

SOUTH FRASER PERIMETER ROAD PROJECT**SCHEDULE 11
CHANGES**

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**PART 1
MINOR WORKS**

1.1 Procedure for Minor Works

The procedure set out in this Part 1 of this Schedule shall apply to any Minor Works initiated by either the Province or the Concessionaire pursuant to Section 7.3 [Minor Works]. No Change Report or Change Certificate shall be required for any such Minor Works, and neither the Review Procedure nor the Consent Procedure shall apply to the consideration of any such Minor Works.

1.2 Minor Works Initiated by Province

(a) Upon receipt by the Concessionaire of a request by the Province for Minor Works pursuant to Section 7.3(a), then subject only to the Concessionaire, within 10 Business Days of the receipt of such request, delivering a notice to the Province's Representative objecting to such Minor Works:

- (i) pursuant to Section 4.2 [Concessionaire Refusal to Proceed] of this Schedule; or
- (ii) alleging that such Minor Works fail to meet the applicable requirements set out in Section 7.3(a),

(and with any such objection to then be resolved in accordance with the Dispute Resolution Procedure), the Concessionaire shall proceed to perform the Minor Works to completion as soon as reasonably practicable.

(b) If, in the opinion of the Province, the Province is or would be likely to be required by the Competitive Tender Requirements to competitively tender or seek competitive bids or proposals in respect of any contract in connection with or relating to the Minor Works, the Province's Representative may, in the notice delivered under Section 7.3(a), require the Concessionaire to seek and evaluate competitive tenders for the Minor Works in accordance with Section 4.4 [Requirement to Obtain Competitive Tenders] of this Schedule.

(c) The Province shall, subject to Section 4.3 [Concessionaire Delay in Responding] of this Schedule, at its discretion, as the sole compensation to which the Concessionaire is entitled in respect of such Minor Works:

- (i) pay to the Concessionaire in advance of the performance of any Minor Works pursuant to Section 1.2(a) of this Schedule the amount, if any, of the Minor Works Valuation for such Minor Works as set out in the request delivered by the Province's Representative pursuant to Section 7.3(a);
- (ii) if competitive tenders are obtained pursuant to Section 4.4 [Requirement to Obtain Competitive Tenders] of this Schedule for any Minor Works performed pursuant to Section 1.2(a) of this Schedule, pay to the Concessionaire for any Minor Works the amount of the lowest compliant tender received pursuant to Section 4.4(a) of this Schedule plus the out of pocket costs that the Concessionaire reasonably and necessarily incurs to obtain such competitive

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tenders and that are approved by the Province's Representative prior to being incurred by the Concessionaire, such amount to be payable by the Province within 30 days of the receipt by the Province's Representative of an invoice from the Concessionaire in respect thereof; or

- (iii) pay the Concessionaire for any Minor Works performed pursuant to Section 1.2(a) of this Schedule within 30 days of the receipt by the Province's Representative of a monthly invoice from the Concessionaire, calculated on the following basis:
 - (A) labour and Construction Plant shall be charged in accordance with rates which are agreed upon by the parties prior to the commencement of such Minor Works; and
 - (B) charges for Plant shall be at the cost of such Plant to the Concessionaire (or any of its Principal Contractors or Subcontractors), net of all discounts, plus a Mark-up of [REDACTED]

1.3 Minor Works Initiated by Concessionaire

Upon receipt by the Province's Representative of a Concessionaire Proposal to carry out Minor Works pursuant to Section 7.3(b), then, unless the Province's Representative, within 10 Business Days of the receipt of such Concessionaire Proposal, delivers a notice to the Concessionaire objecting to the proposed Minor Works on any of the following grounds:

- (a) the proposed Minor Works fail to meet the requirement set out in Section 7.3(b);
- (b) if such Minor Works had been initiated by the Province, the Concessionaire would have been able to refuse to implement such Minor Works on any of the grounds set out in Section 4.2(a) of this Schedule;
- (c) such Minor Works would result in a material departure from, material failure to comply with or material variation to any of the Project Requirements;
- (d) following such Minor Works the Project Infrastructure would not be of a quality or standard of performance or value (to the Province) equal to or better than that required under the Project Requirements prior to such Minor Works, or the residual value of the Project Infrastructure would be negatively affected;
- (e) the conduct of the Project Work in accordance with the proposed Minor Works would be less likely to achieve compliance with the Project Requirements or would be likely to provide for compliance to a lower standard or quality than the conduct of the Project Work in accordance with the Project Requirements prior to such Minor Works;
- (f) such Minor Works would interfere with the relationship of the Province with third parties, or would require the Province to obtain any permission, consent, approval, certificate, permit, licence, statutory agreement or authorization from any Governmental Authority, including the Province, or any other third party;

