclosure of personal information to which FOIPPA applies.
- (b) If in relation to Personal Information the Design-Builder:
 - (i) receives a third-party request for disclosure;
 - (ii) receives a request to disclose, produce or provide access that the Design-Builder knows or has reason to suspect is for the purpose of responding to a third-party request for disclosure; or
 - (iii) has reason to suspect that an unauthorized disclosure of Personal Information has occurred in response to a third-party request for disclosure,subject to Section 3.1(c) of this Schedule, the Design-Builder must immediately notify the Province.
- (c) If the Design-Builder receives a third-party request for disclosure described in Section 3.1(b)(i) or (ii) of this Schedule but is unable to notify the Province as required by Section 3.1(b) of this Schedule, the Design-Builder must instead:
 - (i) use its best efforts to direct the party making the third-party request for disclosure to the Province;
 - (ii) provide the Province with reasonable assistance to contest the third-party request for disclosure; and
 - (iii) take reasonable steps to challenge the third-party request for disclosure, including by presenting evidence with respect to:
 - (A) the control of Personal Information by the Province as a "public body" under FOIPPA;
 - (B) the application of FOIPPA to the Design-Builder as a service provider to the Province;
 - (C) the conflict between FOIPPA and the third-party request for disclosure; and
 - (D) the potential for the Design-Builder to be liable for an offence under FOIPPA as a result of complying with the third-party request for disclosure.

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3.2 Notice of Unauthorized Disclosure

In addition to any obligation the Design-Builder may have to provide the notification contemplated by section 30.5 of FOIPPA, if the Design-Builder knows that there has been an unauthorized disclosure of Personal Information, the Design-Builder must immediately notify the Province.

3.3 Notice of Non-Compliance

If for any reason the Design-Builder does not comply, or anticipates that it will be unable to comply, with a provision in this Schedule in any respect, the Design-Builder must promptly notify the Province of the particulars of the non-compliance or anticipated non-compliance and what steps it proposes to take to address, or prevent recurrence of, the non-compliance or anticipated non-compliance.

**SCHEDULE 19
CLOUD SECURITY**

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1. Definitions

In this Schedule:

- (a) **“Cloud Services”** means services made available to users on demand via the Internet that are characterised by resource pooling, rapid elasticity and measured services with broad network access, including Software as a Service, Platform as a Service and Infrastructure as a Service, as such terms are understood pursuant to definitions provided by the National Institute of Standards and Technology (NIST).
- (b) **“Industry Best Practice”** means best practices commonly recognized in the IT industry from time to time and applicable to the protection and security of sensitive information of a nature similar to Protected Information against unauthorised access, disclosure or use, or any unauthorized attempts to access, disclose or use such information.
- (c) **“Protected Information”** means any and all of:
 - (i) “personal information” as defined in FOIPPA;
 - (ii) information and records of information the Design-Builder is required to treat as confidential under this Agreement; and
 - (iii) records, the integrity or availability of which are to be preserved by the Design-Builder under this Agreement, which in the case of records not falling within (i) or (ii), are marked by the Province as “Protected Information” or the Province otherwise instructs the Design-Builder that the record is “Protected Information” under this Agreement.
- (d) **“Province Information”** means information of the Province, including without limitation any Protected Information, that is disclosed to the Design-Builder, accessed by the Design-Builder or collected by the Design-Builder in relation to the Services and includes any information derived therefrom.
- (e) **“Services”** means the services provided by the Design-Builder to the Province under this Agreement and includes, if applicable, any Cloud Services.
- (f) **“Systems”** means any systems, subsystems, equipment, devices, infrastructure, networks, hardware and software used in connection with the Services, including for managing, operating or providing the Services.

2. Applicability

For greater clarity, unless otherwise specified in this Agreement, the terms and conditions of this Schedule apply to the provision of all Services by the Design-Builder, Subcontractors and their respective personnel. Any reference to the Design-Builder herein will include all Subcontractors, Design-Builder personnel and Subcontractor personnel, as applicable.

3. Industry Best Practice

The Design-Builder must have in place and maintain security controls to protect Protected Information that conform to commonly accepted industry norms that a prudent operator providing similar

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services would have implemented. Without limitation, the Design-Builder will perform its obligations under this Schedule in a manner that best conforms to Industry Best Practice.

4. Compliance and Certifications

Compliance and certification requirements will depend on the type of service provided by the Design-Builder.

