

SCHEDULE 1

CHANGE ORDERS

1. GENERAL

1.1 Capitalized Terms

Capitalized terms used in this Schedule have the definitions as set out in the Agreement to Design, Build, Finance and Operate Northwest Anthony Henday Drive, Edmonton (the "DBFO Agreement") between Her Majesty the Queen in right of Alberta and the Contractor, as defined therein, unless expressed otherwise.

1.2 Section References

Unless otherwise provided, references to section numbers are references to sections in this Schedule.

1.3 Definitions

"**Change Order**" means a variation, addition, reduction, substitution, modification, deletion, removal or other change, other than one which does not have a material effect, to the whole or any part of:

- (a) the Project or the Project Requirements; or
- (b) the O&M or the O&M Requirements;

"**Change Order Confirmation**" means a written confirmation provided by the Province of the Estimate, and, if applicable, of an adjustment to the Contractor's Construction Schedule or the O&M Payments in Schedule 14 (Payment Schedule);

"**Change Order Directive**" means a written instruction and description of a proposed Change Order which is issued on a form designated as a "Change Order Directive Form" and signed by the Province directing the Contractor to immediately proceed with the work attributable to the Change Order, pending the finalization and issuance of a Change Order Confirmation for that Change Order;

"**Change Order Enquiry**" means a written notice and description of a proposed Change Order;

"**Estimate**" means a detailed breakdown, estimate and other information attributable to a Change Order prepared by the Contractor as outlined in Section 3.3.

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2. GENERAL PROVISIONS

2.1 Change Order

Subject to the provisions of this Schedule and without invalidating the DBFO Agreement, the Province may from time to time propose or require the Contractor to carry out and implement a Change Order. The Contractor shall not be entitled to any payment, compensation or extension of time for a Change Order except in accordance with the DBFO Agreement and this Schedule. If the parties can not agree on whether a matter is a Change Order, then:

- (i) if such disagreement is during the Construction Period, the disagreement shall be submitted to the Project Adjudicator (appointed under Schedule 5 (Design and Plan Certification Process and Review Procedure)) for recommendation, and if either party does not agree with the Project Adjudicator's recommendation, the disagreement shall be determined in accordance with the Dispute Resolution Procedure; or
- (ii) if such disagreement is during the Operating Period, the disagreement shall be determined in accordance with the Dispute Resolution Procedure.

2.2 Valuation and Payments for Reductions or Avoided Costs

- (a) If a Change Order involves any reductions in the Project, the Project Requirements, the O&M, or the O&M Requirements, and results in net savings in costs (in the context of a reduction in the Project or the Project Requirements having regard, without limitation, to any reasonable make whole premiums, hedging or other breakage costs, or prepayment fees, and all reasonable redemption implementation costs reasonably incurred by the Contractor as a result of any adjustments to debt service payments) to the Contractor for completing the Project or performing the Project Requirements, the O&M, or the O&M Requirements, then the value of all such savings shall be reflected in a lump sum payment to the Province or in adjustments to the Capital Payments and/or the O&M Payments to the extent as determined by the parties, acting reasonably.
- (b) The Contractor shall not be entitled to claim for any losses, costs or damages for fixed overhead or profit due to the reduction, deletion or removal of any of the Project, the Project Requirements, the O&M, or the O&M Requirements, except to the extent that any of such amounts would have been incurred by the Contractor and are included in the Capital Payments or O&M Payments payable by the Province after the date on which the Project, the Project Requirements, the O&M, and/or O&M Requirements are reduced, deleted or removed.
- (c) The Province shall not issue any Change Order except in accordance with the DBFO Agreement and this Schedule.

3. CHANGE ORDER ENQUIRY PROCESS

3.1 Initiating a Change Order Enquiry

If the Province proposes or requires a Change Order it shall deliver to the Contractor a Change Order Enquiry. The Change Order Enquiry shall describe the proposed Change Order with sufficient detail to enable the Contractor to prepare an Estimate.