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- (g) such Minor Works would otherwise materially affect the risks or costs to which the Province is exposed in respect of the Project; or
- (h) such Minor Works would require any amendment to any Design Data in respect of the Construction or any other Construction Activities during the Term, thereby requiring the submission of such amendment of Design Data to the Design and Certification Procedure,

the Concessionaire may proceed to perform the Minor Works at the Concessionaire's sole risk and expense.

1.4 Consequential Amendments

The Province and the Concessionaire shall each use all reasonable efforts to reach agreement as to the amendments to the Project Requirements, and any other consequential non-material amendments to this Agreement, necessary as a consequence of any Minor Works carried out in accordance with this Part. If the Province and the Concessionaire parties are unable to reach agreement within 10 Business Days, then either such party may refer the matter for resolution under the Dispute Resolution Procedure.

**PART 2
PROVINCE CHANGES**

2.1 Notice of Province Change

The Province may, subject to the Province's ability to initiate a Province Change as a Minor Works under Section 7.3 [Minor Works], issue to the Concessionaire a request for a Province Change under Section 7.1 [Province Changes] setting out the nature, extent and timing of the relevant Province Change with sufficient detail and information to permit the Concessionaire to prepare and deliver to the Province's Representative a Change Report, and including whether:

- (a) in the opinion of the Province, the Province is or would be likely to be required by the Competitive Tender Requirements to competitively tender or seek competitive bids or proposals in respect of any contract in connection with or relating to the Province Change such that the Concessionaire shall be required to seek and evaluate competitive tenders for the Province Change under Section 4.4 [Requirement to Obtain Competitive Tenders] of this Schedule;
- (b) the Province requires the Concessionaire to provide a preliminary estimate of the impacts of the Province Change in accordance with Section 2.2 [Preliminary Estimate of Impacts of Province Change] of this Schedule; and
- (c) the Province wishes to consider an adjustment of Availability Payments in accordance with Section 10.2 [Adjustment of Availability Payments] and therefore requires that the Concessionaire provide in the Change Report the information required pursuant to Section 10.2(a).

2.2 Preliminary Estimate of Impacts of Province Change

When required by the Province for any Province Change pursuant to Section 2.1(b) of this Schedule, but subject to Section 4.2 [Concessionaire Refusal to Proceed] of this Schedule, within 10

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Business Days (or such later date as the Province's Representative may specify acting reasonably in the circumstances) of:

- (a) the receipt by the Concessionaire of a request for a Province Change under Section 2.1 [Notice of Province Change] of this Schedule; or
- (b) a determination pursuant to the Dispute Resolution Procedure in favour of the Province in respect of a dispute pursuant to Section 4.2(b) of this Schedule,

the Concessionaire shall, at its sole cost and expense, deliver to the Province's Representative a written preliminary estimate of the impacts of such Province Change determined in accordance with this Schedule. Within 10 Business Days of the delivery of such a preliminary estimate, the Province's Representative shall notify the Concessionaire in writing whether or not the Province desires to proceed with such Province Change.

2.3 Preparation of Change Report

Subject to Section 4.2 [Concessionaire Refusal to Proceed] of this Schedule:

- (a) in circumstances where Section 2.2 [Preliminary Estimate of Impacts of Province Change] of this Schedule applies, within 35 Business Days of receipt of notification from the Province's Representative pursuant thereto that the Province desires to proceed with a Province Change; or
- (b) in all other circumstances, within 45 Business Days of either:
 - (i) the receipt of a request for a Province Change under Section 2.1 [Notice of Province Change] of this Schedule; or
 - (ii) a determination pursuant to the Dispute Resolution Procedure in favour of the Province in respect of a dispute pursuant to Section 4.2(b) of this Schedule,

the Concessionaire shall consider how to accommodate a proposed Province Change in a cost effective manner so as to minimize the cost of such Province Change and its impact on the Project Schedule and the Project, and otherwise on the performance of the Project Work, and shall prepare and submit to the Province's Representative pursuant to the Consent Procedure (subject to the specific time periods set out in Section 2.6 [Agreement or Disagreement Regarding Change Report] of this Schedule) a written report (a "**Change Report**") identifying all aspects of the Province Change as they relate to the Project, the Project Work and this Agreement including, without limitation:

