

**PORT MANN/HIGHWAY 1 PROJECT
SCHEDULE 18: INTERFACE AGREEMENT**

INTERFACE AGREEMENT

among

TRANSPORTATION INVESTMENT CORPORATION, as Authority

- and -

**KIEWIT/FLATIRON,
GENERAL PARTNERSHIP, as Constructor**

- and -

TRANSPORTATION INVESTMENT CORPORATION, as Operator

- and -

TRANSPORTATION INVESTMENT CORPORATION, as Tolling Contractor

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INTERFACE AGREEMENT

THIS AGREEMENT dated as of _____, 2009.

AMONG: **TRANSPORTATION INVESTMENT CORPORATION**, a corporation established under the *Transportation Investment Act* (British Columbia)

(the “**Authority**”)

AND:

KIEWIT/FLATIRON GENERAL PARTNERSHIP, a general partnership established under the laws of the Province of British Columbia, comprised of **PETER KIEWIT SONS CO.**, a corporation amalgamated under the laws of the Province of Nova Scotia, and **FLATIRON CONSTRUCTORS CANADA LIMITED**, a corporation incorporated under the laws of the Province of British Columbia

(the “**Constructor**”)

AND:

TRANSPORTATION INVESTMENT CORPORATION, a corporation established under the *Transportation Investment Act* (British Columbia)

(the “**Operator**”)

AND:

TRANSPORTATION INVESTMENT CORPORATION, a corporation established under the *Transportation Investment Act* (British Columbia)

(the “**Tolling Contractor**”)

For the following project:

Design, construction, operation, maintenance, rehabilitation and tolling of a new Port Mann Bridge and related highway infrastructure in the Greater Vancouver area.

NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:

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**ARTICLE 1
DEFINITIONS AND INTERPRETATION**

1.1 Definitions - General

Unless defined or as otherwise provided herein, words and phrases used in this Agreement shall have the same meaning and shall be defined and interpreted in accordance with Section 1.1 (Definitions and Interpretation) and Schedule 1 [Definitions and Interpretation] of the DB Agreement. Where the context of this Agreement so requires, the definitions from the DB Agreement will be read and interpreted with such changes as are necessary in order to carry out the intent and purpose of this Agreement and to facilitate the ability of the Parties to carry out and perform their mutual obligations to one another hereunder.

1.2 Definitions - Specific

“**Authority**” means the Party named as such on the first page of this Agreement, its successors and permitted assigns.

“**Chairman**” as used herein relates to the Interface Committee and has the meaning given to such term in Section 4.3(b).

“**Confidential Information**” has the meaning given to such term in Section 11.17(a).

“**Constructor**” means the Party named as such on the first page of this Agreement, its successors and permitted assigns.

“**Contract Price**” has the meaning given to such term in the DB Agreement.

“**Contracts**” means collectively, the DB Agreement, the Tolling Agreement and the OMR Agreement, and, for the purposes of Sections 3.6 and 5.1 only, the DB Agreement, and “**Contract**” means any one of them, as the case may be.

“**Contractors**” means collectively, the Constructor, the Tolling Contractor and the Operator and “**Contractor**” means any one of them, as the case may be.

“**DB Agreement**” means the design build agreement made between the Authority and the Constructor dated as of March 17, 2009, as amended, supplemented or replaced from time to time.

“**DB Work**” has the meaning given to such term in the DB Agreement.

“**DB Work Defect**” has the meaning given to such term in the DB Agreement.

“**DB Work Latent Defect**” has the meaning given to such term in the DB Agreement.

“**Dispute**” means any disagreement, dispute, conflict or controversy between the Parties, arising under or relating to this Agreement or its subject matter.

“**Dispute Resolution Procedure**” means the procedure for final resolution of all Disputes hereunder as set out in Appendix A.

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“**Effective Date**” has the meaning given to such term in the DB Agreement.

“**Executive Panel**” as used herein relates to the Interface Committee and has the meaning given to such term in Section 4.3(d).

“**Interface Committee**” has the meaning given to such term in Section 4.1 of this Agreement.

“**OMR Services**” has the meaning given to such term in the OMR Agreement.

“**OMR Agreement**” means an agreement to be entered into by the Authority with an Operator (as defined in the DB Agreement) for the Operations, Maintenance and Rehabilitation of the Project, as thereafter amended, supplemented or replaced from time to time.

“**Operator**” means the Party named as such on the first page of this Agreement, its successors and permitted assigns.

“**Parties**” means each of the Authority, the Constructor, the Tolling Contractor and the Operator and
“**Party**” means any one of them without specificity.

“**Person for Which it is Responsible**” means, with respect to each of the Parties, each Person for whom such Party is responsible in law interpreted in accordance with Section 1.4(c).

“**Reports**” has the meaning given to such term in the DB Agreement in relation to the DB Work and has the meaning given to such term in the OMR Agreement in relation to the OMR Services and has the meaning given to such term in the Tolling Agreement in relation to the Tolling Services.

“**Representative**” as used herein relates to the Interface Committee and has the meaning given to such term in Section 4.3(a).

“**Required Products List**” has the meaning given to such term in the DB Agreement.

“**Retained Obligations**” means the Authority’s obligations under each of the Contracts which is not DB Work, OMR Services or Tolling Services.

“**Subcontractor**” has the meaning given to such term in the DB Agreement in relation to the Constructor and has the meaning given to such term in the OMR Agreement in relation to the Operator and has the meaning given to such term in the Tolling Agreement in relation to the Tolling Contractor.

“**Tolling Agreement**” means the agreement to be entered into by the Authority with a Tolling Contractor (as defined in the DB Agreement) for the design, construction, completion, testing and operating of the Toll System, as thereafter amended, supplemented or replaced from time to time.

“**Tolling Contractor**” means the Party named as such on the first page of this Agreement, its successors and permitted assigns.

“**Tolling Services**” has the meaning given to such term in the Tolling Agreement.

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1.3 In Writing

Unless otherwise provided, any notice, certificate, consent, approval, determination, agreement or waiver which is required to be issued, made or given under this Agreement shall be required to be issued, made or given in writing in accordance with Section 11.10 hereof.

1.4 Conflict and Interpretation

- (a) The Parties agree that it is a principle of this Agreement that if there is any ambiguity, inconsistency or uncertainty in respect of the rights and obligations contained in this Agreement and those in the Contracts, such rights and obligations in this Agreement shall be additional to and not in substitution for those contained in the Contracts. To the extent of any conflict between this Agreement and any of the Contracts, the Contract shall prevail in respect of the obligations of the parties to that Contract. If and to the extent of any conflict between the terms of the DB Agreement and any other Contract, the terms of the DB Agreement shall govern unless the Authority issues an Authority Change thereunder to address such inconsistency.
- (b) Nothing in this Agreement shall derogate from the obligations and liabilities of the Constructor, the Tolling Contractor and the Operator to the Authority and the Authority to the Constructor, the Tolling Contractor and the Operator, respectively, under their respective Contracts.
- (c) References to a person or persons for whom any of the Contractors are in law responsible shall be interpreted in accordance with Section 2.15 [Persons for Whom Constructor is Responsible] of Schedule 1 [Definitions and Interpretation] of the DB Agreement, except that all references in such section to the "Constructor" shall be read as references to the appropriate Contractor and the reference in such section to "Agreement" shall be read as a reference to this Agreement, the DB Agreement, the OMR Agreement or the Tolling Agreement, as the case may be.

1.5 Appendices

The following Appendices are attached to and incorporated into this Agreement and the Parties covenant and agree to observe and perform their respective obligations, and abide by the terms and conditions, contained in such Appendices:

- Appendix A - Dispute Resolution Procedure
- Appendix B - Form of Acknowledgement Agreement
- Appendix C - Specific Obligations of Cooperation
- Appendix D - Reporting Obligations

**ARTICLE 2
GENERAL OBLIGATIONS OF COOPERATION**

2.1 Parties

The Parties to this Agreement are those that are initial signatories, together with any party contracted to the Authority in relation to the Project and that is nominated by the Authority to be or become a signatory

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to this Agreement. At the commencement of the Project, only some of the parties that are to be signatories to this Agreement will be known to the Authority. The Authority shall therefore initially enter into this Agreement in the capacities as each of "Authority", "Operator" and "Tolling Contractor" and, until the Operator and the Tolling Contractor are added, all of their obligations are the obligations of the Authority. As further parties are nominated by the Authority, they will execute an acknowledgement agreement whereby such entity agrees to adhere to and be bound by the provisions of this Agreement as and from the date when its agreement with the Authority comes into effect, such acknowledgement agreement to be in the form of Appendix B attached hereto. This process shall also apply in accordance with Section 9.1 of this Agreement if a Party's contract with the Authority is terminated and a replacement party is nominated by the Authority.

2.2 Purpose and Intent

The Parties acknowledge and agree that, for the Project to be successful, it is necessary that all Parties work together cooperatively. The Parties have therefore agreed to enter into this Agreement in order to commit to each other to work cooperatively and to effectively administer and determine any interaction and/or conflict between the DB Work, the Tolling Services and the OMR Services. The Contractors recognize the legitimate interests of the Authority in effecting rational, economic and timely solutions to any conflict between the delivery of the DB Work, Tolling Services and the OMR Services.