- (a) For Cloud Services, the Design-Builder must at all times satisfy at least one of the following security standards:
 - (i) compliance requirements identified for a Cloud Service Provider, in the Government of Canada Security Control Profile for Cloud-Based GC IT Services for Protected B, Medium Integrity and Medium Availability (PBMM);
 - (ii) compliance requirements identified for a Cloud Service Provider, in the US Federal Risk and Authorization Management Program (FedRAMP) for moderate impact information systems;
 - (iii) certification with ISO/IEC 27001 based on requirements for a Cloud Service Provider controls in ISO/IEC 27017:2015; or
 - (iv) certification with Cloud Security Alliance (CSA) – Level 2 CSA STAR.
- (b) For all other Services that are not Cloud Services, the Design-Builder must satisfy:
 - (i) certification with ISO/IEC 27001 based on requirements for Information Technology controls in ISO/IEC 27002:2013; or
 - (ii) applicable Province IM/IT standards accessible at <https://www2.gov.bc.ca/gov/content/governments/services-for-government/policies-procedures/im-it-standards>.

5. Attestation of Compliance and Certification of Services

To verify compliance with, as applicable, Section 4(a) of this Schedule (with respect to Cloud Services) or Section 4(b) of this Schedule (with respect to non-Cloud Services), the Design-Builder must provide the Province with satisfactory evidence, by way of independent third-party attestation from a reputable information systems auditor, that any Services provided by the Design-Builder or used by the Design-Builder in connection with the Services satisfy and comply with at least one of the security standards set forth in, as applicable, Section 4(a) of this Schedule (with respect to Cloud Services) or Section 4(b) of this Schedule (with respect to non-Cloud Services).

6. Access Control

With respect to the access, by any Design-Builder personnel, to any part of the Design-Builder's Systems that may contain Province Information, the Design-Builder must:

- (a) implement access control policies and procedures that address onboarding, off-boarding, transition between roles, regular access reviews, limitations and usage control of administrator privileges, and inactivity timeouts;

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- (b) identify and segregate conflicting duties and areas of responsibility, such as separation of duties;
- (c) maintain a current and accurate inventory of computer accounts;
- (d) review the inventory of computer accounts on a regular basis to identify dormant, fictitious or unused accounts;
- (e) enforce principles of “least privilege” and “need to know”;
- (f) review user access rights on a regular basis to identify excessive privileges; and
- (g) enforce a limit of logon attempts and concurrent sessions.

7. Authentication

Where the Design-Builder manages user authentication controls for Design-Builder personnel, the Design-Builder must:

- (a) enforce minimum password complexity, such as requiring passwords to be case sensitive, or requiring passwords to contain a minimum of eight characters and a combination of upper-case letters, lower-case letters, numbers, and/or special characters;
- (b) require regular change of passwords at predetermined intervals, and which limit reuse; and
- (c) require multi-factor authentication for privileged access.

8. Security Awareness

The Design-Builder must

- (a) ensure that all persons employed or retained to perform the Services receive security awareness training, annually and supervision at a level and in substance that is appropriate to that person’s position and the Design-Builder’s obligations under this Schedule; and
- (b) not permit any person the Design-Builder hires or uses to access or obtain any Protected Information unless that person is contractually bound to the Design-Builder in writing to keep Protected Information confidential on terms no less protective than the terms applicable to the Design-Builder under this Agreement.

9. Log Generation and Retention

The Design-Builder must:

- (a) generate and retain logs that are sufficiently detailed to determine who did what and when for a period of 90 days online;
- (b) provide real time access to logs;
- (c) provide the technical capability to forward the logs to the Province; and

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- (d) correlate, monitor, and alert on logs.

10. Investigations Support and Security Investigations

The Design-Builder must:

- (a) retain investigation reports related to a security investigation for a period of 2 years after the investigation is completed or provide to the Province for retention;
- (b) provide reasonable investigative support to the Province;
- (c) maintain chain of custody for evidence;
- (d) support e-discovery; and
- (e) maintain legal holds to meet needs of investigations and judicial requests.

11. Network Time Protocol

Systems used by the Design-Builder or any Subcontractor in the provision of Services must synchronise time with a stratum-2 (or higher time) reliable source.

12. Vulnerability Scan/Penetration Testing

The Design-Builder must conduct regular:

- (a) vulnerability scans;
- (b) web application scans; and
- (c) penetration tests.

13. Configuration and Patch Management

The Design-Builder must:

- (a) have an information security policy based on recognized industry standards;
- (b) apply system hardening methods in securing the Design-Builder Systems;
- (c) logically isolate and encrypt Province Information;
- (d) ensure workstations and servers used in management and provisioning of the Services are patched and secured with anti-malware protection;
- (e) remedy vulnerabilities in a timely manner according to criticality;
- (f) patch all Systems and software regularly according to Industry Best Practices; and
- (g) use secure coding practices when developing applications and application programming interfaces.

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14. Business Continuity, Disaster Recovery, and Backup Plans

The Design-Builder must:

- (a) have a business continuity plan and a disaster recovery plan;
- (b) conduct backups of critical data; and
- (c) review and test business continuity, disaster recovery, and backup plans and procedures regularly.