- (c) an estimate in accordance with Section 2.4 [Valuation of Change in Costs] of this Schedule of the Change in Costs arising from the implementation of the Province Change, and providing with such estimate:
 - (i) all necessary supporting calculations and information including particulars of additional sums to be paid to Principal Contractors, Subcontractors, financiers and professional advisers as reasonably requested and necessary for the Province to be able to understand and evaluate the estimate; and

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- (ii) any time periods after which such estimated prices or parts thereof shall no longer be valid, which periods shall be of sufficient length to allow the Province a reasonable time to consider the Change Report and arrive at an initial evaluation;
- (d) any resulting lump sum payment which the Concessionaire proposes is required to be made pursuant to Section 2.5(a) of this Schedule to reflect the Change in Costs estimated by the Concessionaire under Section 2.3(c) of this Schedule and, where required by the Province pursuant to Section 2.1(c) of this Schedule or otherwise at the option of the Concessionaire pursuant to Section 10.2 [Adjustment of Availability Payments], the information required pursuant to Section 10.2(a), in each case together with all supporting information, including any resulting update of the Financial Model required in accordance with this Agreement;
- (e) any impact on any other amounts payable by one party to another party as a result of the implementation of the Province Change;
- (f) any adjustments required to any of the dates set out in the Project Schedule due to the effect of carrying out such Province Change on any milestone dates set out in the Project Schedule, including any adjustment to the Eastern Segment Required Substantial Completion Date, the Western Segment Required Substantial Completion Date or the Total Completion Target Date which the Concessionaire shall require as a result of the implementation of the Province Change (including details of any corresponding adjustments required by any Principal Contractors or Subcontractors);
- (g) any changes to the Design Data in respect of the Construction or any other Construction Activities during the Term required to be submitted to the Design and Certification Procedure in order to implement such Province Change;
- (h) any other amendments required to this Agreement, the Project Requirements or any Project Document as a result of such Province Change;
- (i) the Concessionaire's requirements for any other assistance and resources from the Province or any other requirements of the Province reasonably required to implement the Province Change;
- (j) any required additional Permits or amendments to existing Permits or Permits that are in the course of being obtained;
- (k) any additional Land Rights necessary for the purpose of implementing the Province Change;
- (l) the extent to which the Province Change would interfere with the Concessionaire's ability to comply with any of its obligations under this Agreement, any Project Document or any Permits;
- (m) the identity of any Principal Contractors and Subcontractors which the Concessionaire intends to engage for the purposes of implementing the Province Change; and

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- (n) any further effects (including benefits and impairments) which the Concessionaire foresees as being likely to result from the Province Change.

2.4 Valuation of Change in Costs

The Concessionaire shall estimate, and provide to the Province's Representative in the Change Report pursuant to Section 2.3(c) of this Schedule, the Change in Costs and shall, subject to Section 4.4 [Requirement to Obtain Competitive Tenders] of this Schedule, incorporate in such estimate all such information, including quantities, as the Province's Representative may reasonably require to enable it to properly evaluate such estimate, including a detailed summary of the prices, costs, charges and Mark-ups used to calculate such estimate, and sufficient additional information (including a statement of the Concessionaire confirming such matters) to demonstrate to the satisfaction of the Province's Representative, acting reasonably, that:

- (a) the Concessionaire has used all reasonable efforts, including where required in accordance with Section 4.4(a) of this Schedule or by the Competitive Tender Requirements, or where otherwise reasonably appropriate, the use of competitive quotations or tenders, to oblige its Principal Contractors and Subcontractors to minimize any increase in costs and to maximize any reduction in costs;
- (b) all costs of the Concessionaire, its Principal Contractors and Subcontractors are limited to actual amounts to the extent such amounts relate specifically to the Province Change and would not otherwise have been incurred and are:
 - (i) paid or to be paid or invoiced to the Concessionaire, its Principal Contractors or Subcontractors; or
 - (ii) paid by the Concessionaire, its Principal Contractors or Subcontractors,all without addition of any Mark-ups except as otherwise expressly provided for in this Section;
- (c) the aggregate amount of:
 - (i) all Mark-ups for profit and overhead included by the Principal Contractors; and
 - (ii) the Mark-up for profit and overhead included on amounts charged directly by the Concessionaire,included in the calculation of such estimated costs does not exceed [REDACTED] of the Change in Costs, and no other Mark-ups (except for any Mark-up referred to in Section 2.4(e) of this Schedule) are included;
- (d) the estimate includes an estimate, without any Mark-up, of:
 - (i) all additional amounts that would be payable by the Concessionaire to the Province under Schedule 10 [Performance Mechanism] as a result of the implementation of the Province Change;

