
PART 1 OF SCHEDULE 14

SUBSEQUENT SCHEMES

1. SUBSEQUENT SCHEME NOTICE

1.1 Where the Concessionaire desires a Subsequent Scheme to be carried out it will give notice to that effect to the Province (the “Subsequent Scheme Notice”).

1.2 The Subsequent Scheme Notice will:

1.2.1 include a description of the proposed Subsequent Scheme which will be in sufficient detail to enable the Province to assess the nature and extent thereof and the likely effect of the Subsequent Scheme on the Project Facilities and on the Undertakings under this Agreement;

1.2.2 without limitation to paragraph 1.2.1, give details of:

1.2.2.1 the size and scope of the proposed works (including outline plans);

1.2.2.2 estimated costings; and

1.2.2.3 a proposed schedule for the works; and

1.2.3 contain the Concessionaire’s suggestions as to the contractual arrangements in respect of the construction of the Subsequent Scheme, including any statutory authority to be relied on, the party who will promote the Subsequent Scheme through any statutory approvals process, the party who will enter into the contracts in respect of the Subsequent Scheme, and the party who will serve as contractor.

1.3 The Province may at any time require the Concessionaire to provide such additional information with respect to the Subsequent Scheme as the Province may reasonably require, and if the Concessionaire fails to provide such information the Province will have no obligation to give any further consideration to the proposed Subsequent Scheme.

2. CONSIDERATION BY THE PROVINCE

2.1 Within 7 days after receipt of the Subsequent Scheme Notice, the Province will acknowledge receipt of such Notice and will thereafter proceed with reasonable dispatch to consider the request contained in the Subsequent Scheme Notice.

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- 2.2 The Province will, as soon as reasonably practicable in the circumstances, taking into consideration, *inter alia*, the complexity of the proposed Subsequent Scheme, give a notice to the Concessionaire indicating whether or not the Province considers that it is worthwhile giving further consideration to the proposed Subsequent Scheme.
- 2.3 The Province will consider the proposal contained in the Subsequent Scheme Notice on its merits, in accordance with and in view of any relevant statutory duties. Without in any way limiting the discretion of the Province in responding to any such request, the Province will, in reaching a decision on whether it is worthwhile to proceed to further discussions with the Concessionaire in regard to such Subsequent Scheme, give consideration, *inter alia*, to whether the Subsequent Scheme would be of benefit to the public.
- 2.4 If the Province gives notice to the Concessionaire that it is willing to consider further the proposed Subsequent Scheme, then the Province and the Concessionaire will enter into negotiations with a view to reaching agreement on the terms and conditions on which the Subsequent Scheme may be taken forward.
- 2.5 The terms and conditions referred to in paragraph 2.4 to be agreed between the Parties will include, *inter alia*, the following:
- 2.5.1 the statutory authority under which the Subsequent Scheme will be promoted and any procedural or structural arrangements to satisfy the requirements of such statutory authority;
 - 2.5.2 the responsibilities of each of the Parties in respect of the statutory approvals process in respect of the Subsequent Scheme;
 - 2.5.3 the standards and specifications to apply to the construction of the Subsequent Scheme and to its subsequent operation, maintenance and rehabilitation;
 - 2.5.4 the procedure for the design and certification of the Subsequent Scheme;
 - 2.5.5 the schedule for the works in connection with the Subsequent Scheme;
 - 2.5.6 any amendments required to this Agreement as a consequence of the Subsequent Scheme, including any amendment referred to in paragraph 7 and any adjustments to the Performance Payments to reflect:

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- 2.5.6.1 any changes in traffic as a consequence of the Subsequent Scheme; and
- 2.5.6.2 any changes in the Concessionaire's costs in respect of the Project Facilities; and
- 2.5.7 the manner in which any land or Rights in respect of land required in connection with the Subsequent Scheme will be acquired, provided that any land or Rights in respect of land acquired by the Concessionaire will, upon request by the Province, be dedicated as a highway or conveyed to the Province or BCTFA free of charge and without any Encumbrances.
- 2.6 For greater certainty:
- 2.6.1 the Province, acting reasonably, will be entitled to require changes in the proposed Subsequent Scheme as a condition to its agreement;
- 2.6.2 either the Concessionaire or the Province may in its absolute and unfettered discretion by notice to the other terminate the discussions in respect of the Subsequent Scheme and, subject to paragraphs 2.7 and 4, in such event neither the Concessionaire nor the Province will have any liability to the other in respect of such Subsequent Scheme; and
- 2.6.3 any agreement reached in accordance with paragraph 2.4 will be conditional upon the making by any relevant Statutory Decision Maker, in accordance with its statutory duties, of any statutory order required to give effect to the agreement in respect of the Subsequent Scheme.
- 2.7 If the Concessionaire at any time gives notice terminating the negotiations in respect of the Subsequent Scheme, the Concessionaire will reimburse the Province and BCTFA for all costs, fees and expenses incurred by the Province and BCTFA in connection with the Subsequent Scheme (including an appropriate sum in respect of general staff costs and overheads).

