

PORT MANN/HIGHWAY 1 PROJECT

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PERFORMANCE MECHANISM

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PART 1
[INTENTIONALLY DELETED]

PART 2
REMITTANCE OBLIGATIONS OF CONSTRUCTOR

2.1 [Intentionally Deleted]

2.2 Obligation to make Construction Period Traffic Management Remittances

- (a) The Constructor shall pay to the Authority a Construction Period Traffic Management Remittance in respect of each month (or portion thereof, as the case may be) during the period from (but excluding) the Effective Date until (and including) the Substantial Completion Date.
- (b) Subject to the provisions of Part 10 [Payments and Remittances], each such Construction Period Traffic Management Remittance shall be calculated in accordance with Section 3.2 [Calculation of Construction Period Traffic Management Remittances] of this Schedule and shall be paid in accordance with Section 5.2 [Due Dates for Remittances Other than Annual Remittances] of this Schedule.

2.3 [Intentionally Deleted]

2.4 Obligation to make Unavailability Events Remittances

- (a) The Constructor shall pay to the Authority an Unavailability Events Remittance in respect of each month (or portion thereof, as the case may be) during the period from (but excluding) the Substantial Completion Date until the end of the DB Term.
- (b) Subject to the provisions of Part 10 [Payments and Remittances], each such Unavailability Events Remittance shall be calculated in accordance with Section 3.4 [Calculation of Unavailability Events Remittances] of this Schedule and shall be paid in accordance with Section 5.2 [Due Dates for Remittances Other than Annual Remittances] of this Schedule.

2.5 Obligation to make Non-Compliance Remittances

- (a) The Constructor shall pay to the Authority a Non-Compliance Remittance in respect of each month (or portion thereof, as the case may be) during the period from (but excluding) the Effective Date until the end of the DB Term.
- (b) Subject to the provisions of Part 10 [Payments and Remittances], each such Non-Compliance Remittance shall be calculated in accordance with Section 3.5 [Calculation of Non-Compliance Remittances] of this Schedule and shall be paid in accordance with Section 5.2 [Due Dates for Remittances Other than Annual Remittances] of this Schedule.

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2.6 [Intentionally Deleted]

2.7 [Intentionally Deleted]

2.8 [Intentionally Deleted]

2.9 Constructor Remittance Obligations

(a) [Intentionally Deleted]

(b) Each obligation of the Constructor to make a Constructor Remittance under this Part 2 [Remittance Obligations of Constructor] of this Schedule is cumulative and in addition to, and not in substitution for or to the exclusion of, each or any other payment or remittance obligation of the Constructor hereunder, and no amount that may from time to time be or become owing by the Authority to the Constructor under this Agreement may be set off against any amount payable by the Constructor to the Authority in respect of any such payment or remittance obligation of the Constructor.

2.10 [Intentionally Deleted]

PART 3
CALCULATION OF REMITTANCES

3.1 [Intentionally Deleted]

3.2 Calculation of Construction Period Traffic Management Remittances

(a) Subject to Sections 3.2(d) through (i) of this Schedule, the amount of the Construction Period Traffic Management Remittance payable in respect of each month m (or portion thereof, as the case may be) of Contract Year n in respect of which a Construction Period Traffic Management Remittance is payable in accordance with Section 2.2(a) of this Schedule shall be determined in accordance with the following formula:

$$\text{ConstructionPeriodTrafficManagementRemittance}_m = \sum_{i=1}^I \text{ConstructionPeriodTrafficManagementAmount}_i$$

where:

I = the number of Traffic Disruption Events occurring in month m (or portion thereof, as the case may be) of Contract Year n

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**Construction
 Period
 Traffic
 Management
 Amount_i**

= the Construction Period Traffic Management Amount in respect of Traffic Disruption Event *i*, calculated in accordance with Section 3.2(b) of this Schedule

- (b) The Construction Period Traffic Management Amount in respect of Traffic Disruption Event *i* shall be determined in accordance with the following formula:

$$\text{ConstructionPeriodTrafficManagementAmount}_i = [LD_i \times DD_i \times TDCD_i] + [LC_i \times DC_i \times TDCC_i]$$

where:

LD_i = in the case of a Non-Permitted Lane Delay, the number of open lanes affected thereby

LC_i = in the case of a Non-Permitted Lane Closure, a Non-Permitted Full Closure or a Non-Permitted Stoppage, as the case may be, the number of lanes closed thereby

provided that, if the total number of lanes unaffected by the relevant Traffic Disruption Event in the relevant Road Section (or Cross Street or Interchange Ramp, as the case may be) is greater than or equal to the total number of lanes available in that Road Section (or Cross Street or Interchange Ramp, as the case may be) as at the date of this Agreement, then **LD_i** or **LC_i**, as the case may be, shall be deemed to be zero