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- (ii) any reduced amounts that would be payable by the Province to the Concessionaire under Schedule 10 [Performance Mechanism] as a result of the implementation of the Province Change; and
 - (iii) if the Province Change causes a delay in either or both of the Eastern Segment Substantial Completion Date or the Western Segment Substantial Completion Date, the amount needed to ensure that the Concessionaire is placed in a no better and no worse position taking into account the Availability Payments that would otherwise have been payable to the Concessionaire but for the delay in such dates;
- (e) to the extent that the Province Change would directly result in a material adverse change to the Concessionaire in the overall risk allocation (which may include for such purpose where Project Schedule delays resulting from such Province Change have a material adverse impact on the Concessionaire's site overhead costs) under this Agreement as at the date of the delivery of the notice of the Province Change to the Concessionaire, taking into account any other factors mitigating the effect of the Province Change on the overall risk allocation (including any changes in this Agreement or the Project Requirements arising out of the Province Change), the amount of any Mark-ups included in the calculation of such estimated costs (in excess of the Mark-up for profit and overhead referred to in Section 2.4(c) of this Schedule) fairly and appropriately reflects such change in overall risk allocation;
- (f) all costs included in such estimate reflect:
- (i) labour rates applying in the open market to providers of services similar to those required in connection with the implementation of the Province Change;
 - (ii) any and all changes in this Agreement or the Project Requirements arising out of the Province Change; and
 - (iii) any and all changes in risk allocation (including any Mark-up referred to in Section 2.4(e) of this Schedule);
- (g) any costs of preparing the Change Report included in such estimate are recoverable by the Concessionaire pursuant to Section 2.9 [Costs of Preparing Change Report] of this Schedule;
- (h) the estimated costs will provide good overall value to the Province and take into account any reasonably foreseeable changes in Laws; and
- (i) the Concessionaire has obtained or will obtain the best value for money when procuring any work, services, supplies, materials or equipment required in connection with the implementation of the proposed Province Change and has complied or will comply with Good Industry Practice in relation to any such procurement, to a standard no less than the Concessionaire would apply if all costs incurred were to its own account without recourse to the Province.

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2.5 Consequences of Province Changes

If it has been agreed or determined in accordance with this Part that, as a result of a Province Change, a party is required to make a payment to another party, such payment shall be made by either, as determined pursuant to Sections 10.1 [Lump Sum Payment and Financing] and 10.2 [Adjustment of Availability Payments]:

- (a) a lump sum payment by the relevant party, calculated in accordance with Section 10.1 [Lump Sum Payment and Financing]; or
- (b) an adjustment being made to the Availability Payments, calculated in accordance with Section 10.2 [Adjustment of Availability Payments].

2.6 Agreement or Disagreement Regarding Change Report

- (a) Following receipt by the Province's Representative of a Change Report prepared in accordance with Section 2.3 [Preparation of Change Report] of this Schedule in respect of a proposed Province Change, the Province and the Concessionaire shall each use all reasonable efforts to reach agreement on the matters described in Section 2.5 [Consequences of Province Change] of this Schedule and all other information contained in the Change Report, and any agreement so reached in writing shall, if recorded in a Change Certificate issued in accordance with Section 2.7 [Change Certificate] of this Schedule, be binding upon the Province and the Concessionaire with respect to the Province Change in accordance with Section 2.8 [Effect of Change Certificate] of this Schedule.
- (b) If the Province and the Concessionaire are unable to agree on the resolution of all matters referred to in the Change Report within 15 Business Days of its receipt by the Province's Representative, the Province's Representative:
 - (i) may elect not to proceed with the relevant Province Change by notice to the Concessionaire; or
 - (ii) otherwise shall issue to the Concessionaire a Change Certificate stating the determination of the Province's Representative of the matters referred to in the Change Report.
- (c) If the Concessionaire disagrees with all or any of the determinations set out in a Change Certificate issued by the Province's Representative pursuant to Section 2.6(b)(ii) of this Schedule, then the Concessionaire may deliver to the Province's Representative within 15 Business Days of the issuance of such Change Certificate notice that it disputes such determinations, failing which such Change Certificate shall be deemed to have been accepted by the Concessionaire. The Province and the Concessionaire shall cooperate to have such dispute resolved in a timely manner pursuant to the Dispute Resolution Procedure. Pending the resolution of any such dispute, the Concessionaire shall proceed with the implementation of the Province Change as directed by the Province's Representative in the Change Certificate and in accordance with Section 2.8 [Effect of Change Certificate] of this Schedule, provided that any amounts reasonably expended, and any delay reasonably established, by the Concessionaire in proceeding to implement