3.2 Contractor's Delivery of Estimate

As soon as practicable and in any event not more than 15 Business Days after receipt of a Change Order Enquiry, or such longer period as the parties, acting reasonably, mutually agree, the Contractor shall deliver to the Province an Estimate prepared in accordance with and meeting the requirements of Section 3.3.

3.3 Estimate Requirements

- (a) The Estimate shall include such of the following information as is applicable, sufficient to demonstrate to the Province's reasonable satisfaction:
 - (i) the steps the Contractor will take to implement the Change Order, in such detail as is reasonable and appropriate in all the circumstances;
 - (ii) any impact on Traffic Availability and impact on the Contractor's Construction Schedule;
 - (iii) any impact on the Contractor's ability to perform the O&M including any impact on the O&M Payment and any other impact of the Change Order on the DBFO Agreement;
 - (iv) any subcontractors required in addition to or in substitution for those listed in Schedule 17 (Subcontractors);
 - (v) the estimated labour cost, materials cost, equipment cost, overhead, and profit attributable to the Change Order;
 - (vi) any permits that are required to be obtained or amended attributable to the Change Order, and the estimated time for obtaining or amending same; and
 - (vii) the proposed methods of certification of any Project Requirements or O&M Requirements required by the Change Order if not currently contemplated within the provisions of the DBFO Agreement,

in each case, together with such supporting information and justification as is reasonably required.

- (b) In preparing its Estimate, the Contractor shall include sufficient information to demonstrate that:

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- (i) the Contractor has used commercially reasonable efforts, including the use of competitive quotes or tenders if appropriate, to oblige its subcontractors to minimize any increase in costs and to maximize any reduction in costs;
 - (ii) the full amount of any and all expenditures that have been reduced or avoided have been taken into account and applied in total to reduce the amount of all Change Order costs;
 - (iii) the Contractor has mitigated or will mitigate the impact of the Change Order, including on the Contractor's Construction Schedule for completion of the Project and the performance of the O&M Requirements; and
 - (iv) in considering the impact of the Change Order on the O&M Payment, if applicable, the Contractor has considered, where the Change Order will increase the O&M or the O&M Requirements, the costs attributable to such increase, including anticipated rehabilitation.
- (c) The Contractor shall use commercially reasonable efforts to obtain the best value for money when procuring any work, services, supplies, materials or equipment required by the Change Order and shall use commercially reasonable efforts to comply with prevailing good industry practice in relation to any such procurement to a standard no less than the Contractor would apply if all costs incurred were to its own account.
- (d) As soon as practicable, and in any event not more than 15 Business Days after the Province receives an Estimate, including any consequential changes to the Estimate resulting from a modification, the Contractor and the Province shall discuss and seek to agree on the Estimate, and, if applicable, an adjustment to the O&M Payment in Schedule 14 (Payment Schedule).
- (e) If the Province would be required by applicable law to require the Contractor to competitively tender any contract in relation to the proposed Change Order, the Province may require the Contractor to seek and evaluate competitive tenders for the proposed Change Order.
- (f) The Province may modify a Change Order Enquiry in writing, at any time prior to the agreement between the parties referred to in (d), above, in which case the Contractor shall, as soon as practicable and in any event not more than 10 Business Days after receipt of such modification or such longer period as the parties acting reasonably mutually agree, notify the Province in writing of any consequential changes to the Estimate and, if applicable, to an adjustment to the O&M Payments in Schedule 14 (Payment Schedule).
- (g) If the parties cannot agree on the reasonableness and validity of an Estimate provided pursuant to a Change Order Enquiry, and, if applicable, an adjustment to the O&M Payments in Schedule 14 (Payment Schedule) ("Dispute"), then:

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- (i) in the case of such a Dispute on or before Construction Completion, the Dispute shall be submitted to the Project Adjudicator (appointed under Schedule 5 (Design and Plan Certification Process and Review Procedure)) for recommendation, and if either party does not agree with the Project Adjudicator's recommendation the Dispute shall be determined in accordance with the Dispute Resolution Procedure; or
- (ii) in the case of such a Dispute after Construction Completion, the Dispute shall be determined in accordance with the Dispute Resolution Procedure.

