

SCHEDULE 29**ADDITIONAL WORKS AND THIRD PARTY WORKS****1. THIRD PARTY WORKS****1.1 Project Co Obligations**

- (a) Project Co shall be responsible for the coordination and scheduling of Third Party Works during the performance of the Works and, during the Operational Term, at the request of the Ministry.
- (b) Project Co shall, for Third Party Contractors and in respect of Third Party Works, assume overall responsibility for compliance with all aspects of Applicable Law relating to health and safety on the Lands, including all the responsibilities of the “prime contractor”, under *The Saskatchewan Employment Act* (Saskatchewan), and all regulations thereto, prior to Substantial Completion and, at the request of the Ministry, at any time that Project Co is acting as a “prime contractor” on the Lands following Substantial Completion.
- (c) Where part of the Works is affected by or depends upon, for its proper execution, the Third Party Works, Project Co shall promptly report to the Ministry in writing and prior to proceeding with that part of the Works any readily apparent deficiencies in the Third Party Works. Failure by Project Co to so report shall be taken into account in determining Project Co’s right to claim against the Ministry for any such readily apparent deficiencies.

1.2 Ministry Obligations

- (a) In connection with the Third Party Works, the Ministry shall:
 - (i) cause Third Party Contractors to comply with the instructions of Project Co relating to matters of health and safety on the Lands and coordination and scheduling of the Third Party Works with (A) the Works during the performance of the Works, and (B) at the request of the Ministry, with the OM&R Work during the performance of the OM&R Work as the Ministry considers appropriate, taking into account the nature of the Third Party Works and the potential for impact on the OM&R Work;
 - (ii) issue encroachment permits to Third Party Contractors containing conditions which are compatible with the conditions of this Project Agreement and cause compliance by Third Party Contractors with all directions of Project Co in respect of any matter regarding health and safety on the Lands and coordination and scheduling of the Third Party Works during the performance of the Works; and

- (iii) require (A) that such insurance coverage is provided by each Third Party Contractor as would be required by a prudent owner similarly situated and (B) that such insurance is coordinated with the insurance coverage of Project Co as it affects the Works and in any event, such insurance shall provide for liability insurance of not less than .
- (b) In the case of Third Party Works carried out prior to Substantial Completion, if:
- (i) any Third Party Contractor causes any damage to the Works;
 - (ii) Project Co incurs any additional costs or there is any delay in the Works Schedule as a result of any Third Party Contractor not complying with the coordination, scheduling and safety instructions of Project Co; or
 - (iii) subject to the performance by Project Co of its obligations under Section 1.1 and any applicable Utility Agreement or Railway Agreement, if Project Co incurs any additional costs or there is any delay in the Works Schedule as a result of any such Third Party Works or the failure of the Third Party Contractor to comply with its obligations under a Utility Agreement or Railway Agreement,

then, provided that, in respect of any Utility Company or Railway Company, Project Co has made all, and is continuing to make all, commercially reasonable efforts to diligently enforce its legal rights under any applicable Utility Agreement or Railway Agreement, any such delay in the Works Schedule or additional costs in respect of the Works shall, subject to and in accordance with Section 39 of the Project Agreement, be treated as a Delay Event and, subject to and in accordance with Section 40 of the Project Agreement, be treated as a Compensation Event.

- (c) In the case of Third Party Works carried out following Substantial Completion, if:
- (i) the failure of any Third Party Contractor to comply with the coordination, scheduling and safety instructions of Project Co pursuant to Section 1.2(a)(i)(B) interferes adversely with, or causes a failure of, the performance of the OM&R Work; or
 - (ii) subject to the performance by Project Co of its obligations under Section 1.1 and any applicable Utility Agreement or Railway Agreement, the carrying out of the Third Party Works or the failure of the Third Party Contractor to comply with its obligations under a Utility Agreement or Railway Agreement interferes adversely with, or causes a failure of the performance of the OM&R Work,

then, provided that, in respect of any Utility Company or Railway Company, Project Co has made all, and is continuing to make all, commercially reasonable efforts to diligently enforce its legal rights under any applicable Utility Agreement or Railway Agreement,

any such interference or failure shall, subject to and in accordance with Section 41 of the Project Agreement, be treated as an Excusing Cause.