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such Province Change pending resolution pursuant to the Dispute Resolution Procedure shall be dealt with as part of such Province Change.

2.7 Change Certificate

A Province Change shall be authorized by the Province's Representative issuing to the Concessionaire a certificate (the "**Change Certificate**") which shall set out:

- (a) the extent to which such Province Change applies to vary any of the Project Work, the Project Schedule, the Project Requirements, this Agreement or the other Project Documents;
- (b) any adjustments to the Availability Payments or any lump sum payment to be made in accordance with Section 2.5 [Consequences of Province Changes] of this Schedule; and
- (c) the resolution of any other matters contained in the Change Report.

2.8 Effect of Change Certificate

- (a) A Change Certificate shall have the effect of varying the Project Work, the Project Schedule, the Project Requirements and/or this Agreement to the extent provided therein with effect from the date of issuance of the Change Certificate or as otherwise provided in the Change Certificate, subject only to the contrary resolution of a dispute initiated by the Concessionaire pursuant to Section 2.6(c) of this Schedule.
- (b) Unless otherwise agreed, or unless directed otherwise by an interim notice to proceed received from the Province's Representative, the Concessionaire shall not proceed with the performance of any Province Change prior to the issuance of a Change Certificate or as otherwise provided in the Change Certificate. With effect from the date of issuance of a Change Certificate or as otherwise provided in the Change Certificate or such an interim notice to proceed, the Concessionaire shall implement the Province Change as directed in the Change Certificate or interim notice to proceed, or as otherwise agreed, and shall, subject to the resolution of any dispute initiated by the Concessionaire in accordance with Section 2.6(c) of this Schedule in respect of such Change Certificate, be bound by this Agreement in so doing as if the Province Change formed part of the Project Requirements.
- (c) Subject only to a dispute initiated by the Concessionaire in accordance with Section 2.6(c) of this Schedule, once issued a Change Certificate shall be binding upon the Province and the Concessionaire with respect to the Province Change and may not be reopened by any party, and the relief and/or compensation, if any, to which the Concessionaire is entitled in accordance with such Change Certificate shall be the only relief and/or compensation to which the Concessionaire shall be entitled in respect of such Province Change.

2.9 Costs of Preparing Change Report

- (a) The costs incurred by the Concessionaire in preparing a Change Report shall be paid for as follows:

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- (i) all costs of the Concessionaire's own staff and employees, and the staff and employees of a Principal Contractor, or any of their Affiliates, which would normally be part of the general management, administration, and supervision of the Project Work and general construction estimating shall be paid for by the Concessionaire and such costs shall not form part of the Change in Costs; and
 - (ii) subject to Section 2.9(b) of this Schedule, the Concessionaire shall be entitled to receive payment from the Province, as part of the Change in Costs or, if the Province elects not to proceed with the relevant Province Changes pursuant to Section 2.7(b)(i) of this Schedule, by separate payment to the Concessionaire by the Province, for any out of pocket costs that the Concessionaire reasonably and necessarily incurs, directly or indirectly, to prepare such Change Report and that are approved by the Province's Representative prior to being incurred by the Concessionaire.
- (b) The Concessionaire shall not be entitled to receive payment from the Province pursuant to Section 2.9(a)(ii) of this Schedule for any out of pocket costs in respect of the preparation of a Change Report for a proposed Province Change if it is agreed or determined pursuant to the Dispute Resolution Procedure that the preliminary estimate of the net amount of the Change in Costs arising from such Province Change prepared by the Concessionaire pursuant to Section 2.2 [Preliminary Estimate of Impacts of Province Change] of this Schedule was less than, by more than 20%, the net amount of the Change in Costs subsequently determined by the parties in accordance with this Part.