2.3 General Obligations of Cooperation

From and after the date of this Agreement, the Parties agree to cooperate to give effect to the purpose and intent of this Agreement and, as a result and in furtherance thereof, covenant as follows:

- (a) the Constructor, the Tolling Contractor and the Operator will, at all times, act reasonably and promptly in the performance of their respective obligations under the DB Agreement, the Tolling Agreement, the OMR Agreement and this Agreement and they will, as between each other, exercise their respective rights and remedies, perform their obligations and use reasonable efforts to mitigate their respective Losses under their respective Contracts and under this Agreement in a commercially reasonable manner in order to carry out the provisions of this Agreement according to its spirit and intent;
- (b) the Operator undertakes not to unreasonably withhold or delay any approval, consent, agreement, information or response required by:
 - (i) the Constructor to the extent that the same is relevant to the discharge of the Constructor's obligations under the DB Agreement and this Agreement, or
 - (ii) the Tolling Contractor to the extent that the same is relevant to the discharge of the Tolling Contractor's obligations under the Tolling Agreement and this Agreement; or
 - (iii) the Authority to the extent that the same is relevant to the discharge of the Retained Obligations;
- (c) the Constructor undertakes not to unreasonably withhold or delay any approval, consent, agreement, information or response required by:

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- (i) the Operator to the extent that the same is relevant to the discharge of the Operator's obligations under the OMR Agreement and this Agreement, or
- (ii) the Tolling Contractor to the extent that the same is relevant to the discharge of the Tolling Contractor's obligations under the Tolling Agreement and this Agreement; or
- (iii) the Authority to the extent that the same is relevant to the discharge of the Retained Obligations the Authority to the extent that the same is relevant to the discharge of the Retained Obligations,

provided that, except by way of an Authority Change under the DB Agreement, this obligation shall not impose obligations more onerous on the Constructor than those imposed upon the Constructor under the DB Agreement and the other provisions of this Agreement;

- (d) the Tolling Contractor undertakes not to unreasonably withhold or delay any approval, consent, agreement, information or response required by:
 - (i) the Operator to the extent that the same is relevant to the discharge of the Operator's obligations under the OMR Agreement and this Agreement, or
 - (ii) the Constructor to the extent that the same is relevant to the discharge of the Constructor's obligations under the DB Agreement and this Agreement; or
 - (iii) the Authority to the extent that the same is relevant to the discharge of the Retained Obligations;
- (e) the Constructor, the Tolling Contractor and the Operator respectively agree not to interfere with, obstruct, impede or delay one another in the performance of their obligations under the DB Agreement and/or the Tolling Agreement and/or the OMR Agreement, respectively, or in the performance of any obligations under this Agreement;
- (f) the Constructor, the Tolling Contractor and the Operator will direct and coordinate their respective Subcontractors in carrying out their respective obligations under the DB Agreement and/or the Tolling Agreement and/or the OMR Agreement, provided that the Constructor, the Tolling Contractor and the Operator shall not be required to act in breach of the DB Agreement and/or the Tolling Agreement and/or the OMR Agreement, respectively;
- (g) the Operator will not knowingly permit any act or omission on either its part or the part of Persons for Which it is Responsible which will contribute to, cause or constitute a breach by:
 - (i) the Constructor of the DB Agreement or the applicable Permits, licenses or approvals or lead to any diminution or loss of any rights or entitlements on the part of the Constructor under the DB Agreement or the applicable Permits, licenses or approvals; or

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- (ii) the Tolling Contractor of the Tolling Agreement or the applicable Permits, licences or approvals or lead to any diminution or loss of any rights or entitlements on the part of the Tolling Contractor under the Tolling Agreement or the applicable Permits, licences or approvals;
- (h) the Constructor will not knowingly permit any act or omission on either its part or the part of Persons for Which it is Responsible which will contribute to, cause or constitute a breach by:
 - (i) the Operator of the OMR Agreement or the applicable Permits, licences or approvals or lead to any diminution or loss of any rights or entitlements on the part of the Operator under the OMR Agreement or the applicable Permits, licences or approvals; or
 - (ii) the Tolling Contractor of the Tolling Agreement or the applicable Permits, licences or approvals or lead to any diminution or loss of any rights or entitlements on the part of the Tolling Contractor under the Tolling Agreement or the applicable Permits, licences or approvals,

provided that, except by way of an Authority Change under the DB Agreement, this obligation shall not impose obligations more onerous on the Constructor than those imposed upon the Constructor under the DB Agreement and the other provisions of this Agreement;

- (i) the Tolling Contractor will not knowingly permit any act or omission on either its part or the part of Persons for Which it is Responsible which will contribute to, cause or constitute a breach by:
 - (i) the Operator of the OMR Agreement or the applicable Permits, licences or approvals or lead to any diminution or loss of any rights or entitlements on the part of the Operator under the OMR Agreement or the applicable Permits, licences and approvals; or
 - (ii) the Constructor of the DB Agreement or the applicable Permits, licences or approvals or lead to any diminution or loss of any rights or entitlements on the part of the Constructor under the DB Agreement or the applicable Permits, licences and approvals.

2.4 Documents Reviewed

The Tolling Contractor and the Operator acknowledge and agree that as of the Effective Date they have each reviewed:

- (a) the terms and conditions of the DB Agreement, the Tolling Agreement and the OMR Agreement and the Permits, licences and approvals (to the extent such Permits, licences and approvals exist as at the date hereof); and

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- (b) the scope of work and standards to be utilized by the Constructor under the DB Agreement, which scope and standards were utilized as the basis for the Tolling Agreement and the OMR Agreement.

The Constructor acknowledges and agrees that as of the Effective Date it has reviewed the scope of work and standards for the Tolling Contractor and the Operator in the draft "Concession Agreement" dated May 5, 2008 and included in the Data Room.

2.5 No Relief from Obligations

The Authority, the Constructor, the Tolling Contractor and the Operator hereby agree as follows:

- (a) nothing in this Agreement shall relieve the Constructor, the Tolling Contractor or the Operator of their obligations under the DB Agreement or the Tolling Agreement or the OMR Agreement, respectively, nor the Authority of any of its obligations under any one of those Contracts;
- (b) no knowledge (whether actual, constructive or implied) that may have been acquired by or imputed to the Authority as a result of its being a party to this Agreement or the Contracts shall, to the extent that such knowledge relates to matters contained in or arising under this Agreement, be used or relied upon in any claim or action at law made or instituted by any of the Constructor or the Tolling Contractor or the Operator against the Authority in connection with the Project under or pursuant to this Agreement or the DB Agreement or the Tolling Agreement or the OMR Agreement respectively, whether by waiver or otherwise, provided that nothing in this Article 2 shall affect the rights and liabilities or obligations of the Authority under the DB Agreement or the Tolling Agreement or the OMR Agreement, which would otherwise have arisen under the relevant Contract; and
- (c) none of the parties shall have any claim against each other except in accordance with this Agreement or the terms of their respective Contracts.

2.6 Priority of Article 2

In the event of any inconsistency between the provisions of this Article 2 and any other provisions of this Agreement (whether express or implied), the provisions of Article 2 shall prevail.

**ARTICLE 3
SPECIFIC OBLIGATIONS**

3.1 Specific Obligations of Cooperation

Without limiting the general agreements of the Constructor, the Tolling Contractor and the Operator to cooperate in Article 2, or the specific obligations set forth in the remainder of this Article 3, during the term of this Agreement, the Constructor, the Tolling Contractor and the Operator specifically agree to cooperate and coordinate their respective activities with respect to the issues set forth in Appendix C attached hereto insofar as they affect, arise within or relate to the DB Work and/or the Tolling Services and/or OMR Services that are being carried out concurrently in relation to the Project. The Parties shall

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also review and update Appendix C attached hereto if applicable upon the nomination by the Authority of an Operator and/or a Tolling Contractor to become a signatory to this Agreement in accordance with Section 2.1.

3.2 Construction Defects

- (a) The Operator and/or Tolling Contractor shall inform the Constructor and the Authority of any DB Work Defect or DB Work Latent Defect which becomes apparent to or is discovered by either of them by a notice stating the nature of the DB Work Defect or DB Work Latent Defect and the work which is required to make good or repair the DB Work Defect or DB Work Latent Defect and any damage caused thereby to the Infrastructure as soon as practicable but in any event within 10 Business Days of discovery of such DB Work Defect or DB Work Latent Defect.
- (b) During the periods specified in Part 5A of the DB Agreement, the Constructor shall comply with its obligations respecting DB Work Defects and DB Work Latent Defects, and any damage caused thereby to comply with the terms of Part 5A of the DB Agreement, within a reasonable time and so as to minimize interference with any use of the Infrastructure and the activities of the other Parties.
- (c) Where the Constructor is required to remedy DB Work Defects or DB Work Latent Defects, the Operator and Tolling Contractor shall cooperate with the Constructor to facilitate the efficient and effective carrying out of such works.
- (d) Where any remedial work is required to remedy any DB Work Defect or DB Work Latent Defect which is the subject of this Agreement, each Contractor shall keep full and detailed records of all Direct Losses incurred as a result thereof or in connection therewith and each shall make its records available to the other Parties on request.
- (e) The Constructor will indemnify and save harmless the Operator and the Tolling Contractor for the reasonable and proper additional service costs and Direct Losses suffered by the Operator and Tolling Contractor respectively, including any Payment Adjustments or other deductions made by the Authority (provided such Contractor has taken reasonable steps to mitigate the consequences of such DB Work Defects or DB Work Latent Defects and such Losses) as a result of DB Work Defects or DB Work Latent Defects during the periods specified in Part 5A of the DB Agreement.
- (f) For the avoidance of doubt, the Authority shall have no liability to the Operator or Tolling Contractor in respect of DB Work Defects or DB Work Latent Defects whatsoever, including any costs of remediation or mitigation or deductions made in relation thereto.
- (g) Notwithstanding any other provision of this Agreement, and with the exception of Section 5.2(b) below, no Party shall be obligated to pay to any other Party, or be liable to any other Party for, any Indirect Losses.
- (h) The Tolling Contractor and Operator hereby acknowledge and agree to be bound by the limitations of the Constructor's obligations with respect to DB Work Defects and DB

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Work Latent Defects under the DB Agreement, including, without limitation, any limitation of the liability of the Constructor in accordance with s. 9.4B of the DB Agreement.