15. Incident Response and Management

The Design-Builder must:

- (a) have an incident management plan and an incident response plan; and
- (b) review and test both incident management and incident response plans annually.

16. Notifications of Breaches

The Design-Builder must notify the Province within 24 hours of the Design-Builder's identification of a breach or incident that has affected, or may affect, Province Information.

17. Notifications of Changes

The Design-Builder must notify the Province of any changes to the Design-Builder's security policies, procedures or agreements that may materially lower the security of Province Information.

18. Asset Management and Disposal

The Design-Builder must

- (a) maintain an inventory of Province Information assets;
- (b) use secure methods when disposing of Province Information assets, and
- (c) maintain records of Province Information asset disposals.

19. Physical Security

The Design-Builder must:

- (a) develop, document, and disseminate a physical and environmental protection policy;
- (b) regularly review and update its current physical and environmental protection policy and procedures; and
- (c) review physical access logs at least once monthly.

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20. Threat and Risk Assessments

The Design-Builder must:

- (a) conduct threat and risk assessments on any part of the Design-Builder's Systems that is new, or has been materially changed since the last threat and risk assessment was conducted; and
- (b) support the Province in completing security threat and risk assessments.

21. Security Screening

The Design-Builder must:

- (a) screen all Design-Builder personnel prior to the Design-Builder authorizing access to Province or Design-Builder Systems;
- (b) conduct criminal record checks on all Design-Builder personnel who have access to any Province or Design-Builder Systems;
- (c) make a reasonable determination of whether the individual constitutes an unreasonable security risk taking into consideration the duties of the individual, the type and sensitivity of information to which the individual may be exposed, and all applicable laws; and
- (d) require all Design-Builder personnel to proactively disclose criminal offences to the Design-Builder unless prohibited by applicable law.

22. Supply Chain

The Design-Builder must ensure that its suppliers and Subcontractors involved in the provision of Services meet or exceed the standards set forth in this Schedule.

23. Encryption

The Design-Builder must:

- (a) implement and maintain encryption of Province Information while at rest and in transit;
- (b) offer the Province the technical capability of cryptographic key management to allow the Province to manage encryption keys in relation to Province Information at rest and in transit;
- (c) not hold or have access to encryption keys if such encryption keys are managed by the Province to encrypt Province Information at rest or in transit; and
- (d) not provide encryption keys used to secure Province Information to a third party or the ability to break such encryption.

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24. Isolation Controls and Logical Isolation of Data

The Design-Builder must:

- (a) implement and maintain the logical isolation of Province Information, even in the case of equipment or technology failure;
- (b) implement, where supported by available technology, the logical isolation of audit records related to Province Information and activities, even in the case of equipment or technology failure; segregate tenancy traffic from management network traffic; and
- (c) not use Protected Information for test or development purposes without the written approval of the Province.

25. Technical Controls

The Design-Builder must:

- (a) implement firewalls, web application firewalls, distributed denial of service, and intrusion prevention systems to control traffic flow to and from the Design-Builder's Systems; and
- (b) secure remote access to the Design-Builder's Systems by Design-Builder personnel and contractors.

26. Use of Province Systems

Use of Province Systems by the Design-Builder or its personnel (including Subcontractors) must be restricted to activities necessary for provision of the Services. The Province reserves the right to not make any particular Province facility, system, network or device available to the Design-Builder unless the Design-Builder or its individual personnel (as applicable) agree to any additional terms and conditions acceptable to the Province.

27. Security Contact

If not set out elsewhere in this Agreement, the Design-Builder must provide the contact information for the individual who will coordinate compliance by the Design-Builder on matters relating to this Schedule.

**SCHEDULE 20
DESIGN-BUILDER OWNERSHIP INFORMATION**

1. Design-Builder Ownership Information
 - (a) The Design-Builder is a British Columbia corporation incorporated on March 27, 2003, all the shares of which are owned by _____.
 - (b) _____ is a British Columbia corporation incorporated on _____ the shares of which are owned _____.

**SCHEDULE 21
KEY INDIVIDUALS**

	Title	Date for Appointment	Name of Key Individuals Appointed at Effective Date
1.	Design-Builder's Representative	Effective Date	
2.	Design Manager	Effective Date	
3.	Construction Manager	Effective Date	
4.	Quality Director	Within 30 calendar days after Effective Date	N/A
5.	Lead Geotechnical Engineer	Within 30 calendar days after Effective Date	N/A
6.	Environmental Manager	Within 30 calendar days after Effective Date	N/A
7.	Operations/Traffic Manager	Within 30 calendar days after Effective Date	N/A
8.	Indigenous Coordinator	Within 30 calendar days after Effective Date	N/A

**SCHEDULE 22
CLOSING DELIVERIES**

In this Schedule, “certified” means that the relevant document is certified (for and on behalf of the relevant corporation or other entity and without personal liability) by an officer, director or authorized signatory of the relevant corporation or other entity as a true, complete and correct copy in full force and effect and unamended as of the date of the relevant certificate.