2. ADDITIONAL WORKS

2.1 Additional Works Notice

- (a) Where the Ministry proposes that Additional Works be carried out it shall notify the Project Co of such intention by means of a notice (the “**Additional Works Notice**”).
- (b) The Additional Works Notice shall:
 - (i) include a description and/or specification of the Additional Works (which description and/or specification shall be sufficient to enable Project Co to assess the nature and extent thereof and the likely effect of the Additional Works on the Works, the OM&R Work and the O&M Interim Services);
 - (ii) specify the time by which the Additional Works are proposed to be completed (which time limit must be reasonable, having regard to the nature of the Additional Works) and the time reasonably required for Project Co to mobilize the resources necessary to perform the Additional Works Services;
 - (iii) specify the Additional Works Services (if any) which the Ministry requires the Project Co to perform in respect of the Additional Works; and
 - (iv) specify the time by which any comments Project Co may have on the contents of the Additional Works Notice must be received (which time limit must be reasonable).

2.2 Project Co Comments

- (a) Any comments made by Project Co, as contemplated in Section 2.1(b)(iv), shall be considered by the Ministry in deciding whether to proceed with the Additional Works but, for the avoidance of doubt, the Ministry shall be entitled, in its discretion, to proceed with any Additional Works and to include or not to include any Project Co comments (in whole or in part) in the Additional Works Notice. If the Ministry, in its discretion, determines that it will include any such Project Co comments, it will revise and re-issue the Additional Works Notice to Project Co.

2.3 Additional Works Services

- (a) Project Co shall, within any time limit specified in the Additional Works Notice, perform such of the functions specified below in relation to the Additional Works as are prescribed in the Additional Works Notice (the “**Additional Works Services**”):

- (i) the preparation of all designs, documents and materials as may be necessary or required by the Ministry for the purposes of the Ministry inviting and obtaining tenders, bids or proposals (“**Tenders**”) for the carrying out of the Additional Works (or any part thereof) in accordance with its procedures and obtaining the Ministry’s approval in respect of all such designs, documentation and materials;
 - (ii) the solicitation on behalf of the Ministry of Tenders for the carrying out of the Additional Works (or any part thereof);
 - (iii) the provision of aid and advice to the Ministry in the consideration of any Tenders obtained and in the selection of a tender or tenders for acceptance;
 - (iv) the negotiation on behalf of the Ministry of the terms of a contract or contracts for the carrying out of the Additional Works (or any part thereof) (an “**Additional Works Contract**”) with each tenderer or other contractor selected by the Ministry (an “**Additional Works Contractor**”), the terms of any such contract to be subject to the approval of the Ministry;
 - (v) the provision, to any Additional Works Contractor of the documentation which it reasonably requires to enable it to proceed with the Additional Works (or any part thereof) in accordance with the terms of the Additional Works Contract;
 - (vi) the provision to the Ministry of such copies as it may require of all documents relating to any Additional Works Contract;
 - (vii) the provision of the services referred to in paragraphs 2.4 and 2.5 below; and
 - (viii) upon completion of any Additional Works (or any part thereof) the preparation and delivery to the Ministry of:
 - (A) “as built” drawings in a form acceptable to the Ministry; and
 - (B) any other information which the Ministry may require in connection with the Additional Works (or any part thereof).
- (b) All Additional Works Contracts shall be between the Ministry and the Additional Works Contractor and shall permit the Ministry to delegate or subcontract its responsibilities and obligations under the Additional Works Contract to Project Co and to authorize Project Co to exercise the Ministry’s rights under the Additional Works Contract. For greater certainty:
- (i) the Ministry shall be solely responsible for paying the Additional Works Contractor, and
 - (ii) Project Co shall cause each Additional Works Contract to include provisions requiring the Additional Works Contractor to comply with all health and safety

instructions of Project Co while present on the Lands and to take all necessary steps to minimize disruption of the Project Operations and the O&M Interim Services.