- (i) The provisions of this Section 3.2 shall survive termination of this Agreement.

3.3 Changes

- (a) The Tolling Contractor and the Operator are bound by Article 5 of their respective Contracts and the Constructor is bound by Part 7 and Schedule 11 of the DB Agreement.
- (b) Each Contractor agrees to coordinate and cooperate with each other and to act in good faith in responding to any Authority Change, Authority Proposal or Other Changes (as defined in their respective Contracts) recognising that each Contractor has provided a fixed price contract for meeting their respective obligations under the Contracts.

3.4 Independent Certifier

- (a) The Contractors will cooperate with and allow access and provide assistance to the Independent Certifier and provide such information, records and documents as may be required by the Independent Certifier to make any determination or decision required to be made by the Independent Certifier pursuant to and in accordance with the provisions of the DB Agreement.
- (b) The Contractors agree that any decision of the Independent Certifier to issue or not to issue any certificate of completion or authorization will be final and binding on the Parties unless and until set aside or varied by arbitration in accordance with Schedule 16 [Disputes Resolution Procedure] of the DB Agreement, and subject to the Authority or the Constructor giving the required notice to arbitrate within 10 Business Days following the date of the decision of the Independent Certifier.

3.5 Hand Over

- (a) The Constructor shall:
 - (i) cooperate and work with the Operator and the Tolling Contractor with respect to the transitions of custody, care, control and responsibility from the Constructor to the Operator and/or the Tolling Contractor of portions of the DB Work and the Project Site as required. Such cooperation shall include notification to the Operator and the Tolling Contractor (with a copy to the Authority) in a timely manner of any requirements reasonably necessary or desirable to facilitate orderly transitions; and
 - (ii) repair, remediate, and restore or otherwise make good any defects or deficiencies in accordance with the DB Agreement.
- (b) The Tolling Contractor shall:

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- (i) cooperate and work with the Constructor and the Operator with respect to the transitions of custody, care, control and responsibility from the Tolling Contractor to the Constructor and/or the Operator of such portions of the Infrastructure and the Project Site as required. Such cooperation shall include notification to the Constructor and the Operator (with a copy to the Authority) in a timely manner of any requirement reasonably necessary or desirable to facilitate orderly transitions; and
 - (ii) repair, remediate, and restore or otherwise make good any defects or deficiencies in accordance with the Tolling Agreement.
- (c) The Operator shall:
- (i) cooperate and work with the Constructor and the Tolling Contractor with respect to the transitions of custody, care, control and responsibility from the Operator to the Constructor and/or the Tolling Contractor of such portions of the Infrastructure and the Project Site as required. Such cooperation shall include notification to the Constructor and the Tolling Contractor (with a copy to the Authority) in a timely manner of any requirement reasonably necessary or desirable to facilitate orderly transitions; and
 - (ii) repair, remediate, and restore or otherwise make good any defects or deficiencies in accordance with the OMR Agreement.
- (d) Handover of such portions of the Infrastructure and the Project Site from one Contractor (the “**Providing Contractor**”) to another Contractor (the “**Receiving Contractor**”) shall be effected as follows:
- (i) The Receiving Contractor shall be given a reasonable opportunity to inspect the work being handed over and provide notice to the Providing Contractor of any deficiencies noted.
 - (ii) The Providing Contractor hereby agrees to correct any errors, deficiencies, omissions, or any other variations from the standards and specifications set out in its Contract, within a reasonable time after the inspection.
 - (iii) The Providing Contractor shall not be required to provide any more than the standards or specifications set out in its Contract, nor compensate the Receiving Contractor for any reasonable delay, unless otherwise agreed.
 - (iv) Any dispute between the Providing Contractor and Receiving Contractor with respect to any such deficiencies, or timing for the correction of such deficiencies, shall be referred to the Dispute Resolution Procedure.

3.6 Reports

As it relates to their respective scopes of work, each Contractor and the Authority shall provide to the other Contractors and the Authority such Reports and other assistance as may be reasonably requested by the other Parties to satisfy their obligations under their respective Contracts and Appendix D of this

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Agreement, provided that the Parties shall determine the contents of Appendix D attached hereto upon the nomination by the Authority of an Operator and/or a Tolling Contractor to become a signatory to this Agreement in accordance with Section 2.1.

3.7 Manuals Etc.

The Constructor shall (i) promptly upon them becoming available, deliver to the Operator and the Authority drafts of, and (ii) as soon as possible and in any case no later than 6 months following the issuing of a Certificate of Total Completion of each of the Relevant Components, deliver to the Operator and to the Authority full and complete electronic copies of, all manuals, as built drawings, manufacturer's instructions and similar documents relating to items comprised in the DB Work.

3.8 Samples

- (a) When required by the Authority's Representative to submit for approval samples of any products proposed by the Constructor which are not included in the Recognized Products List, the Constructor shall submit such samples to the Authority's Representative in accordance with the Review Procedure.
- (b) If requested by the Authority, the Operator or the Tolling Contractor, acting reasonably, the Constructor must demonstrate to the Authority that any products proposed by the Constructor to be used or incorporated in the DB Work which are not on the Recognized Products List will not contravene the DB Agreement, failing which the Constructor shall not use the proposed product and shall propose a suitable alternative product for approval and the provisions of this Section 3.8(b) shall again apply.

3.9 Design Review Process

The Authority, the Operator, the Tolling Contractor and the Constructor acknowledge that the Design of the DB Work will impact both the OMR Services and the Tolling Services.

The Operator, the Tolling Contractor and the Authority shall have a consultative role in respect of design development. During the period of Design, the Constructor shall make available copies of the Design to the Operator, the Tolling Contractor and the Authority at least eight days prior to the time and date on which the Design is to be provided to the Authority. The Authority, and the Operator and the Tolling Contractor through the Authority, may provide comments and feedback on any Design, where such Design has a significant or material impact upon the OMR Services or the Tolling Services, provided however that the Constructor shall only be required to meet the standards contained in the DB Agreement. Any such comments must be provided within five days of receipt of the relevant Design.

The Operator, the Tolling Contractor and the Authority shall provide comments on any Design where the Operator, the Tolling Contractor and/or the Authority is of the opinion that such Design is inconsistent with the Operations, Maintenance, and/or Rehabilitation of the Project Infrastructure or any other provision of the DB Agreement, the OMR Agreement or the Tolling Agreement.

A representative for each of the Authority, the Operator and the Tolling Contractor may attend all scheduled design meetings, in accordance with a meeting schedule delivered by the Constructor to the Operator, the Authority and the Tolling Contractor from time to time.

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3.10 Design Management Plan

The Parties acknowledge that the Constructor has a Design Management Plan. The Constructor shall make the Design Management Plan available to the Operator and the Tolling Contractor upon request.

The Operator and the Tolling Contractor shall interface and cooperate with the Constructor in accordance with the Design Management Plan.

**ARTICLE 4
INTERFACE COMMITTEE**

4.1 Establishment of Interface Committee

The Parties agree to establish an Interface Committee (the “**Interface Committee**”) within 30 days of the execution of this Agreement. The Interface Committee will be constituted in accordance with the provisions of Section 4.3, below, provided, however, that the Interface Committee shall have no authority to alter the respective rights or obligations of the Parties as set out in this Agreement, the DB Agreement, the Tolling Agreement or the OMR Agreement.

4.2 Purpose and Authority of Interface Committee

The Interface Committee is established for the purpose of providing effective dialogue between the Parties as to all issues and concerns relating to any conflict, areas of any potential conflict or other concerns as between the Parties with respect to their respective rights and obligations under the DB Agreement, the Tolling Agreement and the OMR Agreement. The Parties intend that the Interface Committee will meet regularly and, unless otherwise agreed by the Parties, not less frequently than once every month during the Construction Period. Decisions of the Interface Committee shall be final and binding upon the Parties, shall not be subject to the Dispute Resolution Procedure and shall be enacted by the affected Parties in the manner and within the time periods (if any) specified in such decisions.

4.3 Composition and Operating Procedures of the Interface Committee

- (a) The Interface Committee shall be composed of four (4) individuals, being the following primary representatives:
 - (i) for the Constructor – the Design Build Director as defined in Part 3 of Schedule 2 to the DB Agreement;
 - (ii) for the Operator – the Project Manager as defined in section 6.1 of the OMR Agreement;
 - (iii) for the Tolling Contractor – the Project Manager as defined in section 6.1 of the Tolling Agreement; and
 - (iv) for the Authority – the Authority’s Representative as defined in Part 1 of Schedule 2 of the DB Agreement,

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provided that, until the nomination by the Authority of an Operator and a Tolling Contractor in accordance with Section 2.1, the Authority's Representative will serve on the Interface Agreement in the place and stead of the relevant representative of the Operator and/or the Tolling Contractor, as the case may be. Each Party shall have the right to appoint an alternative representative who shall serve on the Interface Committee when a primary representative of such Party is unavailable by reason of sickness, injury, vacation or other reasonable cause. Each representative (including any alternative representative) is hereafter referred to as a "**Representative**". Each Party may (but need not) have both its Representative and its alternate representative attend any meeting of the Interface Committee, provided that any failure to have all such persons present shall not affect the quorum requirements set forth in Section 4.3(h), below.