PART 1 DOCUMENTS TO BE DELIVERED BY THE DESIGN-BUILDER

The Design-Builder will deliver each of the following documents in accordance with Section 2.11 [Execution and Delivery of Project Documents] of this Agreement, in such form and substance as will be satisfactory to the Province:

- (a) this Agreement executed by the Design-Builder;
- (b) the BCIB-Contractor Agreement executed by the Design-Builder, and each BCIB-Subcontractor Agreement required to be entered into by the Subcontractors as of the Effective Date in accordance with Section 2.3(a) of Schedule 13 [Community Benefits Requirements], each executed by the applicable Subcontractor;
- (c) the Bonds;
- (d) any Material Subcontracts entered into as of the Effective Date;
- (e) insurance binders, including certificates of insurance and the terms of the relevant policies, for the Required Insurance required to be taken out by the Design-Builder with effect from the Effective Date;
- (f) a certificate of an officer of the Design-Builder certifying true copies of the following:
 - (i) all constating documents of the Design-Builder;
 - (ii) incumbency of the officers of the Design-Builder; and
 - (iii) resolution of the board of directors of the Design-Builder authorizing the execution and delivery of all Project Documents to which the Design-Builder is a party;
- (g) a certificate of good standing or equivalent of the Design-Builder;
- (h) an original initial Works Schedule, including Critical Path Schedule, which meets the requirements provided in Section 3.3 [Works Schedule] of Schedule 3 and is in all respects consistent with the Project Schedule;
- (i) the 180-Day Lookahead Schedule pursuant to Section 3.5(a) of Schedule 3 [Design and Construction General Requirements];
- (j) a tax verification letter, valid as of the Effective Date, issued by the Province of British Columbia’s Ministry of Finance verifying that the Design-Builder meets its applicable British Columbia corporate income tax filing obligations and provincial sales tax filing and payment obligations; and
- (k) such other documents as the parties may agree, each acting reasonably.

PART 2 DOCUMENTS TO BE DELIVERED BY THE PROVINCE AND BCTFA

The Province and BCTFA will deliver each of the following documents in accordance with Section 2.12 [Execution and Delivery of Project Documents] of this Agreement, in such form and substance as will be satisfactory to the Design-Builder:

- (a) this Agreement, executed by the Province and BCTFA;
- (b) the BCIB-Contractor Agreement, and each BCIB-Subcontractor Agreement required to be entered into by the Subcontractors as of the Effective Date in accordance with Section 2.3(a) of Schedule 13 [Community Benefits Requirements], each executed by BCIB;
- (c) a certificate of fact of the Associate Deputy Minister of Transportation and Infrastructure under the *Financial Administration Act* (British Columbia), including certification of the following:
 - (i) Guarantees and Indemnities Regulation letter(s) from the Ministry of Finance regarding the indemnities provided by each of the Province and BCTFA under this Agreement; and
 - (ii) a certificate of the Ministry of Transportation and Infrastructure pursuant to section 4 of the *Transportation Act* (British Columbia);
- (d) a certificate of an officer of BCTFA certifying a true copy of a resolution of the directors of BCTFA authorizing the execution and delivery by BCTFA of this Agreement;
- (e) a notice appointing the Province's Representative pursuant to Section 3.1(a) of this Agreement; and
- (f) such other documents as the parties may agree, each acting reasonably.

**SCHEDULE 23
BONDS**

PART 1 BONDS..... 1

1.1 Bonds 1

Appendix 23A Specimen Bonds

PART 1
BONDS

1.1 Bonds

- (a) The Design-Builder will purchase and deliver to the Province the Bonds in accordance with Section 2.11 [Execution and Delivery of Project Documents] of this Agreement and will pay for and maintain in force the Bonds until the Substantial Completion Date.
- (b) If the surety notifies any party that the Bonds are or are going to be terminated or cancelled for any reason whatsoever, the Design-Builder will obtain and provide the Province with valid Bonds effective from the date of termination or cancellation of the original Bonds that comply with the bonding requirements of this Agreement.
- (c) The Design-Builder will, if required by the surety, obtain the written consent of the surety to any amendment of this Agreement and will, upon request of the Province, provide confirmation from the surety of such consent or confirmation from the surety that such consent is not required.
- (d) For greater certainty, the amount of the Bonds and any claim under the Bonds will not limit the Province or BCTFA from seeking additional claims, damages or remedies the Province or BCTFA may be entitled to by reason of the Design-Builder's failure to successfully carry out the Project Work in accordance with the terms of this Agreement.
- (e) Upon entering into a Subcontract with a Subcontractor, the Design-Builder will advise the Subcontractor that a labour and materials payment Bond is in effect, will supply a copy of that Bond to the Subcontractor on request, and will post and maintain copies of the labour and materials payment Bond at the Project Site.