- (c) For the avoidance of doubt, neither Project Co nor any of its Affiliates shall be disqualified from consideration in respect of any Tender or contract referred to in Section 2.3(a) by virtue solely of its contractual relationship with the Ministry pursuant to this Agreement, subject to (i) compliance with all Applicable Laws, and (ii) the implementation of such arrangements as the Ministry, in its discretion, determines are necessary or advisable in order to avoid any actual or perceived conflict of interest involving Project Co or its Affiliates.
- (d) During the progress of the Additional Works, Project Co shall, in the performance of the Additional Works Services:
- (i) consult the Ministry at all appropriate times and keep the Ministry informed of all matters connected with the Additional Works (or any part thereof) at such times and in such manner as the Ministry may require;
 - (ii) provide the Ministry with all information or reports in connection with the Additional Works (or any part thereof) as it shall from time to time require;
 - (iii) consult all relevant Governmental Authorities (including the police, agents of the Ministry and any other person or authority having rights which are connected with or affected by the Additional Works (or any part thereof)) and such other authorities or persons as the Ministry may direct (collectively, “**interested parties**”);
 - (iv) throughout the duration of the Additional Works, provide written notice to the Ministry regarding any requirements of interested parties;
 - (v) following provision of written notice to the Ministry in accordance with Section 2.3(d)(iv) and receipt of written authorization from the Ministry in respect thereof, Project Co shall implement and/or comply with any requirements of interested parties referred to in Sections 2.3(d)(iii) and 2.3(d)(iv), solely to the extent authorized by the Ministry in accordance with this Section 2.3(d)(v);
 - (vi) provide the Ministry with not less than 60 days prior written notice of the anticipated completion date of the Additional Works;
 - (vii) ensure that all matters are dealt with which are necessary to achieve the successful, timely, efficient and economic completion of the Additional Works;
 - (viii) comply with the terms of this Schedule and all subsequent reasonable instructions of the Ministry issued in connection with the Additional Works (which

instructions shall be in writing or, if oral, shall be confirmed in writing within five Business Days);

- (ix) for Additional Contractors and in respect of Additional Works assume overall responsibility for compliance with all aspects of Applicable Law relating to health and safety on the Lands, including all the responsibilities of the “prime contractor”, under *The Saskatchewan Employment Act* (Saskatchewan), and all regulations thereto, prior to Substantial Completion and, at the request of the Ministry, at any time that Project Co is acting as a “prime contractor” on the Lands following Substantial Completion; and
- (x) where part of the Works is affected by or depends upon, for its proper execution, the Additional Works, promptly report to the Ministry in writing and prior to proceeding with that part of the Works any readily apparent deficiencies in the Additional Works. Failure by Project Co to so report shall be taken into account in determining Project Co’s right to claim against the Ministry for any such readily apparent deficiencies.

2.4 Further Assurances

- (a) Project Co shall, to the extent specified in the Additional Works Notice, provide the Ministry with such advice and assistance and undertake such duties and responsibilities as may be necessary or as may be required by the Ministry from time to time (including the attendance at any meeting, consultation, inquiry or tribunal, and the preparation of any documentation) to enable the Ministry to obtain any necessary approvals or authorizations for the provision of the Additional Works (or any part thereof) and for the acquisition of land and rights required for the execution of the Additional Works (or any part thereof). Project Co shall further provide the Ministry with such advice and assistance and undertake such duties and responsibilities in relation to the provision of the Additional Works as the Ministry may, from time to time, reasonably require.

2.5 Management

- (a) Project Co shall, to the extent specified in the Additional Works Notice, manage any Additional Works Contract, and in so doing it shall be subject to such procedures of supervision and review as the Ministry may reasonably require.

2.6 Bypass

- (a) Upon completion, the Additional Works may, in the discretion of the Ministry, become part of the Bypass for all purposes of this Project Agreement and the definitions of “Bypass”, “Infrastructure” and “Plant” in Schedule 1 [Definitions and Interpretation] shall be deemed to be amended as appropriate to include such Additional Works and references thereto.