3. **STATUTORY PROCEDURES**

- 3.1 If the Parties reach agreement in respect of a Subsequent Scheme in accordance with paragraph 2.4, then they will cooperate in any statutory procedures necessary in respect of the Subsequent Scheme. Subject to the terms of any agreement reached pursuant to paragraph 2.5.2, the Concessionaire will provide the Province with such advice and assistance and will undertake such duties as may be necessary and as may be required by the Province (including the attendance at any meeting, consultation, inquiry or tribunal, the provision of any witnesses required for any

public hearing or inquiry, and the preparation of any documentation) in respect of any such statutory procedures.

- 3.2 For greater certainty, no action taken in connection with any such statutory procedures will fetter in any way the discretion of any relevant Statutory Decision Maker to decide any issue in accordance with any relevant statutory duties. If a Statutory Decision Maker fails or refuses to make any order or take any other action required in connection with the Subsequent Scheme, such decision will not be subject to review under the Disputes Resolution Procedure and the Concessionaire will not be entitled to any compensation in respect thereof.

4. COSTS

Subject to express agreement to the contrary in accordance with paragraph 2.4, the Concessionaire will bear and will indemnify and hold the Province harmless against:

- 4.1 the Concessionaire's costs in respect of the Subsequent Scheme, including any costs of design or the provision of any information and any costs of the Concessionaire incurred in connection with any negotiations between the Concessionaire and the Province or any statutory procedures in respect of the Subsequent Scheme; and
- 4.2 the costs of any statutory procedures in respect of the Subsequent Scheme, [including any costs of objectors who participate in such procedures to the extent such costs are required to be borne by the Province].

5. OTHER CONSENTS

For greater certainty, nothing in this Part 1 will affect the requirement for the Concessionaire to obtain at its own cost all necessary consents and approvals in respect of the Subsequent Scheme, including any New Permit and any Permits, Licences and Approvals.

6. PROCUREMENT

When in the opinion of the Province it is or would be likely to be required by applicable laws, regulation, policies or guidelines to competitively tender or seek competitive bids or proposals in respect of any works necessary in connection with or relating to the Subsequent Scheme, the Concessionaire will be required to seek and evaluate competitive tenders, bids or proposals, as applicable, for such works in accordance with the provisions of sub-sections 4.1.1 to 4.1.6 of Part 2 of Schedule 13 [Province Changes] as if the Subsequent Scheme were a Province Change, provided, however, that subject to any express agreement to the contrary in accordance with paragraph 2.4, the Concessionaire will not be entitled to any payment, compensation, extension of time in respect of the Subsequent Scheme.

7. **CONCESSION HIGHWAY**

Upon completion, any Subsequent Scheme will become part of the Concession Highway or Off-Site Facilities, as applicable, for all purposes of this Agreement, and the definitions of ‘New Crossing’, ‘New Highway’, ‘Off-Site Facilities’, ‘Concession Highway’ and ‘Project Facilities’ in paragraph 1 of Schedule 1 [Definitions and Interpretation] will be deemed to be amended as appropriate to include references to such Subsequent Scheme.

PART 2 OF SCHEDULE 14

IMPROVEMENTS

1. Any proposal by the Concessionaire for an Improvement will be submitted to the Province's Representative in accordance with the Review Procedure. The Concessionaire will not commence the Improvement unless there has been no objection to such Improvement in accordance with the Review Procedure, subject to the provisions of paragraph 2.
2. The Province will be entitled to object to any proposed Improvement on the grounds set out in paragraph 3.10 of Part 2 of Schedule 8 [Review Procedure].
3. Any Improvement will be deemed to be part of the Concession Highway or Off-Site Facilities, as applicable, for all purposes of this Agreement (including for purposes of determining the standards and specifications to apply to such Improvement) and the definitions of "New Crossing", "New Highway", "Off-Site Facilities", "Concession Highway" and "Project Facilities" in paragraph 1 of Schedule 1 [Definitions and Interpretation] will be deemed to be amended as appropriate to include references to such Improvement.
4. For greater certainty, no review of or failure to make comments on or to object to a proposed Improvement by the Province will absolve the Concessionaire from any obligation to obtain any required consent or approval (including any Permit, Licence or Approval) or to take any other action required by applicable Laws and Regulations in respect of such Improvement (including where applicable the preparation of any environmental audit or statement).