DD_i = in the case of a Non-Permitted Lane Delay, the measure (in minutes) thereof

DC_i = in the case of a Non-Permitted Lane Closure, a Non-Permitted Full Closure or a Non-Permitted Stoppage, as the case may be, the duration (in minutes) thereof

TDCD_i = the Traffic Disruption Charge in respect of a Non-Permitted Lane Delay, determined in accordance with Section 3.2(c) of this Schedule

TDCC_i = the Traffic Disruption Charge in respect of a Non-Permitted Lane Closure, a Non-Permitted Full Closure or a Non-Permitted Stoppage, as the case may be, determined in accordance with Section 3.2(d) of this Schedule

- (c) For a Non-Permitted Lane Delay, the Traffic Disruption Charge shall be calculated with reference to the following Traffic Disruption Charge Lookup Table, using the relevant part of the table for the period during which Traffic Disruption Event *i* occurs:

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Traffic Disruption Charge Lookup Table (TDCC_i)			
Traffic Disruption Charge (per minute, per lane) prior to indexation			
	Period (prior to Tolling Commencement Date) during which Traffic Disruption Event <i>i</i> occurs		
Measure of Traffic Disruption Event <i>i</i>	≥ Two years prior to Substantial Completion Target Date	< 2 years and ≥ 1 year prior to Substantial Completion Target Date	< 1 year prior to Substantial Completion Target Date
Less than 15 minutes			
Equal to or greater than 15 minutes but less than 60 minutes			
Equal to or greater than 60 minutes but less than 120 minutes			
Equal to or greater than 120 minutes			

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- (d) For a Non-Permitted Lane Closure, a Non-Permitted Full Closure or Non-Permitted Stoppage, as the case may be, the Traffic Disruption Charge shall be calculated with reference to the following Traffic Disruption Charge Lookup Table, using the relevant part of the table for the period during which Traffic Disruption Event *i* occurs:

Traffic Disruption Charge Lookup Table (TDCC_i)			
Traffic Disruption Charge (per minute, per lane) prior to indexation			
	Period (prior to Tolling Commencement Date) during which Traffic Disruption Event <i>i</i> occurs		
Duration of Traffic Disruption Event <i>i</i>	≥ Two years prior to Substantial Completion Target Date	< 2 years and ≥ 1 year prior to Substantial Completion Target Date	< 1 year prior to Substantial Completion Target Date
Less than 15 minutes			
Equal to or greater than 15 minutes but less than 60 minutes			
Equal to or greater than 60 minutes but less than 120 minutes			
Equal to or greater than 120 minutes			

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- (e) If a Non-Permitted Lane Closure, Non-Permitted Stoppage or Non-Permitted Lane Delay affects more than one lane and the duration of the Non-Permitted Lane Closure, Non-Permitted Stoppage or Non-Permitted Lane Delay, as the case may be, in respect of each such lane is different, the Construction Period Traffic Management Amount in respect of

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the Non-Permitted Lane Closure, Non-Permitted Stoppage or Non-Permitted Lane Delay, as the case may be, shall be calculated separately for each such lane pursuant to Section 3.2(b) of this Schedule, applying the duration of the Non-Permitted Lane Closure or Non-Permitted Stoppage, or the measure of the Non-Permitted Lane Delay, as the case may be, in respect of that lane.

- (f) If, as a result of Construction Activity in relation to an Underpass or Overpass, there occurs a Non-Permitted Lane Closure, a Non-Permitted Full Closure or a Non-Permitted Lane Delay that affects a portion of each of the Road Sections immediately adjacent to, and on either side of, the Underpass or Overpass (the “**Affected Portion**”), then, provided that the Affected Portion does not extend more than 2 kilometres in total length, the Affected Portion shall, for purposes of this Section 3.2 in relation to such Non-Permitted Lane Closure, Non-Permitted Full Closure or Non-Permitted Lane Delay, be treated as a single Road Section.
- (g) No Construction Period Traffic Management Amount is payable in respect of a Traffic Disruption Event that is the direct result of an Excluded Event, a Relief Event or a Force Majeure Event.
- (h) A Traffic Disruption Event the occurrence of which spans portions of:
 - (i) two or more months during the DB Term; or
 - (ii) two or more periods described in the Traffic Disruption Charge Lookup Table set out in Section 3.2(c) or in Section 3.2(d), as applicable, of this Schedule;

shall be treated as a separate Traffic Disruption Event within each such month or period, as the case may be.