**APPENDIX 23A
SPECIMEN BONDS**

SPECIMEN - PERFORMANCE BOND

NO. _____

KNOW ALL PERSONS BY THESE PRESENTS, that EMIL ANDERSON CONSTRUCTION (EAC) INC. as Principal, hereinafter called the Principal, and (SURETY/INSURANCE COMPANY NAME(S) AND ADDRESS(ES)), a corporation or corporations created and existing under the laws of Canada, and duly authorized to transact the business of Suretyship in Canada, as Surety, hereinafter called the Surety if one Surety is named in this Bond and the Co-Sureties if more than one, is/are subject to the conditions hereinafter contained, held and firmly bound, jointly and severally in the case of Co-Sureties, unto HIS MAJESTY THE KING IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA AS REPRESENTED BY THE MINISTER OF TRANSPORTATION AND INFRASTRUCTURE, as Oblige, hereinafter called the Oblige, in the amount of _____ lawful money of Canada, for the payment of which sum, well and truly to be made, the Principal and the Surety bind themselves or Co-Sureties as the case may be, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a contract with the Oblige, dated the [31st] day of July, 2024 for the JUMPING CREEK TO MACDONALD SNOWSHED PROJECT which Contract Documents are by reference made a part hereof, and is hereinafter referred to as the Contract.

NOW, THEREFORE, the conditions of this obligation are such that if the Principal will well and faithfully observe and perform all the obligations on the part of the Principal to be observed and performed in connection with the Contract, then this obligation will be void; otherwise it will remain in full force and effect, subject, however, to the following conditions:

- (1) Whenever the Principal will be, and declared by the Oblige to be, in default under the contract, the Surety or Co-Sureties as the case may be will
 - (a) if the work is not taken out of the Principal's hands, remedy the default of the Principal,
 - (b) if the work is taken out of the Principal's hands, and the Oblige directs the Surety or Co-Sureties as the case may be to undertake the completion of the work, complete the work in accordance with the Contract provided that a contract is entered into for the completion of the work
 - (i) it will be between the Surety and Co-Sureties as the case may be and the completing contractor, and
 - (ii) the selection of such completing contractor will be subject to the approval of the Oblige,
 - (c) if the work is taken out of the Principal's hands and the Oblige, after reasonable notice to the Surety or Co-Sureties as the case may be, does not direct the Surety or Co-Sureties as the case may be to undertake the completion of the work, assume the financial responsibility for the cost of completion in excess of the moneys available to the Oblige under the Contract,
 - (d) be liable for and pay all the excess costs of completion of the Contract, and
 - (e) not be entitled to any Contract moneys earned by the Principal, up to the date of Principal's default on the Contract and any holdbacks relating to such earned Contract moneys held by the Oblige, and the liability of the Surety or Co-Sureties as the case may be under this Bond will remain unchanged provided, however, and without restricting the generality of the foregoing, upon the completion of the Contract to the satisfaction of the Oblige, any Contract moneys earned by the Principal or holdbacks related thereto held by the Oblige may be paid to the Surety or Co-Sureties as the case may be by the Oblige.
- (2) The Surety or Co-Sureties as the case may be will not be liable for a greater sum than the amount specified in this Bond.
- (3) No suit or action will be instituted by the Oblige herein against the Surety or Co-Sureties as the case may be pursuant to these presents after the expiration of two (2) years from the date on which final payment under the Contract is payable.
- (4) If this Bond is issued by Co-Sureties, then the Co-Surety that signs the first signature block on this Bond will be designated as the "Lead Surety" for the purposes of this Bond and the Co-Sureties hereby jointly and severally irrevocably: appoint and authorize the Lead Surety to act as the sole representative of and agent for the Co-Sureties, and with authority to bind the Co-

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Sureties, in all dealings and matters between the Co-Sureties and the Obligee and/or the Principal arising from or relating to this Bond, including without limitation the receipt on behalf of the Co-Sureties of any notices, directions, demands or draws on or given under this Bond issued by the Obligee and in the investigation, payment, compromise, settlement and defence of any claims, disputes, demands and draws on, arising from or related to this Bond; and, agree and acknowledge that the Obligee and/or Principal will be entitled to assume that any act done, document executed or entered into or waiver given by the Lead Surety to the Obligee and/or Principal arising from or related to this Bond has been duly authorized by each Co-Surety and is binding upon each Co-Surety without the Obligee and/or the Principal being under any obligation to enquire into the authority of the Lead Surety in such matters.

IN WITNESS WHEREOF, the Principal and the Surety or Co-Sureties as the case may be have Signed and Sealed this bond this _____ day of July, 2024.