3.4 Change Order Confirmation

- (a) As soon as practicable, and in any event not more than 10 Business Days (unless an extension is agreed to by the Contractor, acting reasonably) after the date the Estimate, and, if applicable, an adjustment to the O&M Payments in Schedule 14 (Payment Schedule), were agreed to, the Province shall either:
 - (i) withdraw the Change Order Enquiry by written notice to the Contractor; or
 - (ii) issue a Change Order Confirmation.
- (b) If the Province does not issue a Change Order Confirmation within 10 Business Days (or such extended period as may have been agreed to), after the date the Estimate and, if applicable, an adjustment to the O&M Payments in Schedule 14 (Payment Schedule), were agreed to, then the Change Order Enquiry shall be deemed to have been withdrawn.
- (c) Upon the Change Order Confirmation being issued:
 - (i) the parties shall as soon as practicable thereafter do all acts and execute all documents necessary to implement the Change Order, including provision for payment to the Contractor in the amount set out in the Estimate, and, if applicable, implementation of an adjustment to the Contractor's Construction Schedule or the O&M Payments in Schedule 14 (Payment Schedule); and
 - (ii) the Contractor shall implement the Change Order as provided for in the Change Order Confirmation.

4. CHANGE ORDER DIRECTIVE PROCESS

4.1 Initiating a Change Order Directive

At any time and from time to time (including whether or not the Province has made a Change Order Enquiry, or the Contractor fails to provide an Estimate, or an Estimate is not promptly agreed upon by the parties, or there is a Dispute (as defined in Section 3.3(g))), if the Province wishes to proceed with a proposed Change Order within the general scope of the Project, the

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Project Requirements, the O&M, or the O&M Requirements, as the case may be, the Province shall issue a Change Order Directive. The Change Order Directive shall describe the proposed Change Order with sufficient detail to enable the Contractor to prepare an Estimate and to proceed with the work attributable to the Change Order.

4.2 Proceeding with Work

The Contractor will immediately implement the work attributable the Change Order including the appropriate method of procurement, if applicable, upon receipt of the Change Order Directive.

4.3 Estimate and Change Order Confirmation

- (a) If the Contractor has not previously done so, the Contractor shall as soon as practicable and in any event not more than 15 Business Days after the issuance of the Change Order Directive, or such longer period as the parties acting reasonably mutually agree, provide an Estimate to the Province prepared in accordance with and meeting the requirements of Section 3.3;
- (b) as soon as practicable, and in any event not more than 15 Business Days after the Province receives an Estimate, the Contractor and the Province shall discuss and seek to agree on the Estimate and, if applicable, an adjustment to the O&M Payments in Schedule 14 (Payment Schedule);
- (c) as soon as practicable, and in any event not more than 10 Business Days (unless an extension is agreed to by the Contractor, acting reasonably) after the date the Estimate was agreed to, the Province shall issue a Change Order Confirmation;
- (d) as soon as practicable after the Province has issued the Change Order Confirmation, the parties will do all acts and execute all documents necessary to implement the Change Order, including provision for payment to the Contractor in the amount set out in the Estimate and, if applicable, implementation of an adjustment to the Contractor's Construction Schedule or the O&M Payments in Schedule 14 (Payment Schedule); and
- (e) pending issuance of the Change Order Confirmation, the undisputed value of the work performed by the Contractor pursuant to the Change Order Directive, as the parties acting reasonably mutually agree, will be invoiced by the Contractor and will be paid by the Province monthly on a progress basis and all such amounts paid will be accounted for in determining the costs under Section 4.4.