- (i) For certainty, a single Traffic Disruption Event may be both a Non-Permitted Lane Delay and one (but not more than one) of the following:
 - (i) a Non-Permitted Lane Closure;
 - (ii) a Non-Permitted Full Closure; or
 - (iii) a Non-Permitted Stoppage.

3.3 [Intentionally Deleted]

3.4 Calculation of Unavailability Events Remittances

- (a) Subject to Sections 3.4(b) through (h) of this Schedule, the amount of the Unavailability Events Remittance payable in respect of each month m (or portion thereof, as the case may be) of Contract Year n in respect of which an Unavailability Events Remittance is payable in accordance with Section 1.4(a) of this Schedule shall be determined in accordance with the following formula:

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$$\text{UnavailabilityEventsRemittance}_m = \sum_{h,s} \text{UnavailabilityEventsAmount}_{hs} \times \text{InflationIndex}$$

where:

UnavailabilityEventsAmount_{hs} = the Unavailability Events Amount payable in respect of each hour *h* in month *m* in respect of each Road Section *s*, calculated in accordance with the following formula:

$$\text{UnavailabilityEventsAmount}_{hs} = \text{AssumedUsage}_{hs} \times \text{DeemedDelayCost}_{hs} \times \text{DurationFactor}_{hs}$$

where:

Assumed Usage_{hs} of any Road Section *s* (per direction) during any Clock-face Hour *h* is the assumed number of vehicles which would, in ordinary circumstances, have used Road Section *s* (travelling in the relevant direction) during Clock-face Hour *h*, calculated as follows:

- (i) Assumed Usage shall be the Measured Usage of Road Section *s* (per direction) in the Clock-face Hour that corresponds to Clock-face Hour *h* on the same day of the week one week prior to the day on which Clock-face Hour *h* falls (the “**First Reference Clock-face Hour**”), unless an Unusual Event has occurred in the First Reference Clock-face Hour, in which case:
- (ii) Assumed Usage shall be the Measured Usage of Road Section *s* (per direction) in the Clock-face Hour that corresponds to Clock-face Hour *h* on the same day of the week two weeks prior to the day on which Clock-face Hour *h* falls (the “**Second Reference Clock-face Hour**”), unless an Unusual Event has occurred in the Second Reference Clock-face Hour, in which case:
- (iii) Assumed Usage shall be determined by continuing to look back a further week on each iteration until a Clock-face Hour (the “**Other Reference Clock-face Hour**”) that corresponds to Clock-face Hour *h* on the same day of the week is found in which an Unusual Event has not occurred, and the Assumed Usage will be the Measured Usage of Road Section *s* (per direction) for that Clock-face Hour.

Measured Usage-of Road Section s in the First Reference Clock-face Hour, the Second Reference Clock-face Hour or the Other Reference Clock-face Hour, as the case may be, is the traffic volume (count) on Road Section *s* (per direction) during such Clock-face Hour, as determined by the vehicle detection system contemplated by Section 14.5 [Vehicle Detection System] of Schedule 4 [Design and Construction].

DeemedDelayCost_{hs} is calculated with reference to the following Deemed Delay Cost Lookup Table, using the relevant part of the table for the number of lanes available on Road Section *s* (per direction) and *Assumed Usage_{hs}* for Road Section *s* (per direction) during Clock-face Hour *h*:

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Deemed Delay Cost Lookup Table*					
Deemed Delay Cost (per vehicle) prior to indexation					
Lanes ** Open (per direction)	Assumed Usage (per direction)				
	≤ 1500	≥ 1501 and ≤ 3800	≥ 3801 and ≤ 5600	≥ 5601 and ≤ 7500	> 7500
4					
3					
2					
1					
0					

* If a Road Section (per direction) comprises five lanes, then the Deemed Delay Cost shall be calculated with reference to the Deemed Delay Cost Lookup Table above for all periods during which four or fewer lanes are unaffected by any Unavailability Event(s).

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* If a Road Section (per direction) comprises only four lanes, then:

- (i) irrespective of Assumed Usage, the Deemed Delay Cost shall be zero for all periods during which all four lanes are unaffected by any Unavailability Event(s); and
- (ii) the Deemed Delay Cost shall be calculated with reference to the Deemed Delay Cost Lookup Table above for all periods during which three or fewer lanes are unaffected by any Unavailability Event(s).

* If a Road Section (per direction) comprises only three lanes, then:

- (i) irrespective of Assumed Usage, the Deemed Delay Cost shall be zero for all periods during which all three lanes are unaffected by any Unavailability Event(s); and
- (ii) the Deemed Delay Cost shall be calculated with reference to the Deemed Delay Cost Lookup Table above for all periods during which two or fewer lanes are unaffected by any Unavailability Event(s).