- (b) The Authority's Representative shall be the chairman ("**Chairman**") who shall have such duties and obligations as may be specified by the Interface Committee.
- (c) Each Representative or its alternate representative shall attend all meetings of the Interface Committee. If any Representative is routinely absent they will be replaced by the Party that appointed them upon the request of the other Representatives.
- (d) All decisions of the Interface Committee shall be made by unanimity of all Representatives. In the event that there is a lack of unanimity on any matter which comes before the Interface Committee, such matter shall be referred to a panel of four senior executives, one appointed by each Party (the "**Executive Panel**"). The senior executives selected shall not be involved in the day to day management or operation of the Project. The Executive Panel shall also act by unanimity and a decision of such panel shall be binding upon the Parties as if it were a decision of the Interface Committee. If the Executive Panel fails to reach unanimity, the matter may then be referred for resolution in accordance with the Dispute Resolution Procedure.
- (e) The Interface Committee shall hold its meetings at such locations as the Representatives may determine. Additional meetings of the Interface Committee may be held at the request of any Representative provided that at least two (2) days prior notice in writing of such meeting shall be given to each other Representative unless the requirement for such notice is expressly waived in writing by such Representative or such other Representatives attend the meeting and do not object to the absence of the required notice. Unless otherwise agreed to by the Representatives, each such notice shall be accompanied by a written agenda setting forth in reasonable detail the matters to be discussed at the meeting together with any relevant supporting materials.
- (f) Any Representative may participate in a meeting of the Interface Committee by means of telephone conference or other communications equipment by means of which all Persons participating in the meeting can hear and speak to each other, and a Representative participating in a meeting in such manner shall be deemed to be present in person at such meeting. Any matter within the competence of the Interface Committee that is agreed or consented to in writing by Representatives of each of the Parties entitled to attend a meeting of the Interface Committee shall be binding upon the Interface Committee and the Parties as if decided at a duly constituted meeting of the Interface Committee.

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- (g) Except as otherwise provided for in this Agreement, the Interface Committee shall have the authority, by unanimous approval of all Representatives, to establish its own reasonable procedures for meetings, notices, minutes and all other matters necessary for its efficient operation. Minutes shall be kept of all meetings of the Interface Committee, which minutes shall be approved by the Chairman and circulated to all Representatives within 21 days of each meeting.
- (h) A quorum for a meeting of the Interface Committee shall be all Representatives appointed in accordance with Section 4.3(a) above at the time of such meeting. If a meeting is called and a quorum is not present, the meeting shall be adjourned for not less than twenty-four hours, with notice thereof to be provided as contemplated in Section 4.3(e) above.

**ARTICLE 5
ACKNOWLEDGEMENT**

5.1 Warranty and Undertaking

The Authority, the Constructor, the Tolling Contractor and the Operator each warrant and undertake to the other that:

- (a) it shall comply with all its obligations under its Contract in accordance with the terms of such Contract (and acknowledges that nothing in this Agreement shall prejudice this warranty and undertaking or those obligations);
- (b) in addition to any other liability, but subject to any limitations in the OMR Agreement, the Operator shall be responsible and liable to the Constructor and the Tolling Contractor for any Payment Adjustment, liquidated damages, increased costs and the consequences of any increased monitoring, default or similar notices the Constructor or Tolling Contractor respectively may suffer or receive as a result of a failure of the Operator to comply with the provisions of Section 5.1(a);
- (c) in addition to any other liability, but subject to any limitations in the DB Agreement, the Constructor shall be responsible and liable to the Operator and the Tolling Contractor for any Payment Adjustment, increased costs and the consequences of any increased monitoring, default or similar notices the Operator or Tolling Contractor respectively may suffer or receive as a result of a failure by the Constructor to comply with the provisions of Section 5.1(a); and
- (d) in addition to any other liability, but subject to any limitations in the Tolling Agreement, the Tolling Contractor shall be responsible and liable to the Operator and the Constructor for any Payment Adjustment, increased costs and the consequences of any increased monitoring, default or similar notices the Operator or Constructor respectively may suffer or receive as a result of a failure by the Tolling Contractor to comply with the provisions of Section 5.1(a).

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5.2 Authority's Right to Designate Obligations

- (a) Where the Interface Committee has not otherwise made a determination and the Authority, acting reasonably, requires that a determination be made for the orderly carrying out of the Project, the Authority may, but shall not be obligated to, on its own initiative or at the request of any Contractor, acting reasonably, designate by notice in writing to each of the Constructor, the Tolling Contractor and the Operator, from time to time, a particular obligation as either
 - (i) an obligation of the Constructor to be assumed, complied with and performed pursuant to the DB Agreement;
 - (ii) an obligation of the Tolling Contractor to be assumed, complied with and performed pursuant to the Tolling Agreement; or
 - (iii) an obligation of the Operator to be assumed, complied with and performed pursuant to the OMR Agreement.
- (b) The Contractor to whom an obligation has been designated pursuant to Section 5.2(a) shall immediately perform such obligation at its own cost and expense. To the extent that such Contractor disputes such designation, it shall pursue such dispute with the Authority pursuant to Article 10, and in the event that the dispute is successful and it is determined such obligation is an obligation of any other Contractor, such other Contractor shall immediately perform such obligation at its own cost and expense and the Authority shall reimburse the first-mentioned Contractor for all reasonable and substantiated costs and expenses incurred in performing the obligation to the date of its assumption thereof.

**ARTICLE 6
ACCESS**

6.1 Operator, Tolling Contractor and Authority Access

The Constructor agrees that for such time as the Constructor is in control of the Project Site:

- (a) the Operator and its Subcontractors shall be entitled to reasonable access to the Project Site while OMR Services are in progress for all reasonable purposes notified by the Operator and reasonably connected with meeting the obligations of the Operator under the OMR Agreement and this Agreement; and
- (b) the Tolling Contractor and its Subcontractors shall be entitled to reasonable access to the Project Site while Tolling Services are in progress for all reasonable purposes notified by the Tolling Contractor and reasonably connected with meeting the obligations of the Tolling Contractor under the Tolling Agreement and this Agreement; and
- (c) the Authority and its Subcontractors shall be entitled to reasonable access to the Project Site while Retained Obligations are outstanding for all reasonable purposes notified by the Authority and reasonably connected with meeting the Retained Obligations.

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The provisions of this Section 6.1 apply provided that the Constructor shall not be required to act in breach of the DB Agreement. In exercising these access rights, the Operator, the Tolling Contractor and, subject to the DB Agreement, the Authority and their respective Subcontractors shall act in a manner so as to use all reasonable efforts to avoid any disruption, hindrance or impedance to the progress of the ongoing DB Work and shall abide by all reasonable restrictions and requirements of the Constructor subject, in the case of the Authority, to the DB Agreement.

6.2 Constructor, Tolling Contractor and Authority Access

The Operator agrees that for such time as the Operator is in control of the Project Site:

- (a) the Constructor and its Subcontractors shall be entitled to reasonable access to the Project Site while DB Work are in progress for all reasonable purposes notified by the DB Contractor and reasonably connected with meeting the obligations of the Constructor under the DB Agreement, including preparatory work; and
- (b) the Tolling Contractor and its Subcontractors shall be entitled to reasonable access to the Project Site while Tolling Services are in progress for all reasonable purposes notified by the Tolling Contractor and reasonably connected with meeting the obligations of the Tolling Contractor under the Tolling Agreement; and
- (c) the Authority and its Subcontractors shall be entitled to reasonable access to the Project Site while Retained Obligations are outstanding for all reasonable purposes notified by the Authority and reasonably connected with meeting the Retained Obligations.

The provisions of this Section 6.2 apply provided that the Operator shall not be required to act in breach of the OMR Agreement. In exercising these access rights, the Constructor and its Subcontractors and the Tolling Contractor and its Subcontractors shall act in a manner so as to use all reasonable efforts to avoid any disruption, hindrance or impedance to the progress of the ongoing OMR Services and shall abide by all reasonable restrictions and requirements of the Operator.

6.3 Site Safety

Each of the Constructor, the Tolling Contractor and the Operator acknowledge and agree that responsibility for site safety shall be assumed in accordance with Part 4.11 of the DB Agreement.

6.4 Responsibility for Project Facilities

Each of the Constructor, the Operator and the Tolling Contractor acknowledges and agrees that:

- (a) In accordance with the DB Agreement, the Constructor shall assume all custody, care, control and responsibility (including risks associated therewith) for the Project Site from the Effective Date, subject to the provisions of this Section 6.4;
- (b) The Operator shall perform the OMR Services across the Project Site from the Effective Date until termination.