**[IF MORE THAN ONE SURETY ADD SIGNATURE
BLOCKS AS APPROPRIATE FOR EACH AND EVERY
CO-SURETY OBLIGATED UNDER THIS BOND. THE
FIRST SURETY SIGNATURE BLOCK IS FOR THE
LEAD SURETY]**

SIGNED and SEALED

In the presence of:

For the Design-Builder

SEAL

For the Surety Attorney-in-fact

SEAL

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SPECIMEN - LABOUR AND MATERIAL PAYMENT BOND

NO. _____

Note: This Bond is issued simultaneously with another Bond in favour of the Obligea conditioned for the full and faithful performance of the contract.

KNOW ALL PERSONS BY THESE PRESENTS THAT EMIL ANDERSON CONSTRUCTION (EAC) INC. as Principal, hereinafter called the Principal, and (SURETY/INSURANCE COMPANY NAME(S) AND ADDRESS(ES)) a corporation or corporations created and existing under the laws of Canada, and duly authorized to transact the business of Suretyship in Canada, as Surety, hereinafter called the Surety if one Surety is named in this Bond and the Co-Sureties if more than one, is/are, subject to the conditions hereinafter contained, held and firmly bound, jointly and severally in the case of Co-Sureties, unto HIS MAJESTY THE KING IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA AS REPRESENTED BY THE MINISTER OF TRANSPORTATION AND INFRASTRUCTURE, as Obligea, hereinafter called the Obligea, for the use and benefit of the Claimants, their and each of their heirs, executors, administrators, successors and assigns, in the amount of

of lawful money of Canada, for the payment of which sum, well and truly to be made, the Principal and the Surety or Co-Sureties as the case may be bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a written contract with the Obligea, dated the [31st] day of July, 2024 for the JUMPING CREEK TO MACDONALD SNOWSHED PROJECT, which Contract Documents are by reference made a part hereof, and is hereinafter referred to as the Contract.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if the Principal will make payment to all Claimants for all labour and material used or reasonably required for use in the performance of the Contract, then this obligation will be null and void; otherwise it will remain in full force and effect, subject, however, to the following conditions:

1. A Claimant for the purpose of this Bond is defined as one having a direct contract with the Principal for labour, material, or both, used or reasonably required for use in the performance of the Contract, labour and material being construed to include that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment directly applicable to the Contract provided that a person, firm or corporation who rents equipment to the Principal to be used in the performance of the Contract under a contract which provides that all or any part of the rent is to be applied towards the purchase price thereof, will only be a Claimant to the extent of the prevailing industrial rental value of such equipment for the period during which the equipment was used in the performance of the Contract. The prevailing industrial value of equipment will be determined, insofar as it is practical to do so, in accordance with and in the manner provided for in the latest revised edition of the publication of the Canadian Construction Association titled "Rental Rates on Contractors Equipment" published prior to the period during which the equipment was used in the performance of the Contract.
2. The Principal and the Surety or Co-Sureties as the case may be, hereby jointly and severally agree with the Obligea, that every Claimant who has not been paid as provided for under the terms of their contract with the Principal, before the expiration of a period of ninety (90) days after the date on which the last of such Claimant's work or labour was done or performed or materials were furnished by such Claimant, sue on this Bond, prosecute the suit to final judgment for such sum or sums as may be justly due to such Claimant under the terms of their contract with the Principal and have execution thereon. Provided that the Obligea is not obliged to do or take any act, action or proceeding against the Surety or Co-Sureties as the case may be on behalf of the Claimants, or any of them, to enforce the provisions of this Bond. If any act, action or proceeding is taken either in the name of the Obligea or by joining the Obligea as a party to such proceeding, then such act, action or proceeding, will be taken on the understanding and basis that the Claimants, or any of them, who take such act, action or proceeding will indemnify and save harmless the Obligea against all costs, charges and expenses or liabilities incurred thereon and any loss or damage resulting to the Obligea by reason thereof. Provided still further that, subject to the foregoing terms and conditions, the Claimants, or any of them, may use the name of the Obligea to sue on and enforce the provisions of this Bond.