**excluding auxiliary lanes

DurationFactor_n is calculated with reference to the following Duration Factor Table:

Duration Factor Table	
Relevant Unavailability Event duration	Duration Factor
Less than or equal to 15 mins	
More than 15 mins and less than or equal to 30 mins	
More than 30 mins and less than or equal to 45 mins	
More than 45 mins and less than or equal to 60 mins	

Inflation Index_n = the Inflation Index for Contract Year *n*

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- (b) A Relevant Unavailability Event the duration of which spans portions of two or more Clock-face Hours shall be treated as a separate Relevant Unavailability Event within each such Clock-face Hour.
- (c) Occurrence of Relevant Unavailability Events shall be determined separately for each Road Section.
- (d) The Constructor shall have no obligation to make Unavailability Events Remittances in respect of Relevant Unavailability Events occurring in the Central Segment or in Road Section 11e (eastbound lanes, GEB Rd. Overpass to East of 200th Street), Road Section 12e (eastbound lanes, West of 208th Street to Glover Road), Road Section 1w (westbound lanes, Glover Road to West of 208th Street), Road Section 2w (westbound lanes, East of 200th Street to GEB Rd. Overpass), Road Section 1e (eastbound lanes, McGill St. to West of 1st Avenue), Road Section 12w (westbound lanes, West of 1st Ave. to McGill St.), Road Section 2n (eastbound lanes, SFPR Extension) or Road Section 1s (westbound lanes, SFPR Extension).
- (e) If Relevant Unavailability Events occur simultaneously on up to three contiguous Road Sections, only the greatest of the relevant *UnavailabilityEventsAmounts* resulting from the application of the formula set out in Section 3.4(a) of this Schedule shall be included in the Unavailability Events Remittance payable in respect of the month during which those Relevant Unavailability Events have occurred.
- (f) The Constructor shall not permit the occurrence of any Relevant Unavailability Events in any Road Section in respect of which the Assumed Usage is in excess of the product derived by application of the following formula:

1,300 vehicles per hour × the least number of lanes intended by the Constructor to remain open in the Road Section at any time during the occurrence or subsistence of the Relevant Unavailability Event.
- (g) No Unavailability Events Amount is payable in respect of an Unavailability Event that is the direct result of an Excluded Event.
- (h) The Unavailability Events Amount otherwise payable in respect of a Relevant Unavailability Event that is the direct result of a Force Majeure Event shall be reduced by 90%.

3.5 Calculation of Non-Compliance Remittances

The amount of the Non-Compliance Remittance payable in respect of each month *m* (or portion thereof, as the case may) of Contract Year *n* in respect of which a Non-Compliance Remittance is payable in accordance with Section 2.5(a) of this Schedule shall be determined in accordance with the following formula:

$$NCR_{mn} = \sum_{d=1}^m NCR_{Remittance_d} \times Inflation\ Index$$

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where:

NCE Remittance_d = the NCE Remittance in respect of day *d* of month *m* of Contract Year *n*, calculated as follows:

\$1,000 x the greater of (NCE Remittance Points_d – 25) and 0, in respect of any day prior to and including the Substantial Completion Date; or

\$1,000 x the greater of (NCE Remittance Points_d – 15) and 0, in respect of any day after the Substantial Completion Date

where:

NCE Remittance Points_d is the NCE Remittance Points (Remittance) Balance (referred to in Section 4.2(b) of this Schedule) on day *d*

Inflation Index_n = the Inflation Index for Contract Year *n*

3.6 [Intentionally Deleted]

3.7 [Intentionally Deleted]

3.8 [Intentionally Deleted]

3.9 **Calculation of Inflation Index**

The Inflation Index for Contract Year *n* shall be calculated in accordance with the following formula:

$$\text{Inflation Index}_n = 1.025^{\text{YearCounter}}$$

where:

YearCounter = 1, for Contract Year 1;

2, for Contract Year 2;

3, for Contract Year 3;

and so on throughout the DB Term.

**PART 4
NCE REMITTANCE POINTS AND NCE DEFAULT POINTS**

4.1 **Assignment of NCE Remittance Points**

- (a) Upon any occurrence of a Non-Compliance Event (NCE), whether such occurrence is first identified and reported to the other party by the Constructor or the Authority, NCE Remittance Points shall be assigned by the Authority on the basis set out in Appendix D

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[Assignment of NCE Remittance Points] to this Schedule and in accordance with this Section 4.1.