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6.5 Traffic Management

- (a) The Constructor shall manage and co-ordinate all traffic on the Project Site from the Effective Date until the Total Completion Date and shall provide such traffic management and control as the Tolling Contractor requires for the provisions of the Tolling Services, unless otherwise determined at the Tolling Contractor's discretion, and as the Operator requires for the provisions of the OMR Services, unless otherwise determined at the Operator's discretion. The Contractors shall attend at the Constructors traffic management meetings, to be held no less than weekly. Attendance by telecommunications device is acceptable. The traffic management requirements of each Contractor shall be incorporated into the Constructor's Traffic Management Plans, as determined by the Constructor acting reasonably.
- (b) The Operator shall manage and co-ordinate all traffic on the Project Site from the day after Total Completion and shall provide such traffic management controls as the Contractors require for the provision of the DB Work, the OMR Services and the Tolling Services, unless otherwise determined by the relevant Contractor.
- (c) All responsibility for traffic management penalties shall be assumed by the Party providing the traffic management and control except where another Party fails to abide by the Traffic Management Plan or instructions of the traffic manager or designate.

ARTICLE 7

RESPONSIBILITY FOR DB WORK, TOLLING SERVICES AND OMR SERVICES

7.1 Disputes as to Responsibility

- (a) In the event that a Dispute arises between the Parties with respect to the scope of the DB Work versus the Tolling Services versus the OMR Services or with respect to the Party responsible to perform such work, the Authority shall, acting reasonably, determine the scope of the work and which Party will carry out the work in dispute. The Contractor so directed shall act expediently to immediately carry out the Authority's directions at the Party's own cost and expense.
- (b) In the event the Party directed to carry out such work disputes its obligation to do so, it may pursue resolution of the Dispute through the Interface Committee, and if such issue is not resolved by the Interface Committee it may be pursued under the Dispute Resolution Procedure. In the event that any final resolution of any such Dispute pursuant to the Dispute Resolution Procedure determines that the Party who performed the disputed work was not responsible to perform that work, the Party which should have performed the disputed work shall reimburse the Authority, and the Authority shall reimburse the performing Party for all reasonable and substantiated costs and expenses which the performing Party incurred in carrying out such disputed work. If the quantum of any such costs cannot be agreed upon between the Parties, such issue shall be resolved in accordance with the Dispute Resolution Procedure.

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**ARTICLE 8
TERMINATION**

8.1 Termination of Agreement

- (a) The Constructor will cease to be a party to this Agreement upon the expiry of the Constructor's liability for DB Work Defects under Part 5A of the DB Agreement and the resolution of all warranty claims thereunder.
- (b) This Agreement shall terminate and cease to have effect upon the expiry of all of the Contractors' liability for performance of each of their respective scopes of work under their respective Contracts.
- (c) Notwithstanding the foregoing, the Parties agree that Section 3.2 [Construction Defects], Article 5 [Acknowledgement], Section 11.17 [Confidentiality] of this Agreement and Article 10 [Dispute Resolution Procedure] shall survive the termination of this Agreement and remain in full force and effect for 2 years following the date the Party bringing a claim first becomes aware or ought, with reasonable diligence, to have become aware of such claim.

8.2 Termination Without Prejudice

The termination of this Agreement shall be without prejudice to the rights and liabilities of the Parties which shall have accrued under this Agreement prior to the date of termination.

**ARTICLE 9
REPLACING A CONTRACTOR**

9.1 Acknowledgement Agreement

If any of the Tolling Agreement or the OMR Agreement is terminated while the DB Agreement remains in existence, the Authority will use reasonable commercial efforts to ensure that any new entity entering into an agreement with the Authority in place of the terminated Contractor executes an acknowledgement agreement whereby such entity agrees to adhere to and be bound by the provisions of this Agreement as and from the date when its agreement with the Authority comes into effect, such acknowledgement agreement to be in the form of Appendix B attached hereto. To the extent that the Authority is unable to cause such new entity to enter into an acknowledgement agreement in the form of Appendix B attached hereto, the remaining Contractors shall be entitled to compensation from the Authority for any increased costs or expenses in the performance of the DB Work or Tolling Services or OMR Services (as applicable) arising as a result of the fact that such new entity is not bound by the provisions of this Agreement.

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**ARTICLE 10
DISPUTE RESOLUTION PROCEDURE**

10.1 Dispute Resolution

The Contractors agree to submit to arbitration any and all Disputes with respect to any matter pertaining to or arising out of this Agreement including any Dispute in connection with or in respect of the existence, terms, validity, breach or termination of this Agreement, provided that such Dispute remains unresolved because of a failure by both the Interface Committee and the Executive Panel to reach consensus as contemplated by Section 4.3(d). Any and all such Disputes shall be resolved in accordance with the Dispute Resolution Procedure under Appendix A of this Agreement, and, except as contemplated by the Dispute Resolution Procedure under this Agreement, no Party shall have the right to refer any such Dispute for resolution by any other dispute resolution process, including any dispute resolution procedure or process specified by any of the DB Agreement or the Tolling Agreement or the OMR Agreement.

10.2 Disputes Relating to DB Agreement

Notwithstanding the foregoing and any other provision in this Agreement, if the Authority desires that, in respect of any Dispute pertaining to or arising out of this Agreement, the Constructor or the Tolling Contractor or the Operator or some or all of them become parties to a dispute between the Authority and the Authority that involves similar issues and that is governed by the dispute resolution procedure under Schedule 16 [Dispute Resolution Procedure] of the DB Agreement, the Constructor, the Tolling Contractor and the Operator agree:

- (a) to the appointment of the same Expert and the same Arbitrator as may be appointed pursuant to the dispute resolution procedure under Schedule 16 [Dispute Resolution Procedure] of the DB Agreement to resolve the dispute between the Authority and the Authority, and any Expert or Arbitrator already appointed under this Agreement shall cease to have authority or jurisdiction to determine the Dispute;
- (b) to participate in any proceedings in a Court commenced pursuant to Section 5.1 of Schedule 16 [Dispute Resolution Procedure] of the DB Agreement;
- (c) to any and all steps agreeable to the Authority and the Authority to consolidate the respective disputes into one dispute, for a common and overall resolution, in which case the consolidated dispute shall be determined in accordance with the dispute resolution procedure under Schedule 16 [Dispute Resolution Procedure] of the DB Agreement; and
- (d) to become a party to, and to be bound by the results in or from, the dispute resolution procedure under Schedule 16 [Dispute Resolution Procedure] of the DB Agreement.

**ARTICLE 11
MISCELLANEOUS PROVISIONS**

11.1 Payments

Each invoice for any payment hereunder shall, unless otherwise agreed to or disputed in writing by the recipient, be due for payment by the party to whom it is addressed 30 days after the date the invoice is

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delivered. This provision does not affect the obligations of the Authority or any Contractor under the DB Agreement, OMR Agreement or Tolling Agreement.

11.2 Set-Off

- (a) With respect to the amounts, if any, payable by a Contractor (the “**Indebted Contractor**”) to any other Contractor (the “**Entitled Contractor**”) pursuant to this Agreement, the Entitled Contractor may provide written notice to the Authority (with a copy to the Indebted Contractor) of any such amounts payable.
- (b) Upon receipt of such notice, and provided that such notice, or the amount specified therein, is not disputed by the Indebted Contractor within 10 Business Days, the Authority, if it is reasonably satisfied that there will be no adverse effect upon its rights or its ability to perform its obligations under the Project Documents, shall set-off such amounts payable as specified in the notice against any amounts which, after 30 days following delivery of such notice, are payable by the Authority to the Indebted Contractor pursuant to the DB Agreement or Tolling Contract or OMR Agreement, as the case may be.
- (c) In the event of such set-off, the Authority shall remit such amounts as were set-off to the Entitled Contractor subject to and in accordance with the applicable provisions of the respective Contracts

11.3 Costs and Expenses

Each Party shall be responsible for the payment of its own costs and expenses in connection with this Agreement and all transactions contemplated in this Agreement, except where otherwise determined in accordance with the Dispute Resolution Procedure.

11.4 Interpretive Provisions

In this Agreement:

- (a) references to this Agreement include the Schedules, Appendices and other attachments hereto;
- (b) references to “hereunder”, “herein” and “hereof” are to the provisions of this Agreement, and references to Articles and Sections herein refer to articles, sections, or subsections of this Agreement;
- (c) the headings of the Articles, Sections, Appendices and any other headings, captions or indices herein are inserted for convenience of reference only and shall not be used in any way in construing or interpreting any provision hereof;
- (d) whenever the singular or masculine or neuter is used, it shall be interpreted as meaning the plural or feminine or body politic or corporate, and vice versa, as the context requires;
- (e) where a term is defined herein, a derivative of such term shall have a corresponding meaning unless the context otherwise requires;

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- (f) any reference to a statute shall include and shall be deemed to be a reference to such statute and to the regulations made pursuant thereto, and all amendments made thereto and in force from time to time, and to any statute or regulation that may be passed which has the effect of supplementing the statute so referred to or the regulations made pursuant thereto;
- (g) references to “including” and “includes” means “including, without limitation” and “includes, without limitation” respectively;
- (h) unless otherwise expressly stated, references to “dollars” or “\$” means Canadian dollars; and
- (i) references to the “knowledge” of any Person, means the actual knowledge of senior management of such Person, after due and reasonable enquiry.