**PART 3
VALUE ENGINEERING PROPOSALS**

3.1 Notice of Value Engineering Proposal

The Concessionaire may submit to the Province's Representative pursuant to the Consent Procedure a Value Engineering Proposal under Section 7.4 [Value Engineering Proposal], which Value Engineering Proposal shall:

- (a) set out the extent to which such Value Engineering Proposal would, if accepted by the Province's Representative, apply to vary the Project Work, the Project Requirements and/or this Agreement;
- (b) set out all the applicable information required in a Change Report;
- (c) provide sufficient information to the Province's Representative to enable it to consider the sharing of benefits under Section 3.4 [Sharing Benefits of Value Engineering Proposal] of this Schedule and, in connection therewith, set out any lump sum payment to be made pursuant to Section 10.1 [Lump Sum Payment and Financing] as a result, and, if the Concessionaire proposes to effect such payment through adjustments to the Availability Payments pursuant to Section 10.2 [Adjustment of Availability Payments], the information required pursuant to Section 10.2(a);
- (d) specify the Concessionaire's reasons and justification for proposing the Value Engineering Proposal, including:

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- (i) the comparative advantages to the Concessionaire and the Province of each variation to the Project Work, the Project Requirements and/or this Agreement referred to in Section 3.1(a) of this Schedule;
 - (ii) confirmation that the financial strength of the Concessionaire is sufficient to implement the Value Engineering Proposal;
 - (iii) confirmation that, if such Value Engineering Proposal had been initiated by the Province, the Concessionaire would not have been able to refuse to implement such Value Engineering Proposal on any of the grounds set out in Section 4.2(a) of this Schedule; and
 - (iv) confirmation whether, if such Value Engineering Proposal had been initiated by the Concessionaire as a Minor Works, the Province could potentially have been able to reject such Value Engineering Proposal on any of the grounds set out in Section 1.3 [Minor Works Initiated by Concessionaire] of this Schedule, together with the Concessionaire's rationale for why the Value Engineering Proposal is nevertheless recommended to the Province notwithstanding the applicability of any such grounds for rejection; and
- (e) indicate if there are any dates by which a decision by the Province is requested.

3.2 Evaluation of Value Engineering Proposal

- (a) In accordance with the Consent Procedure, the Province's Representative shall consider any Value Engineering Proposal received from the Concessionaire, including:
 - (i) requesting any clarification or additional information or documentation regarding the Value Engineering Proposal as required by the Province's Representative to fully evaluate and consider the Value Engineering Proposal;
 - (ii) requesting, if not provided by the Concessionaire pursuant to Section 3.1(c) of this Schedule, the information required pursuant to Section 10.2(a) to effect the payment for such Value Engineering Proposal through adjustments to the Availability Payments pursuant to Section 10.2 [Adjustment of Availability Payments]; and
 - (iii) requesting modifications of the Value Engineering Proposal if required by the Province's Representative.
- (b) The Province may accept or reject any Value Engineering Proposal in its discretion.

3.3 Change Certificate for Value Engineering Proposal

If the Province's Representative accepts a Value Engineering Proposal pursuant to Section 3.2(b) of this Schedule, with or without modification, the relevant Value Engineering Proposal shall be documented and evidenced by a Change Certificate prepared by the Concessionaire and issued by the Province's Representative in the same manner as a Province Change under Section 2.7 [Change Certificate] of this Schedule.

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3.4 Sharing Benefits of Value Engineering Proposal

If the Value Engineering Proposal causes or shall cause the costs of the Concessionaire or of a Principal Contractor to decrease, after taking into account the agreed implementation and reasonably allocated development costs of the Value Engineering Proposal incurred by the Concessionaire or any Principal Contractor or Subcontractor, and taking into account any other uses of the Value Engineering Proposal by the Concessionaire, the net savings in the costs of the Concessionaire and any such Principal Contractor or Subcontractor shall be shared equally by the Concessionaire and the Province in the manner agreed to by the Province's Representative and set out in the relevant Change Certificate in response to the Concessionaire's proposal therefor provided under Section 3.1(c).