- (b) If the occurrence of a Non-Compliance Event is first identified and reported by the Authority and the Authority, acting reasonably, considers that the Constructor ought to have identified and reported the occurrence of the Non-Compliance Event before the Authority did so, the Authority may assign one additional NCE Remittance Point in respect of that Non-Compliance Event.
- (c) No NCE Remittance Points shall be assigned by the Authority in respect of a NCE that is the direct result of an Authority Non-Excusable Event.
- (d) If, after the date of occurrence of a NCE (other than a NCE 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 NCE subsists for a period of 28 calendar days, then (in addition to any NCE Remittance Points assigned upon the initial occurrence of the NCE) the applicable number of NCE Remittance Points shall thereupon again be assigned by the Authority in respect of that NCE.

For each successive 28 calendar day period that such NCE subsists, the applicable number of NCE Remittance Points shall again be assigned by the Authority in respect of that NCE, so that the aggregate number of NCE Remittance Points outstanding in respect of that NCE at any time shall be determined by application of the following formula:

$$\text{NCE Remittance Points outstanding in respect of any subsisting NCE} = \text{Points} \times (1 + \text{Compounding Periods})$$

where:

Points = the number of NCE Remittance Points applicable to the NCE, as set out in Appendix D [Assignment of NCE Remittance Points] to this Schedule

Compounding Periods = the total number of successive 28 calendar day periods having elapsed since the date of initial occurrence of the NCE, as at the date of determination.

- (e) The Authority expressly reserves the right to refrain from assigning NCE Remittance Points in respect of any Non-Compliance Event, and the Authority may do so without prejudice to any of its other available rights and remedies in respect of that Non-Compliance Event, and without prejudice to its right to assign NCE Remittance Points, and to exercise any of its other available rights and remedies, in respect of any other Non-Compliance Event. Any such refraining by the Authority from assigning any NCE Remittance Points shall not excuse the Constructor from performing, nor otherwise affect the Constructor's obligation to perform, all of its obligations under this Agreement.
- (f) The Authority shall notify the Constructor of the assignment by the Authority of any NCE Remittance Points pursuant to this Section 4.1 promptly after such assignment.

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- (g) The Constructor will be entitled to dispute the assignment of any NCE Remittance Points only if (i) the number of such NCE Remittance Points assigned by the Authority in respect of a Non-Compliance Event is greater than the number of NCE Remittance Points identified by the Constructor in the relevant monthly report delivered under Section 5.1 [Monthly Report] of this Schedule as being assignable in respect of that Non-Compliance Event and (ii) the Constructor refers such dispute to the Dispute Resolution Procedure within 10 Business Days after its receipt from the Authority of notice of such assignment.
- (h) The assignment of NCE Remittance Points as contemplated by this Section 4.1 is in addition to and not in substitution for or to the exclusion of any other rights and remedies available to the Authority under this Agreement or any of the other Project Documents or at law or in equity, and the Authority may have recourse to any one or more of all of such rights and remedies, concurrently or successively, as it shall see fit, without prejudice to any of its other available rights and remedies.

4.2 Calculation of NCE Remittance Points (Remittance) Balance

- (a) For purposes of Section 3.5 [Calculation of Non-Compliance Remittances] of this Schedule:
 - (i) NCE Remittance Points that have been assigned pursuant to Section 4.1 [Assignment of NCE Remittance Points] of this Schedule (other than as a result of a traffic management audit process conducted pursuant to Schedule 4.8 [Traffic Management Auditing] of Schedule 7) shall subsist for the duration of the period from the date of occurrence of the NCE in respect of which such NCE Remittance Points have been assigned until the date on which the Nonconformity Report in respect of such NCE is "closed" in accordance with Section 6.1 [Nonconformity Reporting Process] of Schedule 7, whereupon such NCE Remittance Points shall be deducted from the then current NCE Remittance Points (Remittance) Balance; and
 - (ii) NCE Remittance Points that have been assigned pursuant to Schedule 4.1 [Assignment of NCE Remittance 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 shall subsist until 11:59 pm on the date of occurrence of the NCE in respect of which such NCE Remittance Points have been assigned, whereupon such NCE Remittance Points shall be deducted from the then current NCE Remittance Points (Remittance) Balance.
- (b) At all times during the DB Term, the Authority shall maintain a record of:
 - (i) the aggregate number of NCE Remittance Points assigned pursuant to Section 4.1 [Assignment of NCE Remittance Points] of this Schedule at any time during the period from the Effective Date until such time; and
 - (ii) the aggregate number of NCE Remittance Points assigned pursuant to Section 4.1 [Assignment of NCE Remittance Points] of this Schedule at any time during the period from the Effective Date until such time, and still outstanding as at such

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time as determined pursuant to Section 4.2(a) of this Schedule (the “**NCE Remittance Points (Remittance) Balance**”).