11.5 General Duty to Mitigate

Without limiting and in addition to all other obligations to mitigate required by this Agreement and the Contracts, in all cases where a Party is entitled to receive from one of the other Parties any additional compensation, damages or extension of time, the first mentioned Party will have a duty to mitigate and reduce the amount required to be paid by the other Party or the length of the extension of time required to be granted (subject, in the case of the Authority as “Authority”, to the same limitations on such duty of the Authority to mitigate as set out in Section 3.2 of the DB Agreement for the Authority’s duty to mitigate thereunder).

11.6 Interest

To the extent that any amount under this Agreement is due and payable, unless otherwise expressly provided for, interest shall accrue on such amount commencing 30 days after such amount is due and payable at the Default Rate plus 2% calculated daily and compounded monthly until such amount is paid.

11.7 Entire Agreement

This Agreement (together with the Contracts) represents the entire agreement between the Parties, and supersedes all prior negotiations, representations, agreements, and understandings, whether written or oral, unless the same have been incorporated into this Agreement by reference. This Agreement may be amended only by written instrument signed by all Parties. There are no representations, warranties, conditions or other agreements, whether direct or collateral, or express or implied, that form a part of or affect this Agreement, or which induced any Party hereto to enter into this Agreement or on which reliance is placed by any Party hereto, except as specifically set out in this Agreement.

11.8 Severability

In case a provision of this Agreement is held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not be affected. In such event, the Parties shall negotiate in good faith to amend this Agreement in order to implement its provisions and carry out the spirit and the intent of this Agreement. If the Parties cannot agree on an appropriate amendment, the Dispute Resolution Procedure will apply.

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11.9 Successors and Permitted Assigns

Subject to Section 11.12, this Agreement shall enure for the benefit of and be binding on the respective successors and permitted assigns of each Party.

11.10 Notices

All notices and approvals required or permitted by this Agreement (including notices to Representatives) shall be in writing and delivered personally or by courier or sent by facsimile or electronic transmittal to the addresses or facsimile numbers and addresses provided below or as further amended by notice of the Parties:

Authority: Transportation Investment Corporation
Suite 1420 – 1111 West Georgia Street
Vancouver, British Columbia
V6E 4M3
Attention: Frank Blasetti, Chief Executive Officer
Fax: 604-775-1143
Email: frank.blasetti@gov.bc.ca

Operator: Transportation Investment Corporation
Suite 1420 – 1111 West Georgia Street
Vancouver, British Columbia
V6E 4M3
Attention: Frank Blasetti, Chief Executive Officer
Fax: 604-775-1143
Email: frank.blasetti@gov.bc.ca

Constructor: Kiewit/Flatiron General Partnership
Suite 1410 – 1111 West Georgia Street
Vancouver, British Columbia
V6E 4M3
Attention: Frank Margitan
Fax: 604-629-0310
Email: frank.margitan@kiewit.com

Tolling Contractor: Transportation Investment Corporation
Suite 1420 – 1111 West Georgia Street
Vancouver, British Columbia
V6E 4M3
Attention: Frank Blasetti, Chief Executive Officer
Fax: 604-775-1143
Email: frank.blasetti@gov.bc.ca

or at such other address or facsimile number of which the parties may, from time to time, notify one another. A notice shall be deemed to have been sent and received on the next Business Day following the day it is delivered personally or by courier or on the next Business Day following the day on which transmission is confirmed, if by facsimile or electronic transmittal. All notices given by either the

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Constructor or the Operator or the Tolling Contractor to one another shall be accompanied by a concurrent notice to the same effect to the Authority.

11.11 Governing Law and Attornment

This Agreement and any Disputes arising hereunder shall be governed exclusively by the laws of the Province of British Columbia and those of Canada applicable therein. To the extent that this Agreement contemplates or allows the involvement of any court, the Parties hereby irrevocably attorn to the exclusive jurisdiction of the Courts of the Province of British Columbia.

11.12 Assignment

- (a) Subject to Section 2.1, without the prior written consent of the Authority, which consent may be withheld in the Authority's sole discretion:
 - (i) the Operator shall not assign, subcontract or transfer an interest in this Agreement (including indirectly by way of a sale or other change in control of the Operator) except as is permitted in the OMR Agreement and to the same party to whom it assigns, subcontract or transfers its interest in the OMR Agreement;
 - (ii) the Constructor shall not assign, subcontract or transfer an interest this Agreement (including indirectly by way of a sale or other change in control of the Constructor) except as permitted in the DB Agreement and to the same party to whom it assigns, subcontract or transfers its interest in the DB Agreement; and
 - (iii) the Tolling Contractor shall not assign, subcontract or transfer an interest this Agreement (including indirectly by way of a sale or other change in control of the Tolling Contractor) except as permitted in the Tolling Agreement and to the same party to whom it assigns, subcontract or transfers its interest in the Tolling Agreement.
- (b) The Authority may assign, subcontract or transfer its interest in this Agreement as "Authority" without the consent of the Operator or the Constructor or Tolling Contractor only in the circumstances of a permitted assignment, subcontracting or transfer of its interest in the DB Agreement and then only to the same party to whom it assigns, subcontracts or transfers its interest in the DB Agreement.
- (c) Notwithstanding the foregoing, in the event of an assignment or proposed assignment (or novation or proposed novation) of the DB Agreement or the Tolling Agreement or the OMR Agreement, respectively, in accordance with the terms of such agreements, respectively, this Agreement shall be contemporaneously assigned (or novated) to and assumed (or agreed) by the entity to which the rights and obligations of the Constructor or the Tolling Contractor or the Operator pursuant to the DB Agreement or the Tolling Agreement or the OMR Agreement, respectively, has been or is proposed to be assigned (or novated).

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11.13 Time of the Essence

Time is of the essence of every provision of this Agreement. Extension, waiver or variation of any provisions of this Agreement shall not be deemed to affect this provision and there shall be no implied waiver of this provision.

11.14 Further Assurances

The Parties shall do or cause to be done all such further acts and things as may be reasonably necessary or desirable to give full effect to this Agreement. Without limiting the foregoing, each of the Parties will at any time and from time to time execute and deliver or cause to be executed and delivered such further instruments and take such further action as may be reasonably requested by any other Party in order to give full effect to the intent and purpose of this Agreement.

11.15 Breach of the Agreement

Each Contractor will notify the Authority of the discovery that any statement, representation, covenant or warranty made or agreed to by that Party herein is false, misleading or has not been complied with, as the case may be, in any material respect as soon as practicable, and in any case within 7 days, after it becomes aware of such matter.

11.16 Third Party Beneficiaries

Except as provided in the indemnities pursuant to the Contracts or this Agreement, it is specifically agreed between the Parties executing this Agreement that it is not intended by any of the provisions of this Agreement to create in the public or any member thereof, a third party beneficiary hereunder, or to authorize anyone not a party to this Agreement to maintain a suit for personal injury or property damage pursuant to the terms or provisions of this Agreement.

11.17 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 (save as hereinafter provided) any of the terms of this Agreement or any confidential or proprietary information (including documents, computer records, specifications, formulae, evaluations, methods, processes, technical descriptions, reports and other data, records, drawings and information whether or not included in the Design Data) or Traffic Data provided by the Authority or the Authority provided to or arising or acquired by it pursuant to the terms or performance of this Agreement (including any such documents or information supplied in the course of dispute resolution proceedings under the Dispute Resolution Procedure) (collectively, the “**Confidential Information**”).
- (b) Notwithstanding Section 11.17(a), a Party may disclose the whole or any part of the Confidential Information:
 - (i) to its directors, officers, employees, contractors, subcontractors, agents, or professional advisors 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 provided that such persons acknowledge the confidentiality of

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such Confidential Information and agree to comply with this Section 11.17 as though they were a Party hereto;

- (ii) when required to do so by applicable Laws or by or pursuant to the rules or any order having the force of Law of any Court, association or agency of competent jurisdiction or any Governmental Authority;
 - (iii) to any bank or financial institution from whom it is seeking or obtaining financing for its activities in relation to the Project provided that such persons acknowledge the confidentiality of such Confidential Information and agree to comply with this Section 11.17 as though they were a Party hereto;
 - (iv) to the extent that the Confidential Information has, except as a result of breach of confidentiality, become publicly available or generally known to the public at the time of such disclosure;
 - (v) 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;
 - (vi) 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;
 - (vii) in connection with all meetings and proceedings for the resolution of Disputes;
 - (viii) to the extent required pursuant to the DB Agreement; or
 - (ix) in the case of the Authority, to the parties to the Project Documents provided that such persons acknowledge the confidentiality of such Confidential Information and agree to comply with this Section 11.17 as though they were a Party hereto.
- (c) Each Party acknowledges that it is aware that the Freedom of Information and Protection of *Privacy Act* (British Columbia) applies to this Agreement and to all contractual submissions and other documents and records relating to this Agreement. No action taken or required to be taken by any Party for the purpose of complying with such act will be considered a breach of any obligation under this Agreement.