3.5 Costs of Value Engineering Proposal

- (a) The Concessionaire may deliver to the Province's Representative preliminary information with respect to a proposed Value Engineering Proposal and the Province may, at its discretion, agree in advance to pay all or any portion of the costs of developing such Value Engineering Proposal.
- (b) Subject only to an agreement of the Province otherwise in accordance with Section 3.5(a) of this Schedule, all costs of a Value Engineering Proposal shall be borne solely by the Concessionaire, including that the Concessionaire shall pay to the Province promptly after receipt of an invoice therefor all reasonable and proper costs and expenses reasonably incurred by the Province in connection with reviewing such Value Engineering Proposal and making a determination as to the acceptance or rejection of such Value Engineering Proposal, whether or not such Value Engineering Proposal is accepted and whether or not the proposed Value Engineering Proposal takes place, such costs and expenses to include professional costs and expenses, advisor fees and other out of pocket expenses, fees, costs and expenses charged by Partnerships BC or the Province to the Province, and the Province's reasonable internal administrative and personnel costs. At the time of the Concessionaire's submission of a Value Engineering Proposal pursuant to Section 3.1 [Notice of Value Engineering Proposal] of this Schedule, and as a condition precedent to the commencement of any time period specified for the Province's Representative to object or otherwise respond to such submission and to any obligation of the Province to review or consider any matter in respect of which any such submission is made, the Concessionaire shall pay to the Province the sum of \$35,000 (index linked) to be held by the Province on account of the Concessionaire's obligations to pay under this Section in respect of such submission. After the relevant decision of the Province is rendered, the Province shall either refund any overpayment by the Concessionaire on account of amounts payable by the Concessionaire under this Section, or invoice the Concessionaire for any additional amounts payable by the Concessionaire under this Section, which additional amounts the Concessionaire shall pay within 10 Business Days after receipt of such invoice.

**PART 4
GENERAL PROVISIONS**

4.1 Modification of Processes and Procedures

Nothing in this Schedule or Part 7 [Province Changes and Concessionaire Proposals] shall limit

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the ability of the parties to mutually, in writing, modify, simplify or waive some or all of the processes and procedures outlined in this Schedule or such Part in respect of Province Changes or Concessionaire Proposals, including Minor Works and Value Engineering Proposals.

4.2 Concessionaire Refusal to Proceed

- (a) The Concessionaire may, acting reasonably, refuse to provide a Change Report or implement a Province Change (including Minor Works but excluding Required Province Changes) on the basis that:
 - (i) to implement the Province Change would not be technically feasible;
 - (ii) the Province Change would, if implemented, materially and adversely affect the Concessionaire's ability to perform its obligations under this Agreement, any other Province Project Document or any Senior Lending Agreement, after having taken into account any amendments to any provision thereof contemplated under this Schedule, and the sufficiency of funds available to the Concessionaire from all sources, including debt, equity and any payments to be made to the Concessionaire by the Province in respect of such Province Change under this Schedule;
 - (iii) to implement the Province Change would be contrary to Good Industry Practice;
 - (iv) to implement the Province Change would be contrary to Laws;
 - (v) to implement the Province Change would be unsafe;
 - (vi) the Concessionaire would be unable (using all reasonable efforts in respect thereof) to obtain any new Permit or any amendment or revision to an existing Permit (other than any new or amended Permit that would be the responsibility of the Province) that is:
 - (A) necessary to implement the Province Change;
 - (B) necessary otherwise to allow compliance with the provisions of this Agreement as a consequence of implementation of such Province Change having regard to the provisions of this Agreement (as amended, where appropriate, to take account of or make provision for the Province Change); or
 - (C) necessitated by the revocation or cancellation of any existing Permit or the imposition of any additional conditions with which the Concessionaire would be unable to comply in relation to any existing Permit occurring as a result of the Province Change; or
 - (vii) the Concessionaire would be unable (using all reasonable efforts in respect thereof) to obtain any Land Rights necessary for the purpose of implementing the Province Change except where the Province obtains, directly or indirectly, such Land Rights,

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provided that the Concessionaire shall deliver to the Province's Representative, within 20 Business Days (or within 10 Business Days in the case of Minor Works) after the receipt by the Concessionaire of the request for such Province Change, written notice of such refusal together with an explanation of the Concessionaire's reasons therefor in sufficient detail to permit a considered review thereof by the Province's Representative. If the Concessionaire does not deliver to the Province's Representative any such written notice of refusal within such time period, the Concessionaire shall be deemed to have agreed to such Province Change and shall either proceed with the performance of such Minor Works under Section 1.2(a) of this Schedule or the preparation of a Change Report under Section 2.3 [Preparation of Change Report] of this Schedule for such other Province Change, as the case may be.