4.3 Calculation of NCE Remittance Points (Default) Balance

- (a) For purposes of Section 4.4 [Assignment of NCE Default Points] of this Schedule, NCE Remittance Points that have been assigned pursuant to Section 4.1 [Assignment of NCE Remittance Points] of this Schedule shall subsist for the duration of the period from the date of occurrence of the NCE in respect of which such NCE Remittance Points have been assigned until the earlier of:
- (i) the date on which the Authority assigns one or more NCE Default Points in respect of such NCE Remittance Points pursuant to Section 4.4(a) of this Schedule; and
 - (ii) the end of the Contract Year in which such NCE Remittance Points were assigned;

whereupon such NCE Remittance Points shall be deducted from the then current NCE Remittance Points (Default) Balance.

- (b) At all times during the DB Term, the Authority shall maintain a record of the aggregate number of NCE Remittance Points assigned pursuant to Section 4.1 [Assignment of NCE Remittance Points] of this Schedule at any time during the period from the commencement of the then current Contract Year until such time, and still outstanding as at such time as determined pursuant to Section 4.3(a) of this Schedule (the “**NCE Remittance Points (Default) Balance**”).

4.4 Assignment of NCE Default Points

NCE Default Points shall be assigned to the Constructor on the basis set out in this Section 4.4.

- (a) For each 150 NCE Remittance Points assigned to the Constructor during a Contract Year the Authority shall assign to the Constructor one NCE Default Point. Upon any such assignment of a NCE Default Point, the then current NCE Remittance Points (Default) Balance (referred to in Section 4.3(b) of this Schedule) shall be reduced by 150 NCE Remittance Points.
- (b) If the Constructor fails to perform or observe any of its material obligations under this Agreement (other than its obligations referred to in Section 4.4(c) of this Schedule, but including First Nations Requirements) then the Authority may, in its discretion, assign to the Constructor up to a maximum of 5 NCE Default Points for each such failure.
- (c) If there occurs:
- (i) 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; or

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- (ii) a Nonconformity in respect of a Quality Audit of the Quality Management System (a “**Repeat Nonconformity**”) that relates to a requirement in respect of which a Nonconformity has occurred previously, whether or not such Repeat Nonconformity is remedied;

then the Authority may, in its discretion, assign to the Constructor up to a maximum of 3 NCE Default Points for each such Nonconformity or Repeat Nonconformity, as the case may be.

- (d) Once assigned pursuant to this Section 4.4, NCE Default Points shall subsist for the remainder of the DB Term (but, for the purposes of Section 4.4(e)(ii) of this Schedule, shall be in effect only for the period of three years from the date of their assignment).
- (e) At all times during the DB Term, the Authority shall maintain a record of
 - (i) the aggregate number of NCE Default Points assigned pursuant to this Section 4.4 at any time during the period from the Effective Date until such time; and
 - (ii) the aggregate number of NCE Default Points assigned pursuant to this Section 4.4 at any time during the period from (but excluding) the date that is three years prior to such time until such time (the “**NCE Default Points Balance**”).
- (f) The Authority shall notify the Constructor of the assignment of any NCE Default Points pursuant to this Section 4.4 promptly after such assignment.
- (g) The Constructor will be entitled to dispute the assignment of any NCE Default Point only if (i) the number of such NCE Default Points assigned by the Authority in respect of any month is greater than the number of NCE Default Points identified by the Constructor in the relevant monthly report delivered by the Constructor under Section 5.1 [Monthly Report] of this Schedule as being assignable in respect of that month and (ii) the Constructor refers such dispute to the Dispute Resolution Procedure within 10 Business Days after its receipt from the Authority of notice of such assignment.
- (h) The Authority’s right to assign NCE Default Points as contemplated by this Section 4.4 is in addition to and not in substitution for or to the exclusion of any other rights and remedies available to the Authority under this Agreement or any of the other Project Documents or at law or in equity, and the Authority may have recourse to any one or more or all of such rights and remedies, concurrently or successively, as it shall see fit, without prejudice to any of its other available rights and remedies.

PART 5
MONTHLY REPORTS AND DUE DATES FOR REMITTANCES

5.1 Monthly Report

Not later than 10 Business Days after the last day of each month (or portion thereof, as the case may be) in each Contract Year, the Constructor shall deliver to the Authority’s Representative a report setting out

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the Constructor's calculation of the payments or remittances payable by it in respect of that month (or portion thereof, as the case may be) or in respect of any Contract Year ending on the last day of that month (as the case may be) in accordance with this Schedule. Specifically, the report shall show the Constructor's calculation of each of the following (each stated separately):

