

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 Northeast Stoney Trail, Calgary (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, omission, 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 Requirements; or
- (b) the O&M Requirements;

"**Change Order Confirmation**" has the meaning given in section 2.5;

"**Change Order Directive**" means a written instruction 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 a Change Order, pending the finalization and issuance of a Change Order Confirmation for that Change Order;

"**Change Order Enquiry**" has the meaning given in section 2.2;

"**Estimate**" has the meaning given in section 2.3.

2. CHANGE ORDERS

2.1 Change Order

Subject to the provisions of this Schedule, 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 this Schedule.

2.2 Change Order Enquiry

If the Province proposes or initiates a Change Order it shall deliver to the Contractor a written notice of the proposed Change Order (a “Change Order Enquiry”). A Change Order Enquiry shall describe the proposed Change Order with sufficient detail to enable the Contractor to prepare an Estimate.

2.3 Contractor Estimate

As soon as practicable and in any event within 15 Business Days after receipt of a Change Order Enquiry, or such longer period as the parties mutually agree, the Contractor shall deliver to the Province its detailed breakdown, estimate and other information (the “Estimate”) prepared in accordance with and meeting the requirements of section 2.4.

2.4 Estimate

- (a) The Estimate shall include the following information, 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 any other schedule impact on the completion of the Project;
 - (iii) any impact on the Contractor's ability to perform the O&M and any other impact on the DBFO Agreement;
 - (iv) any permits that are required to be obtained or amended, and the estimated time for obtaining or amending same;
 - (v) the proposed methods of certification of any Project Requirements or O&M Requirements required by the Change Order if not covered by the provisions of the DBFO Agreement; andin 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:
 - (i) the Contractor has used commercially reasonable efforts, including the use of competitive quotes or tenders if appropriate, to oblige its sub-contractors to minimize any increase in costs and to maximize any reduction in costs;

**SCHEDULE 1 – DBFO AGREEMENT
DRAFT: SEPTEMBER 29, 2006**

- (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; and
 - (iii) the Contractor has mitigated or will mitigate the impact of the Change Order, including on the schedule for completion of the Project and the performance of the O&M Requirements.
- (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, the Contractor and the Province shall discuss and seek to agree on the Estimate, including any amendments to the Estimate.
- (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, notify the Province in writing of any consequential changes to the Estimate.
- (g) If the parties cannot agree (“Dispute”) on an Estimate, then:
- (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.

2.5 Change Order Confirmation

- (a) As soon as practicable, and in any event within 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:

**SCHEDULE 1 – DBFO AGREEMENT
DRAFT: SEPTEMBER 29, 2006**

- (i) withdraw the Change Order Enquiry by written notice to the Contractor; or
 - (ii) issue a written confirmation (the "Change Order Confirmation") of the Estimate, including any agreed upon modifications thereto.
- (b) If the Province does not issue a Change Order Confirmation within such 10 Business Days (or such extended period as may have been 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;
 - (ii) the Contractor shall implement the Change Order as provided for in the Change Order Confirmation.

2.6 Valuation and Payments for Reductions or Avoided Costs

- (a) If a Change Order involves any reductions in the Project Requirements or the O&M Requirements, or net savings in costs to the Contractor for performing the Project Requirements or the O&M Requirements, then the value of all such reductions or 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 Requirements or the O&M Requirements, except to the extent that any of such amounts have been incurred by the Contractor and included in the Capital Payments or O&M Payments payable by the Province after the date on which the Project Requirements and/or O&M Requirements are reduced, deleted or removed.
- (c) The Province shall not issue any Change Order or Change Orders which singularly or in the aggregate materially reduce the O&M Requirements under the DBFO Agreement. Any Dispute as to whether any Change Order or Change Orders singularly or in the aggregate materially reduce the O&M Requirements under the DBFO Agreement shall be determined in accordance with the Dispute Resolution Procedure.

3. CHANGE ORDER DIRECTIVE

3.1 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 or Change Order Confirmation is not promptly agreed upon by the parties, or there is a Dispute in relation thereto), if the Province wishes to proceed with a proposed Change Order within the general scope of the Project Requirements or the O&M Requirements, as the case may be, the following shall apply:

- (a) the Province shall issue a Change Order Directive to the Contractor (in the case of the issuance of a Change Order Directive on or before the Construction Completion), signed by the Province, directing the Contractor to proceed with the proposed Change Order in which case the Contractor will proceed with the proposed Change Order and the determination of the valuation and payment of any adjustments therefore will be made as soon as reasonably possible after commencement of the implementation thereof in the same manner and to the same extent as a Change Order for which a Change Order Enquiry, Estimate and Change Order Confirmation would be issued hereunder;
- (b) if the Contractor has not previously done so, the Contractor shall as soon as practicable and in any event within 15 Business Days after the issuance of the Change Order Directive provide an Estimate in accordance with the requirements of this Schedule for an Estimate.

3.2 Valuation of Change Order Costs

If the Province and the Contractor have not been able to reach agreement on the costs of a Change Order and the Province has issued a Change Order Directive, the Change Order shall be valued as follows:

For the work under the Change Order 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:

**SCHEDULE 1 – DBFO AGREEMENT
DRAFT: SEPTEMBER 29, 2006**

- (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 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 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;

**SCHEDULE 1 – DBFO AGREEMENT
DRAFT: SEPTEMBER 29, 2006**

- (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).