

**SCHEDULE 22
INDIGENOUS REQUIREMENTS**

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**PART 1
INDIGENOUS REQUIREMENTS**

1.1 General Requirements

Project Co shall at its expense comply with, observe, satisfy and perform all of the obligations and requirements set out in this Part 1 (the “**Indigenous Requirements**”), including the following:

- (a) Project Co shall provide to the Identified Indigenous Groups during the period from the Effective Date to the SC3 Substantial Completion Date the total Person Years of employment as set out in the table provided by the Province to Project Co prior to the Financial Submittal Date (the “**Table of Minimum Indigenous Employment Requirements**”) and identifying a minimum requirement of Person Years of employment for either an individual Identified Indigenous Group, or an aggregate for certain specified Identified Indigenous Groups, in each case as identified in such table (each, a “**Minimum Indigenous Employment Requirement**”). Lists of individuals associated with the Identified Indigenous Groups will be provided to Project Co and updated from time to time, and employment provided to any individual listed on any such list at the time of employment will count towards the applicable Minimum Indigenous Employment Requirement.
- (b) Project Co shall provide to the Identified Indigenous Groups during the period from the Effective Date to the SC3 Substantial Completion Date in relation to the Project Work, the total value of contracts as set out in the table provided by the Province to Project Co prior to the Financial Submittal Date (the “**Table of Minimum Indigenous Contracts Requirements**”) and identifying a minimum value of contracts for either an individual Identified Indigenous Group, or an aggregate for certain specified Identified Indigenous Groups, in each case as identified in such table (each, a “**Minimum Indigenous Contracts Requirement**”). Lists of businesses associated with the Identified Indigenous Groups will be provided to Project Co and updated from time to time, and contracts entered into with any business listed on any such list at the time of entering into such contract will count towards the applicable Minimum Indigenous Contracts Requirement.
- (c) Construction in relation to Section 2.6(b) of Schedule 6 [Environmental Requirements] will not count toward any Minimum Indigenous Employment Requirement or Minimum Indigenous Contracts Requirement.
- (d) Project Co shall have an initial meeting with each of the Identified Indigenous Groups within 30 days of the Effective Date to initiate the process for the determination of the employment and contract opportunities to be established with the respective Identified Indigenous Groups in relation to the Project Work to fulfil the requirements set out in Sections 1.1(a) and 1.1(b) of this Schedule.
- (e) To inform the development of the Indigenous Participation Plan in accordance with Section 1.2 [Indigenous Participation Plan] of this Schedule, Project Co shall meet monthly, at minimum, with the Identified Indigenous Groups until the Indigenous Participation Plan has been developed and accepted in accordance with Section 1.2 [Indigenous Participation Plan] of this Schedule.
- (f) Project Co (including its Principal Contractors and relevant Subcontractors) shall attend and participate in any business-to-business or other workshops initiated by the Province in relation to the Indigenous Requirements.

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- (g) Project Co (including its Principal Contractors and relevant Subcontractors) shall engage with the Identified Indigenous Groups in a respectful manner that upholds the relationship between the Province and the Identified Indigenous Groups.
- (h) In addition to the requirements set out in Sections 1.1(a) and 1.1(b) of this Schedule, Project Co shall work with the Identified Indigenous Groups to explore additional employment and contract opportunities that could be awarded by Project Co or its Principal Contractors or Subcontractors to the respective Identified Indigenous Groups in support of the Project Work. Project Co shall make commercially reasonable efforts to reach mutual agreement with the respective Identified Indigenous Groups for the provision of any such additional employment and contract opportunities in support of the Project Work, and details of all such efforts shall be included in each monthly report submitted to the Province's Representative pursuant to Section 1.6(a) of this Schedule.

1.2 Indigenous Participation Plan

PIR1.2a Project Co shall develop and submit to the Province's Representative for approval, acting reasonably, pursuant to the Consent Procedure within 90 days of the Effective Date, a written plan (the "**Indigenous Participation Plan**") which describes the procedures for achieving the Indigenous Requirements specified in Section 1.1 [General Requirements] of this Schedule.

PIR1.2b Project Co shall update the Indigenous Participation Plan as required and annually, at a minimum, and submit all proposed amendments or updates to the Indigenous Participation Plan to the Province's Representative pursuant to the Consent Procedure.