IN WITNESS WHEREOF the Parties hereto have duly executed this Agreement as of the day and year first above written:

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TRANSPORTATION INVESTMENT CORPORATION,
as Authority, by its authorized signatory:

Per:

Name: Peter Milburn
Title: Chair

KIEWIT/FLATIRON GENERAL PARTNERSHIP,
as Constructor, by its partners:

PETER KIEWIT SONS CO.
by its authorized signatories:

Per:

Name:
Title:

Per:

Name:
Title:

**FLATIRON CONSTRUCTORS CANADA
LIMITED**
by its authorized signatories:

Per:

Name:
Title:

Per:

Name:
Title:

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TRANSPORATION INVESTMENT CORPORATION,
as Operator, by its authorized signatory:

Per:

Name: Peter Milburn
Title: Chair

TRANSPORATION INVESTMENT CORPORATION,
as Tolling Contractor, by its authorized signatory:

Per:

Name: Peter Milburn
Title: Chair

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**APPENDIX A
DISPUTE RESOLUTION PROCEDURE**

1. General

- (a) Each of the Parties agrees that at all times it will make bona fide efforts to:
 - (i) resolve by amicable negotiations any and all Disputes, and
 - (ii) have all Disputes resolved by the Executive Panel before engaging the dispute resolution processes described in Sections 3 and 4 of this Appendix.
- (b) If the Parties are unable to resolve a Dispute at the Executive Panel pursuant to Section 1(a)(ii) of this Appendix, any Party may deliver to the others a written notice of dispute (the “**Notice of Dispute**”), which Notice of Dispute will initiate the dispute resolution process described in Sections 3 and 4 of this Appendix. To be effective, the Notice of Dispute must expressly state that it is a notice of dispute, set out the particulars of the matter in dispute, describe the remedy or resolution sought by the Party issuing the Notice of Dispute and be signed by a duly authorized representative of the Party issuing it.

2. Independent Certifier

Paragraph 3 of this Appendix will not apply in respect of the resolution of any Dispute regarding a decision of the Independent Certifier unless otherwise agreed by the Parties on terms acceptable to the Parties.

3. Referral of Disputes to Arbitration

- (a) If the Parties are unable to resolve the Dispute in the manner contemplated in Section 1(a)(i) of this Appendix, then any Party may, at any time, by written notice to the other Parties, require that the Dispute be resolved by arbitration pursuant to Section 4 of this Appendix.
- (b) If a Party refers a Dispute to arbitration pursuant to this Appendix, or otherwise initiates or pursues any dispute resolution process, appeal or legal proceeding (including any appeal or litigation permitted pursuant to Section 3 of this Appendix), then, unless the Parties otherwise expressly agree in writing, all submissions prepared by a Party in respect of any proceedings involving the Interface Committee or the Executive Panel and all information, documents, notes and records prepared by the Interface Committee or the Executive Panel, will be confidential and inadmissible in any such arbitration, dispute resolution process, appeal or legal proceeding.

4. Arbitration

- (a) If a Dispute is referred to arbitration pursuant to Section 33 of this Appendix, the *Commercial Arbitration Act* (British Columbia) will apply to any arbitration conducted hereunder except to the extent that its provisions are modified by the express provisions of this Section 4 or by agreement of the Parties.

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- (b) A Party (the “**Initiating Party**”) may commence arbitration proceedings by giving a written notice to the other Parties (the “**Responding Parties**”) identifying the nature of the Dispute, the determination of the Expert that is to be the subject of the arbitration, and any amount involved and the remedy sought. Within 10 Business Days following receipt of such notice by the Responding Parties, the Initiating Party and the Responding Parties will designate a single arbitrator acceptable to all of them. If the Parties fail to appoint such a single arbitrator within such period of time, the Initiating Party will, by written notice to the Responding Parties, appoint an arbitrator. The Responding Parties will, within 10 Business Days following receipt of such notice, jointly appoint an arbitrator by joint written notice to the Initiating Party, and the two arbitrators so appointed will select a third arbitrator acceptable to both of them. If the Responding Parties fail to appoint an arbitrator within such period of time (or such additional period of time as the Parties may agree), the Initiating Party may appoint an arbitrator on behalf of the Responding Parties and is hereby appointed the agent of the Responding Parties for such purpose. If the two arbitrators so appointed are unable to agree upon the third arbitrator within 10 Business Days following the appointment of the arbitrator by (or on behalf of) the Responding Parties, any Party may apply under the *Commercial Arbitration Act* to a judge of the Supreme Court of British Columbia to appoint the third arbitrator, and the provisions of the *Commercial Arbitration Act* will govern such appointment. No person may be nominated or appointed to act as an arbitrator who has or at any time has had any interest whatsoever (including without limitation a financial, employment, professional or family interest) in the conduct of the DB Work, OMR Services, the Tolling Services, the Retained Obligations or in the business affairs of the Constructor, the Operator, the Tolling Contractor, the Authority or any consultant, subconsultant or subcontractor of any of them.
- (c) The single arbitrator or panel of arbitrators appointed pursuant to Section 4(b) of this Appendix to act hereunder (the “**Arbitrator**”) will have appropriate qualifications by profession or occupation to decide the matter in Dispute.
- (d) Within 10 Business Days following the appointment of the Arbitrator (or where the Arbitrator is a panel of arbitrators, the appointment of the last member of such panel) pursuant to Section 4(a) of this Appendix, the Initiating Party will send to the Responding Parties and the Arbitrator a statement (the “**Statement**”) setting out in reasonable detail the facts and any contentions of law on which the Initiating Party relies and the relief that it claims. Within 10 Business Days following receipt of such Statement, each Responding Party will send to the Initiating Party, the other Responding Party and the Arbitrator a response (the “**Responses**”) to the Statement setting out in reasonable detail which of the facts and contentions of law in the Statement such Responding Party admits or denies, on what grounds, and any other facts and contentions of law on which it relies. Within 10 Business Days following receipt of the latest of such Responses, the Initiating Party may send to the Responding Parties and the Arbitrator a reply to the Response (the “**Initiating Party’s Reply**”). Within 10 Business Days following receipt of the Initiating Party’s Reply, each Responding Party may send to the Initiating Party, the other Responding Party and the Arbitrator a reply to the Initiating Party’s Reply (each “**Responding Party’s Reply**”) (the Initiating Party’s Reply and the Responding Party’s Replies being referred to in this Appendix, collectively, as “**Replies**” and, individually, as a “**Reply**”).

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Every Statement, Response and Reply given in accordance with the foregoing will be accompanied by copies (or, if they are especially voluminous, lists) of all essential documents and other materials on which the Party concerned relies.

- (e) After submission of the Statement, Responses and Replies, if any, given in accordance with Section 4(d) of this Appendix, the Arbitrator will forthwith meet with and give directions to the Parties for the further conduct of the arbitration. There will be no oral discovery unless otherwise ordered by the Arbitrator.
- (f) Meetings and hearings of the Arbitrator will take place in Vancouver, British Columbia or in such other place as the Parties may agree. Subject to the foregoing, the Arbitrator may at any time fix the date, time and place of meetings and hearings in the arbitration and will give the Parties adequate notice thereof. All meetings and hearings will be in private unless the Parties otherwise agree, and each Party may be represented at any meetings or hearings by legal counsel. Each Party may examine and re-examine its witnesses and cross-examine those of the other Party at the arbitration.
- (g) Subject to the provisions of the *Commercial Arbitration Act*, the Arbitrator will send a decision in writing to the Parties within 30 days following the conclusion of all hearings referred to in Section 4(f) of this Appendix unless such period of time is extended for a fixed period by the Arbitrator on written notice to each Party because of illness or other cause beyond the Arbitrator's control and, unless the Parties otherwise agree, will state the reasons for the decision. If the Arbitrator is a panel, the decision of the majority of the panel will be deemed to be the decision of the Arbitrator.
- (h) Subject to the provisions of the *Commercial Arbitration Act*, and with the exception of monetary awards in excess of \$5,000,000 or errors in law, the decision of the Arbitrator will be final and binding on the Parties and not subject to any appeal, further arbitration, litigation or any other dispute resolution process, provided that the Arbitrator has followed the rules and procedures herein in good faith and has proceeded in accordance with the principles of natural justice. If the decision results in an award in excess of \$5,000,000, the decision of the Arbitrator may be appealed on a question of fact or on a question of mixed fact and law where permitted pursuant to the provisions of the *Commercial Arbitration Act*. If the decision is alleged to have been based upon an error in law, a Party may appeal the decision in that regard pursuant to the provisions of the *Commercial Arbitration Act*.
- (i) The object of an arbitration hereunder is to ensure the just, expeditious, economical and final determination of the Dispute. Without limiting the jurisdiction or powers of the Arbitrator under the *Commercial Arbitration Act*, a submission to arbitration hereunder will confer on the Arbitrator the jurisdiction and power to:
 - (i) determine any question of law arising in the arbitration;
 - (ii) determine any question as to the Arbitrator's jurisdiction;
 - (iii) determine any question of good faith or dishonesty arising in the Dispute;

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- (iv) order any Party to furnish further details of its case, in fact or in law to the other Party;
- (v) proceed with the arbitration notwithstanding any failure or refusal of a Party to comply with these provisions or with the Arbitrator's orders or directions or to attend any meeting or hearing, but only after giving such Party notice that the Arbitrator intends to do so;
- (vi) receive and take into account such written or oral evidence tendered by the Parties as the Arbitrator determines is relevant, whether or not strictly admissible in law;
- (vii) make one or more interim awards;
- (viii) hold meetings and hearings and make a decision (including without limitation a final decision) in British Columbia or elsewhere with the concurrence of the Parties;
- (ix) order the Parties to produce to the Arbitrator, and to each other for inspection, and to supply copies of, any books and records, documents, materials and other information in their possession or control which the Arbitrator determines to be relevant;
- (x) order the preservation or storage of any property or thing relevant to the subject matter of the arbitration under the control of either of the Parties;
- (xi) make any order as to the payment of costs of the arbitration, including without limitation legal fees on a solicitor and own client basis, and
- (xii) include, as Part of any award, the payment of interest at the rate set out in the Agreement from an appropriate date as determined by the Arbitrator.