- (a) any Construction Period Traffic Management Remittance payable in respect of that month (or portion thereof, as the case may be);
- (b) [Intentionally Deleted]
- (c) any Unavailability Events Remittance payable in respect of that month (or portion thereof, as the case may be), together with a summary of Measured Usage of each Road Section for each hour during that month (or portion thereof, as the case may be);
- (d) any Non-Compliance Remittance payable in respect of that month (or portion thereof, as the case may be);
- (e) [Intentionally Deleted]
- (f) [Intentionally Deleted]
- (g) [Intentionally Deleted]
- (h) [Intentionally Deleted]
- (i) [Intentionally Deleted]
- (j) [Intentionally Deleted]
- (k) the total of all NCE Remittance Points assignable to the Constructor in respect of all Non-Compliance Events occurring during that month (or portion thereof, as the case may be);
- (l) the NCE Remittance Points (Remittance) Balance as at the end of that month (or portion thereof, as the case may be);
- (m) the NCE Remittance Points (Default) Balance as at the end of that month (or portion thereof, as the case may be);
- (n) the total of all NCE Default Points assignable to the Constructor during that month (or portion thereof, as the case may be);
- (o) the NCE Default Points Balance as at the end of that month (or portion thereof, as the case may be);
- (p) any GST payable in respect of any of the Constructor Remittances referred to in paragraphs (a) through (g) above in respect of that month (or portion thereof, as the case may be) or in respect of any Contract Year ending on the last day of that month (as the case may be);

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- (q) any PST payable in respect of any of the Constructor Remittances referred to in paragraphs (a) through (g) above in respect of that month (or portion thereof, as the case may be) or in respect of any Contract Year ending on the last day of that month (as the case may be), with a description of the value of the property or services subject to PST payable in respect of such remittances in respect of that month (or portion thereof, as the case may be);
- (r) any adjustments to reflect over-payments and/or underpayments (each such adjustment stated separately) made by the Constructor or by the Authority in preceding months (or portions thereof, as the case may be);
- (s) any interest payable in respect of any amounts owed; and
- (t) the net amount owing by the Constructor to the Authority or by the Authority to the Constructor.

A report delivered pursuant to this Section 5.1 shall be accompanied by work papers clearly setting forth the derivation of the amounts set out therein in accordance with all applicable calculations specified in this Schedule.

5.2 Due Dates for Remittances Other than Annual Remittances

- (a) If any monthly report delivered pursuant to Section 5.1 [Monthly Report] of this Schedule shows a net amount owing by the Constructor to the Authority then, without prejudice to Section 10.8 [Payment of Disputed Amounts], the Constructor shall pay and remit to the Authority such amount, simultaneously with the delivery of such monthly report to the Authority.
- (b) If any monthly report delivered pursuant to Section 5.1 [Monthly Report] of this Schedule shows a net amount owing by the Authority to the Constructor, it shall be accompanied by an invoice from the Constructor to the Authority in respect of such amount (which invoice will separately identify any GST and any PST included in the calculation of such amount). Without prejudice to Section 10.8 [Payment of Disputed Amounts], the Authority shall pay to the Constructor the amount of any such invoice issued by the Constructor, not later than the later of:
 - (i) the last day of the month following the month (or portion thereof, as the case may be) to which the invoice relates; or
 - (ii) the 10th Business Day after the Authority has received both the said invoice and the monthly report in respect of such month (or portion thereof, as the case may be).

5.3 Authority can issue Invoices

If the Constructor fails to issue any report or invoice within the time period required pursuant to this Part 5 [Monthly Reports and Due Dates for Remittances], the Authority may itself prepare and deliver to the Constructor such report or invoice. Any such report or invoice delivered pursuant to this Section 5.3 shall

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be accompanied by work papers clearly setting forth the derivation of the amounts set out therein in accordance with all applicable calculations specified in this Schedule.

PART 6
[INTENTIONALLY DELETED]

PART 7
[INTENTIONALLY DELETED]

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APPENDIX A
[INTENTIONALLY DELETED]

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APPENDIX B
[INTENTIONALLY DELETED]

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APPENDIX C

Schedule of Road Sections

(reference: Sections 3.2 and 3.4(c))