- (b) If the Province's Representative disagrees with the Concessionaire's refusal to proceed delivered under Section 4.2(a) of this Schedule, then the Province's Representative may notify the Concessionaire of such disagreement within 15 Business Days of the receipt of the Concessionaire's refusal, failing which the request for such Province Change shall be deemed to have been cancelled. The parties shall cooperate to have such dispute resolved in a timely manner pursuant to the Dispute Resolution Procedure and, pending the resolution of such dispute, the Concessionaire shall not be required to proceed with the performance of such Minor Works under Section 1.2(a) of this Schedule or the preparation of a Change Report under Section 2.3 [Preparation of Change Report] of this Schedule for such other Province Change, as the case may be.

4.3 Concessionaire Delay in Responding

In the event that the Concessionaire fails to:

- (a) commence the performance of any Minor Works requested by the Province or deliver a notice to the Province's Representative disputing such requested Minor Works within the time period set out in Section 1.2(a) of this Schedule;
- (b) prepare a Change Report in respect of any other Province Change requested by the Province within the time period set out in Section 2.3 [Preparation of Change Report] of this Schedule or deliver a notice to the Province's Representative refusing to proceed with such other Province Change within the time period set out in Section 4.2(a) of this Schedule; or
- (c) meet any other time period required in respect of any Minor Works or other Province Change under Part 7 [Province Changes and Concessionaire Proposals] and this Schedule,

then, without limiting any rights of the Province under this Agreement in respect of such failure, the Concessionaire shall bear the sole risk and expense of any increase in the amount that the Province would be required to pay to the Concessionaire pursuant to Part 7 [Province Changes and Concessionaire Proposals] and this Schedule in respect of such Minor Works or other Province Change as a result of such delay. The onus for establishing that no such increase has resulted from such delay shall be on the Concessionaire.

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4.4 Requirement to Obtain Competitive Tenders

- (a) If either:
- (i) the Province's Representative gives notice of the requirement for the Concessionaire to obtain competitive tenders for any Minor Works or other Province Change pursuant to Section 1.2(b) or Section 2.1(a) of this Schedule; or
 - (ii) the total estimated Change in Costs payable by the Province in respect of the Minor Works or other Province Change are reasonably likely to exceed \$150,000 (index linked),

then, unless, subject to the Competitive Tender Requirements, the Province's Representative waives such requirement by notice to the Concessionaire or the Concessionaire demonstrates to the reasonable satisfaction of the Province's Representative that it is impracticable, given the nature of such Minor Works or other Province Change, to obtain such competitive tenders, the Concessionaire shall obtain, or cause its Principal Contractors or Subcontractors to obtain, as appropriate, at least three competitive tenders that would (if the Province had procured such work directly) meet the Competitive Tender Requirements for the work involved in such Minor Works or other Province Change, and at least one of which such tenders shall, subject to any contrary Competitive Tender Requirements, be from a third party at arm's length from the Concessionaire, its Affiliates and the Principal Contractors.

- (b) In the case of Minor Works, the Province shall, notwithstanding the receipt of tenders pursuant to Section 4.4(a) of this Schedule, make payment for such Minor Works in accordance with Section 1.2(c) of this Schedule.
- (c) In the case of any Province Change other than Minor Works, the Change in Costs for such Province Change shall be the amount of the lowest compliant tender received pursuant to Section 4.4(a) of this Schedule, plus any Mark-up contemplated in Sections 2.4(c) and (e) of this Schedule.

4.5 Changes Not to Correct Errors in Cost Estimates

Neither the Concessionaire nor the Province shall use a Concessionaire Proposal or a Province Change, respectively, to correct, or derive benefit from, any errors or omissions in the cost estimates provided by the Concessionaire for any Project Work forming part of this Agreement.

4.6 Disputes

Any dispute between the parties arising in connection with any matter in respect of a Province Change or Concessionaire Proposal, including any Minor Works, shall be resolved in accordance with the Dispute Resolution Procedure.