The jurisdiction and powers referred to in this Section 4(i) will be exercised at the discretion of the Arbitrator subject only to applicable Laws and the provisions of the Agreement.

- (j) If a Party is entitled to initiate or pursue any arbitration, dispute resolution process or legal proceeding (including any appeal or litigation permitted under Sections 4(h) or 5 of this Appendix) then, unless the Parties otherwise expressly agree in writing, all submissions prepared by a Party in connection with the arbitration proceedings under this Section 4 and all information, documents, notes and records, prepared by the Arbitrator will be confidential and inadmissible in any such arbitration, dispute resolution process or legal proceeding except to the extent required by any appeal of a decision of an Arbitrator.

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5. Provisional Remedies

No Party is precluded from initiating a proceeding in a Court of competent jurisdiction 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 the Agreement, including temporary and preliminary injunctive relief and restraining orders and the appointment of a receiver, interim receiver, manager, receiver and manager or administrative receiver or administrator.

6. Continuing Performance

- (a) At all times, notwithstanding the existence of any Dispute or the referral of any Dispute for resolution under this Appendix, except as may otherwise be expressly provided in the Agreement, the Parties will continue to comply with, observe and perform all of their respective obligations under the Agreement and the DB Agreement, the Tolling Agreement and the OMR Agreement, respectively, without prejudice to the right to contest, dispute and challenge the relevant matter in accordance with the provisions of the Agreement. Without limitation to the foregoing, and for illustrative purposes only, in the event of a Dispute with respect to the reasonableness of any approval by the Authority, the Constructor and/or the Operator and/or the Tolling Contractor will comply with such decision but, where permitted under the terms of the Agreement, may submit the question of reasonableness for determination pursuant to the provisions of this Appendix. To the extent that any such Dispute involves a disagreement as to the nature or scope of the Constructor's or the Tolling Contractor's or the Operator's obligations hereunder (including as to the performance or method of performance of any of the DB Work or the OMR Services or the Tolling Services), the Constructor, the Tolling Contractor and the Operator will, respectively, comply with all instructions given by the Authority's Representative pending the outcome of the Dispute, but without prejudice to the rights of the Constructor, the Tolling Contractor or the Operator as ultimately determined in accordance with this Dispute Resolution Procedure.
- (b) Subject to the express provisions of the Agreement, where there is any Dispute as to the amount of monies owing by one Party to Party hereunder, the portion of the amount owing that is not contested, disputed or challenged, if any, will be paid when due hereunder, but without prejudice to the rights of the Parties to contest, dispute or challenge the disposition of the remaining portion of the monies claimed hereunder.

7. Rights Pending Final Resolution of Dispute

If a Party receiving a notice of termination of the Agreement disputes the right of the Party giving such notice to terminate the Agreement by making application to the dispute resolution procedure in this Appendix, it must state in the Notice of Dispute if it elects to accept such termination without prejudice to its right to assert a claim for damages for the alleged wrongful termination or to any other rights to which it is entitled under the Agreement. Such election will be irrevocable and the Party making the election will only be entitled to seek its damages, if any. If the disputing Party does not so elect, the termination of the Agreement will occur upon the expiry of a period of 30 days following a final decision of the Arbitrator to the effect that the right to terminate was validly exercised.

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8. Costs of Arbitration

The costs of the proceeding shall be borne by the Parties in the proportions determined by the Expert or Arbitrator, as applicable, failing which the Parties will share equally, and be responsible for their respective shares of, all costs relating to the arbitration as and when due.

9. Legal Proceedings

Except as expressly contemplated in this Appendix, neither any Expert nor any Arbitrator may be required to testify or otherwise be compellable in or in connection with any appeal, litigation, arbitration, dispute resolution process or legal proceeding, nor will any of their respective information, documents, notes or records be used or referred to or admissible in or in connection with any such litigation, arbitration, dispute resolution process or legal proceeding (and, for greater certainty, all such notes and records will be confidential) except to the extent required by any appeal of a decision of an Expert or an Arbitrator.

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**APPENDIX B
FORM OF ACKNOWLEDGEMENT AGREEMENT**

ACKNOWLEDGEMENT AGREEMENT

THIS ACKNOWLEDGEMENT AGREEMENT is made on •

BETWEEN:

TRANSPORTATION INVESTMENT CORPORATION (the “**Authority**”);

- and -

[Operator or Constructor or Tolling Contractor] (the “[**Initial Remaining Contractor**]”);

- and -

[Operator or Constructor or Tolling Contractor] (the “**Second Remaining Contractor**” and together with the Initial Remaining Contractor, the “[**Remaining Contractors**]”);

- and -

[Replacement Contractor] (the “**Novatee**”).

WHEREAS:

This Acknowledgement Agreement is entered into pursuant to the Interface Agreement dated •, 2009 between the Authority, the [**Remaining Contractors**], and [**Terminated Contractor**] (the “**Interface Agreement**”).

NOW THEREFORE IT IS AGREED as follows:

1. Terms defined in the Interface Agreement shall have the same meaning herein.
2. This is a novation agreement entered into in accordance with Section 9.1 of the Interface Agreement and in respect of which the effective date of the novation is • (the “**Novation Date**”).
3. The parties hereto acknowledge and agree that, on and with effect from the Novation Date:
 - (a) the Novatee shall become a party to the Interface Agreement in place of [**Terminated Contractor**] and thereafter the Novatee shall be treated as if it had originally been named as a party thereto in place of [**Terminated Contractor**] and [**Terminated Contractor**] shall be released from all its obligations under the Interface Agreement, provided that nothing herein contained shall be construed as a release of [**Terminated Contractor**] from any obligation or liability under the Interface Agreement, which obligation or liability had accrued prior to the Novation Date;

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- (b) the Novatee shall assume and enjoy the rights, powers, privileges and perform and discharge the obligations, liabilities and duties of **[Terminated Contractor]** under the Interface Agreement and **[Terminated Contractor]** shall be released from all such obligations, liabilities and duties, provided that nothing herein contained shall be construed as a release of **[Terminated Contractor]** from any obligation or liability under the Interface Agreement, which obligation or liability had accrued prior to the Novation Date;
 - (c) the Authority and **[Remaining Contractors]** shall owe their obligations, liabilities and duties under the Interface Agreement to the Novatee in place of **[Terminated Contractor]**;
4. This Acknowledgement Agreement shall be governed exclusively by the laws of the Province of British Columbia and those of Canada applicable therein.

IN WITNESS whereof this Acknowledgement Agreement has been executed and the day and year first before written.

TRANSPORATION INVESTMENT CORPORATION

Authorized Signatory

Authorized Signatory

[Initial Remaining Contractor]

Authorized Signatory

Authorized Signatory

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[Second Remaining Contractor]

Authorized Signatory

Authorized Signatory

[Novatee]

Authorized Signatory

Authorized Signatory

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**APPENDIX C
SPECIFIC OBLIGATIONS OF COOPERATION**

This Appendix shall be reviewed and updated by the Parties in accordance with Section 3.1 of this Agreement.

1. ***Certification of Tolling Commencement and Substantial/Final Completion*** – The Constructor, the Tolling Contractor and the Operator will work together to ensure full preparedness for handover of the Infrastructure and the Site to each other in an efficient manner.
2. ***Design Changes*** – The Constructor will require flexibility to make changes to the Detailed Design from time to time as permitted pursuant to the DB Agreement. The Authority will seek approval from the Operator and Tolling Contractor prior to consenting to any such changes (where Authority consent is required under the DB Agreement) that impact on the whole life costs. The Tolling Contractor and Operator will have the right to review the design, materials, specifications and workmanship of the Project and provide comments for consideration by the Constructor.
3. ***Construction Schedule Changes*** – The Constructor will require flexibility to adjust the construction schedule as permitted pursuant to the DB Agreement. The Authority will seek input from the Operator and the Tolling Contractor prior to consenting to any such changes (where Authority consent is required under the DB Agreement) which affect the economics of the Project and, in particular, any change which affects the timing of reaching completion of Tolling Milestones.
4. ***Authority Changes/Supervening Events/Force Majeure/Relief Events***– With respect to all of these, cooperation will be required among the Parties in order to respond and react appropriately.
5. ***Inspection*** – The Parties will need to coordinate their responses to allow for various inspections by the Authority and its representatives.
6. ***Record Keeping/Audit*** – To the extent that record keeping obligations overlap, the Constructor, the Tolling Contractor and the Operator will need to agree upon and establish an appropriate record-keeping protocol.
7. ***Environmental Requirements*** – The preparation of integrated environmental management plans will require cooperation between the Constructor, the Tolling Contractor and the Operator.
8. ***Quality Management*** – The integration of quality management plans and required ISO Certification will require cooperation between the Constructor, the Tolling Contractor and the Operator.
9. ***Public Consultation/Community Relations*** – A coordinated approach to public consultation and community relations will be required, particularly during the Construction Period.
10. ***Lane Closures/Traffic Management Plans*** – All lane closures (including for Final Completion activities and defect repair) will be coordinated to ensure maximum free-flow of traffic in order to minimize resulting payments under the Contracts and to maximize toll revenues.

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**APPENDIX D
REPORTING OBLIGATIONS**

This Appendix shall be completed by the Parties in accordance with Section 3.6 of this Agreement.