East-bound				
Section No.	Section location	Start	End	Length (km)
1e	McGill St. to West of 1st Ave ¹	0+00	15+90	1.59
2e	West of 1st Ave. to Boundary Rd.	15+90	32+10	1.62
3e	Grandview Hwy to East of Willingdon Ave.	32+10	59+40	2.73
4e	Douglas Rd. to Kensington Ave.	59+40	88+45	2.91
5e	Burnaby Lake to East of North Rd.	88+45	143+15	5.47
6e	East of North Rd. to King Edward St.	143+15	169+30	2.62
7e	Cape Horn Interchange	169+30	196+60	2.73
8e	Fraser River Crossing to 152nd St.	196+60	234+10	3.75
9e	156th St. to East of 160th St.	234+10	266+70	3.26
10e	West of 176th St. to East of GEB Rd. Overpass	266+70	292+85	2.62
11e	GEB Rd. Overpass to East of 200th St.	292+85	344+95	5.21
12e	West of 208th St. to Glover Rd.	344+95	389+25	4.43
1n	176th St. Extension ²	0+00	10+40	1.04
2n	SFPR Extension	10+40	30+40	2.00
West-bound				
Section No.	Section location	Start	End	Length (km)
1w	Glover Rd. to West of 208th St. ³	0+00	44+30	4.43
2w	East of 200th St. to GEB Rd. Overpass	44+30	96+40	5.21
3w	West of GEB Rd. Overpass to West of 176th St.	96+40	122+55	2.62
4w	East of 160th St. to 156th St.	122+55	155+15	3.26
5w	152nd St. to Fraser River Crossing	155+15	192+65	3.75
6w	Cape Horn Interchange	192+65	219+95	2.73
7w	King Edward St. to East of North Rd.	219+95	246+10	2.62
8w	East of North Rd. to Burnaby Lake	246+10	300+80	5.47
9w	Kensington Ave. to Douglas Rd.	300+80	329+85	2.91
10w	East of Willingdon Ave. to Grandview Hwy	329+85	357+15	2.73
11w	Boundary Rd. to West of 1st Ave.	357+15	373+35	1.62
12w	West of 1st Ave to McGill St.	373+35	389+25	1.59
1s	SFPR Extension ⁴	0+00	20+00	2.00
2s	176th St. Extension	20+00	30+40	1.04

Notes:

- 1- "0" chainage in east bound direction is east edge of McGill St. bridge.
- 2- "0" chainage in north west bound direction is north edge of future Barnston Dr. bridge.
- 3- "0" chainage in west bound direction is west edge of Glover Rd. bridge.
- 4- "0" chainage in south east bound direction is 70m west of future west abutment of Fraser Heights Bridge.

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APPENDIX D

Assignment of NCE Remittance Points

(reference: Section 4.1(a))

(see attached)

Port Mann / Highway 1 – Performance Mechanism Assignment of NCE Remittance Points

Performance Requirement	Performance Category	Basis of Assessment	NCEP Assigned
Concession Agreement and All Schedules			
Document Deliverables submitted to the Authority	Timeliness	As specified in this Agreement (including the relevant Schedules)	1
	Completeness	Either a Review Procedure (Schedule 2) resulting in repeat 'comments' on re-submitted submission documents specified in this Agreement (including the relevant Schedules), or a Consent Procedure (Schedule 2) resulting in repeat 'rejected' (other than a "deemed" rejection under Section 2.2(e) of Schedule 2 or a rejection on the merits of a submission), on submission documents specified in this Agreement (including the relevant Schedules)	2
Schedule 4 : Design and Construction			
Traffic Management	Implementation of Traffic Management requirements in respect to Schedule 4	Where a "Marginal" Site Condition Rating is assigned, or where a follow-up audit discloses that such "Marginal" Site Condition Rating has not been remedied within the applicable response time specified in accordance with Section 4.8 of Schedule 7	1
		Where a "Needs Improvement" Site Condition Rating is assigned, or where a follow-up audit discloses that such "Needs Improvement" Site Condition Rating has not been remedied within the applicable response time specified in accordance with Section 4.8 of Schedule 7	2
		Where an "Unacceptable" Site Condition Rating is assigned, or where a follow-up audit discloses that such "Unacceptable" Site Condition Rating has not been remedied within the applicable response time specified in accordance with Section 4.8 of Schedule 7	5
Schedule 6 : Environmental Obligations			
Environmental Commitments & Assurances	Implementation	As designated as "Minor" in Schedule 6, Appendix B	1
		As designated as "Moderate" in Schedule 6, Appendix B	2
		As designated as "Major" in Schedule 6, Appendix B	5
		As designated as "Severe" in Schedule 6, Appendix B	10
Performance Measures	Environmental Performance Measures	All other measures (identified as PEXXX) specified in Schedule 6	1
Schedule 7 : Quality Management			
Unresolved NCR's	Implementation	Where an NCE is not resolved within the response time specified on the NCR in accordance with Schedule 7, Part 6.	5
Performance Measures	Quality Performance Measures	All other measures (identified as PQXXX) specified in Schedule 7	1
Document Deliverables submitted to the Authority	Implementation	Where an NCE occurs in relation to the implementation of any deliverable (where appropriate) required by this Agreement (including the relevant Schedules)	3
Schedule 9 : Communication and Consultation			
Performance Measures	Implementation	All other measures (identified as PCXXX) specified in Schedule 9	1