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3. No suit or action will be commenced hereunder by any Claimant:
- (a) unless such Claimant will have given written notice within the time limits hereinafter set forth to each of the Principal, the Surety or Co-Sureties as the case may be and the Oblige, stating with substantial accuracy the amount claimed. Such notice will be served by mailing the same by registered mail to the Principal, the Surety and the Oblige, at any place where an office is regularly maintained for the transaction of business by such persons or served in any manner in which legal process may be served in the Province or other part of Canada in which the subject matter of the Contract is located. Such notice will be given
 - (1) in respect of any claim for the amount or any portion thereof, required to be held back from the Claimant by the Principal, under either the terms of the Claimant's contract with the Principal or under the Builder's Liens Legislation applicable to the Claimant's contract with the Principal whichever is the greater, within one hundred and twenty (120) days after such Claimant should have been paid in full under the Claimant's contract with the Principal.
 - (2) in respect of any claim other than for the holdback, or portion thereof, referred to above, within one hundred and twenty (120) days after the date upon which such Claimant did, or performed, the last of the work or labour or furnished the last of the materials for which such claim is made, under the Claimant's contract with the Principal;
 - (b) after the expiration of one (1) year following the date on which the Principal ceased work on the contract, including work performed under the guarantees provided in the contract.
 - (c) other than in a Court of competent jurisdiction in a Province or Territory of Canada in which the subject matter of the contract, or any part thereof, is situated and not elsewhere, and the parties hereto agree to submit to the jurisdiction of such Court.
4. The Surety or Co-Sureties as the case may be agrees not to take advantage of Article 2365 of the Civil Code of the Province of Quebec in the event that, by an act or an omission of a Claimant, the Surety or Co-Sureties as the case may be can no longer be subrogated in the rights, hypothecs and privileges of said Claimant.
5. The amount of this Bond will be reduced by, and to the extent of any payment or payments made in good faith, and in accordance with the provisions hereof, inclusive of the payment by the Surety or Co-Sureties as the case may be of builders liens which may be filed of record against the subject matter of the Contract, whether or not claim for the amount of such lien be presented under and against this Bond.
6. The Surety or Co-Sureties as the case may be will not be liable for a greater sum than the specified penalty of this Bond.
7. If this Bond is issued by Co-Sureties, then the Co-Surety that signs the first signature block on this Bond will be designated as the "Lead Surety" for the purposes of this Bond and the Co-Sureties hereby jointly and severally irrevocably: appoint and authorize the Lead Surety to act as the sole representative of and agent for the Co-Sureties, and with authority to bind the Co-Sureties, in all dealings and matters between the Co-Sureties and the Oblige, Principal and/or any Claimant(s) arising from or relating to this Bond, including without limitation the receipt on behalf of the Co-Sureties of any directions, notices, demands or draws on or given under this Bond issued by the Oblige and/or any Claimant(s) and in the investigation, payment, compromise, settlement and defence of any claims, demands and draws on, arising from or related to this Bond; and, agree and acknowledge that the Oblige, the Principal and/or any Claimant(s) will be entitled to assume that any act done, document executed or entered into or waiver given by the Lead Surety to the Oblige, the Principal and/or the Claimant(s) arising from or related to this Bond has been duly authorized by each Co-Surety and is binding upon each Co-Surety without the Oblige, Principal and/or the Claimant(s) being under any obligation to enquire into the authority of the Lead Surety in such matters.

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IN WITNESS WHEREOF, the Principal and the Surety or Co-Sureties as the case may be have Signed and Sealed this Bond
this _____ day of July, 2024

**[IF MORE THAN ONE SURETY ADD SIGNATURE
BLOCKS AS APPROPRIATE FOR EACH AND EVERY
CO-SURETY OBLIGATED UNDER THIS BOND. THE
FIRST SURETY SIGNATURE BLOCK IS FOR THE
LEAD SURETY]**

SIGNED and SEALED

In the presence of:

For the Principal

SEAL

For the Surety Attorney-in-fact

SEAL

**SCHEDULE 24
LETTERS OF CREDIT**

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Appendix 24A Form of Letter of Credit	

**PART 1
LETTERS OF CREDIT**

1.1 Replacement Letters of Credit

If:

- (a) the Design-Builder fails to replace any Letter of Credit within ten Business Days after the downgrading of the institution issuing or confirming such Letter of Credit below the level specified in Appendix 24A [Form of Letter of Credit]; or
- (b) the institution issuing or confirming any Letter of Credit notifies the Province that such Letter of Credit will not be renewed in accordance with its terms and the Design-Builder has not (by the date which is ten Business Days prior to the date of termination or expiry of such Letter of Credit) made arrangements satisfactory to the Province, in its discretion, that will result in such Letter of Credit being replaced with effect from the date of its termination or expiry with a Letter of Credit that satisfies (in the discretion of the Province) the requirements specified in Appendix 24A [Form of Letter of Credit],

the Province will be entitled to make a demand for the full principal amount of such Letter of Credit and deposit the proceeds of such demand in an account in the name of the Province, in which event the Province will thereafter be entitled to withdraw funds from such account in any circumstance in which the Province would otherwise have been entitled in accordance with this Agreement to make a demand under such Letter of Credit, provided that, if, at any time after the Province has made such a demand for the full principal amount of such Letter of Credit, the Design-Builder delivers a replacement Letter of Credit to the Province that satisfies (in the discretion of the Province) the requirements specified in Appendix 24A [Form of Letter of Credit] to this Schedule, the Province will pay the Design-Builder the amount, as at the date of delivery of such replacement Letter of Credit, standing to the credit of such account (save that the Province will be entitled to retain for its own account any interest that has accrued to such account).