- (c) The Indigenous Participation Plan shall describe, as a minimum:
 - (i) how Project Co has engaged Identified Indigenous Groups in relation to the development of the Indigenous Participation Plan, including how input has been considered in its development;
 - (ii) the identification of the capacities for the types of employment of, and contracts with, each Identified Indigenous Group;
 - (iii) the identification of priority areas for types of employment and contract opportunities for each Identified Indigenous Group, based on the priority areas identified by each Identified Indigenous Group;
 - (iv) the identification of potential applicable contract opportunities for each Identified Indigenous Group;
 - (v) how Project Co intends to comply with its obligations under Sections 1.1(a), 1.1(b) and 1.1(h) of this Schedule, and work with the Identified Indigenous Groups to ensure successful implementation (including describing appropriate procedural mechanisms for developing and maintaining the ongoing working relationship between Project Co and the respective Identified Indigenous Groups);
 - (vi) communications protocols, including frequency of meetings and frequency of updates and communications with Identified Indigenous Groups and

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identification of key contacts for each Identified Indigenous Group and Project Co's team, which Project Co has agreed with the Identified Indigenous Groups at the meetings referred to in Sections 1.1(d) and 1.1(e) of this Schedule;

- (vii) the specific decision-making and procurement processes and how they will be applied to achieve success related to
 - (A) recruitment and hiring of employees to meet each Minimum Indigenous Employment Requirement pursuant to Section 1.1(a) of this Schedule; and
 - (B) entering into contracts to meet each Minimum Indigenous Contracts Requirement pursuant to Section 1.1(b) of this Schedule;
- (viii) a milestone schedule by Contract Year for the attainment of each Minimum Indigenous Employment Requirement and Minimum Indigenous Contracts Requirement;
- (ix) the process by which additional employment and contract opportunities as contemplated in Section 1.1(h) of this Schedule will be identified and awarded, including how this process has been communicated to the Identified Indigenous Groups and clearly distinguishing between the process in relation to the achievement of the minimum requirements described in Sections 1.1(a) and 1.1(b) of this Schedule and the additional employment and contract opportunities described in Section 1.1(h) of this Schedule;
- (x) how Project Co will liaise and meet regularly, bi-annually at a minimum, with the Identified Indigenous Groups to identify changes to the priorities and capacities for types of employment and contract opportunities for each Identified Indigenous Group, based on the areas identified by each Identified Indigenous Group;
- (xi) training opportunities for the Identified Indigenous Groups, with reference to the priority areas identified for each Identified Indigenous Group in accordance with Section 1.2(c)(iii) of this Schedule, and timeframes within which training will be provided;
- (xii) a format of a monthly report to be submitted to the Province's Representative reporting on the following items:
 - (A) all employment provided to date in furtherance of achieving the Indigenous Requirements, including the status of Project Co's achievement in respect of the identified milestones for each Minimum Indigenous Employment Requirement, with reference to the priority areas identified for each Identified Indigenous Group in accordance with Section 1.2(c)(iii) of this Schedule;
 - (B) all contracts entered into to date in furtherance of achieving the Indigenous Requirements, including the status of Project Co's achievement in respect of the identified milestones for each Minimum Indigenous Contracts Requirement, with reference to the priority areas

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identified for each Identified Indigenous Group in accordance with Section 1.2(c)(iii) of this Schedule;

- (C) explanations for any variances between the status of Project Co's realized achievements referenced in paragraphs (A) and (B) above and the planned achievements as identified in the Indigenous Participation Plan, and
 - (D) any remedial actions or improvements or updates to the Indigenous Participation Plan that may be necessary to achieve the Indigenous Requirements; and
- (xiii) a format of a final report to be submitted to the Province's Representative prior to Total Completion which:
- (A) summarizes all employment provided to and contracts entered into with each Identified Indigenous Group throughout the Project;
 - (B) sets out Project Co's achievement in respect of:
 - (1) each Minimum Indigenous Employment Requirement; and
 - (2) each Minimum Indigenous Contracts Requirement.

1.3 Indigenous Contracting and Employment Coordinator

- (a) Project Co's Indigenous Contracting and Employment Coordinator will be a Key Individual subject to the requirements of Schedule 2 [Representatives, Review Procedure and Consent Procedure].
- (b) Project Co's Indigenous Contracting and Employment Coordinator will have excellent communication skills and proven skill and experience in:
 - (i) planning, coordinating and implementing Indigenous procurement and employment opportunities on infrastructure projects;
 - (ii) developing and maintaining productive working relationships with Indigenous communities in relation to employment and contracting processes; and
 - (iii) project management and procurement on infrastructure construction projects.
- (c) Without limiting the generality of the foregoing, the job specification and responsibilities of the Indigenous Contracting and Employment Coordinator will include the following in relation to employment and contract opportunities:
 - (i) establishing and maintaining productive working relationships with the Identified Indigenous Groups;
 - (ii) developing, administering and managing the day-to-day implementation of the Indigenous Participation Plan;

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- (iii) undertaking tracking and reporting in relation to the implementation of the Indigenous Participation Plan and the Indigenous Requirements; and
- (iv) updating the Indigenous Participation Plan with input from Identified Indigenous Groups.