4.4 Valuation of Change Order Directive Costs

If the Province has issued a Change Order Directive and the Province and the Contractor have not been able to reach agreement on the Estimate, and, if applicable, an adjustment to the O&M Payments in Schedule 14 (Payment Schedule), then adjustments to the O&M Payments in Schedule 14 shall be determined by the Dispute Resolution Procedure, applying the criteria set out in Section 3.3(b)(iv) and having regard to the manner in which value and payment are

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determined below, and the work attributable to the Change Order shall be valued and payment to the Contractor shall be determined as follows:

For the work under the Change Order Directive that is to be performed by the Contractor's own forces or by the subcontractors identified in Schedule 17 (Subcontractors) (the "Schedule 17 Subcontractors"), that portion of the Change Order (the "Own Forces Work") shall be valued as follows:

- (a) For all labour directly involved in the Own Forces Work, the Province shall pay the actual cost of labour on the Own Forces Work including payments made to or on behalf of the workers for holiday pay, Workers' Compensation Board assessments, Employment Insurance and Canada Pension Plan payments, plus an additional 20% of the total labour cost for the Own Forces Work;
- (b) For each piece of equipment used directly in the Own Forces Work, including trucks but excluding small tools, the Province shall pay:
 - (i) at the rates shown in the then current *Equipment Rental Rates Guide and Membership Roster* as issued by the Alberta Roadbuilders and Heavy Construction Association or its successor publication or an equivalent publication agreed upon by the parties; and
 - (ii) for third party equipment rental accounts, at the rates invoiced by the third party provided these rates were approved in writing by the Province prior to the commencement of the Change Order work;
- (c) For all materials purchased by the Contractor or the Schedule 17 Subcontractors solely to perform or incorporate into the Own Forces Work, the Province shall pay the amount shown on the material supplier's invoices plus an additional 15%; and
- (d) For supervision required directly on the Own Forces Work, the Contractor shall be paid the actual cost of the superintendent's or foreman's wages at the scale being paid for work to meet the Contractor's obligations pursuant to the DBFO Agreement, including statutory payments made to them or on their behalf for holiday pay, Workers' Compensation Board assessments, Employment Insurance and Canada Pension Plan, plus an additional 20% of the total cost of the superintendent's or foreman's wages for the Own Forces Work. If the supervisory personnel are also engaged on work other than the Own Forces Work, only that portion attributable to the Own Forces Work shall be paid for by the Province.

For the work under the Change Order Directive that is to be performed by a subcontractor of the Contractor (other than the Schedule 17 Subcontractors) pursuant to a contract between the Contractor and such subcontractor, that portion of the Change Order (the "Subcontractor Work") shall be valued as follows:

- (e) For all labour directly involved in the Subcontractor Work, the Province shall pay the actual cost of labour on the Subcontractor Work including payments made to or on

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- behalf of the workers for holiday pay, Workers' Compensation Board assessments, Employment Insurance and Canada Pension Plan payments, plus an additional 20% of the total labour cost for the Subcontractor Work;
- (f) For each piece of equipment used directly in the Subcontractor Work, including trucks but excluding small tools, the Province shall pay:
 - (i) at the rates shown in the then current *Equipment Rental Rates Guide and Membership Roster* as issued by the Alberta Roadbuilders and Heavy Construction Association or its successor publication or an equivalent publication agreed upon by the parties; and
 - (ii) for third party equipment rental accounts, at the rates invoiced by the third party provided these rates were approved in writing by the Province prior to the commencement of the Change Order work;
 - (g) For all materials purchased solely to perform or incorporate into the Subcontractor Work, the Province shall pay the amount shown on the material supplier's invoices plus an additional 15%;
 - (h) For supervision required directly on the Subcontractor Work, the actual cost of the superintendent's or foreman's wages at the same scale being paid by the Contractor for work to meet the Contractor's obligations pursuant to the DBFO Agreement, including statutory payments made to them or on their behalf for holiday pay, Workers' Compensation Board assessments, Employment Insurance and Canada Pension Plan, plus an additional 20% of the total cost of the superintendent's or foreman's wages for the Subcontractor Work. If the supervisory personnel are also engaged on work other than the Subcontractor Work, only that portion attributable to the Subcontractor Work shall be paid for by the Province; and
 - (i) For the Contractor's work (including without limitation direct costs, indirect costs, overhead and profit) on the Subcontractor Work, an amount equal to 10% of the sum of the amounts determined in (e), (f), (g), and (h).