2.7 Exercise of Rights

- (a) Project Co is responsible for satisfying itself as to the extent to which it is entitled to take the benefit of or exercise rights under any Additional Works Contract and, without limiting any other disclaimer or release of liability provided herein, the Ministry makes no representation or warranty whatsoever in that regard. In the event of a dispute between Project Co and an Additional Contractor as to whether Project Co is entitled to the benefit of or to exercise rights under any Additional Works Contract, which dispute, despite the reasonable and diligent efforts of Project Co, has not been resolved within a reasonable period of time, the Ministry, at the request and expense of Project Co, shall use reasonable efforts within and subject to the scope of its legal rights under the terms of the relevant Additional Works Contract to assist Project Co in taking the benefit of or exercising the relevant rights under such Additional Works Contract. Where Project Co is given assistance by the Ministry in accordance with this Section 2.7 and regardless of whether or not Project Co is ultimately able to take the benefit of or exercise the relevant rights under the Additional Works Contract as a result of the provision of such assistance, Project Co shall indemnify and hold the Ministry harmless in respect of any Direct Losses as a result of or in connection with the provision of such assistance.

2.8 Variation for Delay

- (a) If, notwithstanding Project Co's compliance with the provisions of this Agreement and any Additional Works Contract, the carrying out of Additional Works prior to Substantial Completion will cause a delay in the Works Schedule or will cause Project Co to incur additional costs of performing the Works that are not otherwise compensable under the Project Agreement, then such delay or additional costs incurred by Project Co, to the extent they could not reasonably have been avoided or mitigated by Project Co, shall, subject to and in accordance with Schedule 19 – Variation Procedure, result in a Variation.
- (b) Except to the extent expressly set out therein, any such Variation shall not relieve Project Co of or from any of its obligations or liabilities under Article 2 of this Schedule.

2.9 OM&R Work

- (a) Where the Additional Works become part of the Bypass pursuant to Section 2.6(a), Project Co shall be responsible for performing all OM&R Work in relation to the Additional Works subject to and in accordance with the provisions of this Project Agreement.
- (b) Where the Ministry determines that the Additional Works shall become part of the Bypass pursuant to Section 2.6(a), the Ministry shall issue a Variation Enquiry in respect of any OM&R Work relating to the Additional Works and the relevant provisions of Schedule 19 – Variation Procedure shall apply except that:

- (i) Project Co may only object to any such Variation Enquiry on the grounds that the implementation of the Variation would not enable it to comply with Applicable Law;
- (ii) Project Co shall be responsible for obtaining all Project Co Permits, Licences and Approvals required in respect of the Variation;
- (iii) the Ministry shall not be entitled to withdraw any such Variation Enquiry unless the Parties otherwise agree;
- (iv) Project Co shall proceed to implement the Variation within such period as will enable it to commence the OM&R Work in respect of the Additional Works upon completion of such Additional Works;

3. PAYMENT FOR ADDITIONAL WORKS SERVICES

3.1 Additional Works

- (a) The remuneration of Project Co and any Project Co Party in connection with the carrying out of any Additional Works Services as referred to in Section 2 of this Schedule 29 shall be on a time basis in respect of each employee of Project Co and any Project Co Party engaged in the Additional Works Services, as follows:

- (i) Hours Rate calculated as:

$$\text{Basic Annual Salary (Note A)/1600} \quad \times \quad \text{Actual Hours Worked (Note B)} \quad \times \quad \text{The On-Cost Multiplier (Note C)}$$

Plus

- (ii) Other Payroll Costs (Note D)

Notes

Note (A) “**Basic Annual Salary**” is the annual salary excluding overtime and bonuses during the period covered by the account. Where the annual salary is changed during the period covered by the account, the total worked should be apportioned and applied to the relevant salary level.

Note (B) “**Actual Hours Worked**” shall include overtime hours.

Note (C) “**The On-Cost Multiplier**” is the factor required to recover the appropriate part of the annual salary and on-costs. The multiplier to be used for this Agreement is

- Note (D)** “**Other Payroll Costs**” means the annual amount of all contributions and payments made by Project Co on behalf of or in respect of a person employed by Project Co in respect of pension, health insurance and other reasonable and customary employee, and any tax, charge, levy, impost or payment of any kind whatsoever which Project Co is obliged by law to make on behalf of or in respect of such person, divided by 1600 (being deemed to be the average annual total of effective working hours) and multiplied by the number of working hours spent by such person performing any of the Additional Works Services in respect of which payment is to be made. For the purposes of this definition the annual amount of all contributions and payments made by Project Co on behalf of or in respect of a person employed by it for a period less than a year shall be pro-rated.
- Note (E)** Project Co shall submit its accounts for payment in a form and manner acceptable to the Ministry.
- Note (F)** Time spent in travelling for the purposes of performing any of the Additional Works Services shall be chargeable, excluding travel between home and normal work place.
- Note (G)** Time spent by staff engaged in general accountancy, secretarial or administrative duties (unless otherwise agreed) shall not be chargeable.