**APPENDIX 24A
FORM OF LETTER OF CREDIT**

[NTD: Letters of Credit are to be issued by a Canadian chartered bank with offices in Vancouver, or any other bank or financial institution with offices in Vancouver acceptable to the Province. Any Letter of Credit will be callable at the issuing institution's counter in Vancouver.]

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

[Date]

HIS MAJESTY THE KING IN RIGHT OF THE
PROVINCE OF BRITISH COLUMBIA

[Address]

[Attention]

(the "**Beneficiary**")

Re: Design-Build Agreement dated July 31, 2024 between the Beneficiary, BC Transportation Financing Authority and Emil Anderson Construction (EAC) Inc. (the "**Applicant**") in respect of the Jumping Creek to MacDonald Snowshed 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 CAD\$ to the Beneficiary, effective immediately and expiring on _____ (the "**Expiry Date**").

We, [Name of Bank] (the "**Issuing Bank**"), at our offices shown above in Vancouver, British Columbia, Canada (the "**Offices**"), will immediately pay to you under this Standby Letter of Credit any amount or amounts claimed, not to exceed in the aggregate CAD\$, 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, and upon presentation of the original or certified copy 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 or certified copy of this Standby Letter of Credit and any amendments hereto are received by us at the Offices on or before the Expiry Date, we will immediately notify the Applicant of the receipt of such Sight Draft without enquiring whether you have a legitimate claim between yourself and the Applicant.

After the Expiry Date has elapsed, no draw will 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 will 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

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registered mail or hand delivered, 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 WILL 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.

This Standby Letter of Credit is subject to and governed by the ISP98.

This Standby Letter of Credit will be interpreted and governed by the laws of British Columbia and the federal laws of Canada applicable therein.

Per: _____
Authorized Signatory

Per: _____
Authorized Signatory

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SIGHT DRAFT

To: **[Name of Issuing Bank]**
[Address of Offices]

Re: [name of Issuing Bank]'s Standby Letter of Credit No. [●] dated [●] (the “**Standby Letter of Credit**”) issued in favour of [●] on behalf of [●] (the “**Applicant**”)

We refer to the Standby Letter of Credit. Terms defined in the Standby Letter of Credit have the same meaning when used in this Sight Draft.

We hereby request payment of CAD\$[●] ([●] Canadian Dollars).

Payment should be made to the following account:

Name: [●]
Account Number: [●]
Bank: [●]

We hereby confirm that the undersigned is entitled to present the Standby Letter of Credit for payment in accordance with the terms and conditions of the Design-Build Agreement between the Beneficiary and the Applicant in respect of the Project.

Yours truly,

[**Name of Holder**]

By: _____
Authorized Signatory

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REQUEST DESIGNATING THE TRANSFEREE

To: [Name of Issuing Bank]
[Address of Offices]

Re: [name of Issuing Bank]'s Standby Letter of Credit No. [●] dated [●] (the “**Standby Letter of Credit**”) issued in favour of [●] on behalf of [●] (the “**Applicant**”)

We refer to the Standby Letter of Credit. Terms defined in the Standby Letter of Credit have the same meaning when used in this Request Designating the Transferee.

For value received, we request you to transfer the Standby Letter of Credit to the following transferee:

[Name of Transferee]
[Full Address of Transferee]

We enclose herewith the original Standby Letter of Credit together with any amendments thereto.

Please forward the transfer amendment and all future amendments, correspondence and notifications under the Standby Letter of Credit to the transferee designated above to the attention of [●].

[**Name of Holder**]

By: _____
Authorized Signatory

**SCHEDULE 25
PROPOSAL EXTRACTS**

SCHEDULE 4: DESIGN AND CONSTRUCTION

Part 1: Design and Construction Requirements

1. The Design Builder will consider the need for concrete median barrier along the westbound shoulder to provide for additional avalanche catchment volume.
2. The Design-Builder will carry out geotechnical investigations to further define the possible deep-seated weathered zone within the bedrock as identified by the Design-Builder in its Proposal.
3. The Design-Builder will assess the need for and, if deemed required by the Design-Builder, construct engineered rock catchments and physical barriers along Travelled Lanes to improve public protection.
4. The Design-Builder will monitor groundwater conditions which will be reviewed by the Lead Geotechnical Engineer on a regular basis.
5. The Design-Builder will consider the influence of groundwater on slope stability.
6. The Design-Builder will utilize flow dissipation features including rip-rap and outlet headwalls with roughness element design in accordance with FHWA HEC 14 to reduce flow velocities, protect existing slopes and convey flows to a location where channelized flow is already present and able to accept discharges without further erosion.
7. Ditches on the north (upslope) side of the highway will be oversized for the calculated 100-year return period peak flow rates to accommodate debris flow and avalanche storage.