3.2 Costs and Expenses

- (a) In addition to the fee described in paragraph 3.1 above, Project Co shall be reimbursed by the Ministry for all approved costs and expenses properly incurred by it in connection with the Additional Works Services to be performed under this Schedule and certified by Project Co in respect of:
- (i) travel and subsistence expenses in accordance with standard Ministry rates and conditions in force from time to time;
 - (ii) the cost of printing and reproduction of all documents, drawings, maps and records and the like authorized by the Ministry;
 - (iii) the cost of providing, where required by the Ministry, auditors' certificates of costs; and
 - (iv) the cost of any other expenses authorized by the Ministry, excluding normal office overheads such as rent, rates, heating, lighting, telephone and postal charges.

3.3 Interpretation

- (a) For the purposes of this Schedule, “approved” means approved in writing by the Ministry before the cost, remuneration or expenditure in question is incurred or committed.

SCHEDULE 29
ADDITIONAL WORKS**Part 2****Payment for Additional Works Services**

4. The remuneration of Project Co and any Project Co Party in connection with the carrying out of any Additional Works Services as referred to in Part 1 of this Schedule 29 shall be on a time basis in respect of each employee of Project Co and any Project Co Party engaged in the Additional Works Services, as follows:

4.1 Hours Rate calculated as:

$$\begin{array}{rcccl} \text{Basic Annual Salary (Note A)/1600} & & \times & \text{Actual} & \times & \text{The On-} \\ & & & \text{Hours} & & \text{Cost} \\ & & & \text{Worked} & & \text{Multiplier} \\ & & & \text{(Note B)} & & \text{(Note C)} \end{array}$$

Plus

4.2 Other Payroll Costs (Note D)

Notes

Note (A) "Basic Annual Salary" is the annual salary excluding overtime and bonuses during the period covered by the account. Where the annual salary is changed during the period covered by the account, the total worked should be apportioned and applied to the relevant salary level.

Note (B) "Actual Hours Worked" shall include overtime hours.

Note (C) "The On-Cost Multiplier" is the factor required to recover the appropriate part of the annual salary and on-costs. The multiplier to be used for this Agreement is

Note (D) "Other Payroll Costs" means the annual amount of all contributions and payments made by Project Co on behalf of or in respect of a person employed by Project Co in respect of pension, health insurance and other reasonable and customary employee, and any tax, charge, levy, impost or payment of any kind whatsoever which Project Co is obliged by law to make on behalf of or in respect of such person, divided by 1600 (being deemed to be the average annual total of effective working hours) and multiplied by the number of working hours spent by such person performing any of the Additional Works Services in respect of which payment is to be made. For the purposes of this definition the annual amount of all contributions and payments made by Project Co on behalf of or in respect of a person employed by it for a period less than a year shall be pro-rated.

Note (E) Project Co shall submit its accounts for payment in a form and manner acceptable to the Ministry.

Note (F) Time spent in travelling for the purposes of performing any of the Additional Works Services shall be chargeable, excluding travel between home and normal work place.

Note (G) Time spent by staff engaged in general accountancy, secretarial or administrative duties (unless otherwise agreed) shall not be chargeable.

5. In addition to the fee described in paragraph 1 above, Project Co shall be reimbursed by the Ministry for all approved costs and expenses properly incurred by it in connection with the Additional Works Services to be performed under this Schedule and certified by Project Co in respect of:

5.1 travel and subsistence expenses in accordance with standard Ministry rates and conditions in force from time to time;

5.2 the cost of printing and reproduction of all documents, drawings, maps and records and the like authorized by the Ministry;

5.3 the cost of providing, where required by the Ministry, auditors' certificates of costs; and

5.4 the cost of any other expenses authorized by the Ministry, excluding normal office overheads such as rent, rates, heating, lighting, telephone and postal charges.

6. For the purposes of this Schedule, "approved" means approved in writing by the Ministry before the cost, remuneration or expenditure in question is incurred or committed.