1.4 Amendment of Indigenous Requirements

Project Co may at any time submit to the Province's Representative for acceptance, acting reasonably, in accordance with the Consent Procedure any proposed revision to the Indigenous Requirements (as the same may previously have been revised in accordance with this Section 1.4) or any part thereof. If any such proposed revision is accepted by the Province in accordance with the Consent Procedure, then the Indigenous Requirements as so revised shall be the Indigenous Requirements for the purposes of this Agreement, subject to any further revision accepted by the Province, acting reasonably, in accordance with the Consent Procedure. For greater certainty, no payment shall be made by the Province to Project Co as a consequence of implementation of a revision to the Indigenous Requirements pursuant to this Section 1.4 (including, for greater certainty, any revisions to the Indigenous Requirements resulting from the implementation of any additional contract opportunities contemplated by Section 1.1(h) of this Schedule).

1.5 Failure to Meet Indigenous Requirements

- (a) Project Co acknowledges that the achievement of each Minimum Indigenous Contracts Requirement is crucial to the purpose and objectives of the Indigenous Requirements and that if Project Co fails to meet any of the Minimum Indigenous Contracts Requirements, the Province will not be obtaining the level of Project Work assumed to be included in the payments to be made to Project Co hereunder, may suffer losses and damages associated with the Project Work that are difficult to quantify in advance and that are reflected in the payments set out in Section 1.5(b)(iii) of this Schedule.
- (b) In the event that Project Co fails to meet:
 - (i) any milestone for the attainment of each Minimum Indigenous Employment Requirement as set out in the Indigenous Participation Plan or, for the period from the Effective Date to the SC3 Substantial Completion Date, any of the Minimum Indigenous Employment Requirements (and in such case without prejudice to any other right or remedy available to the Province and BCTFA, including the assignment of NCE Points and/or Default Points pursuant to Schedule 10 [Payment and Performance Mechanism]), Project Co and the Province shall meet to determine an appropriate remedial strategy to address such failure, provided that, at the option of the Province, Project Co shall, along with the Province, meet with the relevant Identified Indigenous Group or Identified Indigenous Groups, as applicable, in order to seek the views of such Identified Indigenous Group or Identified Indigenous Groups in relation to an appropriate remedial strategy;
 - (ii) any milestone for the attainment of each Minimum Indigenous Contracts Requirement as set out in the Indigenous Participation Plan, Project Co and the Province shall meet to determine an appropriate remedial strategy to address such failure, provided that, at the option of the Province, Project Co shall, along with the Province, meet with the relevant Identified Indigenous Group or Identified

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Indigenous Groups, as applicable, in order to seek the views of such Identified Indigenous Group or Identified Indigenous Groups in relation to an appropriate remedial strategy; and

- (iii) for the period from the Effective Date to the SC3 Substantial Completion Date, any of the Minimum Indigenous Contracts Requirements, each such failure shall be a Non-Compliance Event and Project Co shall pay to the Province in respect thereof 10% of the amount by which such Minimum Indigenous Contracts Requirement exceeds the total value of contracts provided by Project Co to the relevant Identified Indigenous Group or Identified Indigenous Groups, as applicable, during such period.

1.6 Indigenous Requirements Reporting

Project Co shall submit to the Province's Representative in accordance with the Consent Procedure:

PIR1.6a on a monthly basis from the Effective Date until the Total Completion Date, the monthly report referred to in Section 1.2(c)(xii); and

PIR1.6b on or before the Total Completion Date, the final report referred to in Section 1.2(c)(xiii) of this Schedule,

and provide to the Province such other documentation and information in respect of the Indigenous Participation Plan as the Province may reasonably request.

PART 2 OTHER INDIGENOUS MATTERS

2.1 Cooperation with Consultation

Project Co shall, at its own reasonable cost and expense (except to the extent expressly provided otherwise in this Agreement), having regard to and without detracting in any way from the Indigenous Requirements and Project Co's other obligations contained in this Agreement, cooperate with and assist the Province in connection with any consultations with any Indigenous group on issues pertaining to the Project.

2.2 Other Agreements with Indigenous Groups

In addition to the Indigenous Requirements, Project Co shall observe and cause all of its Principal Contractors, Subcontractors and any other person for whom Project Co is in law responsible to observe the terms and conditions of any agreement between the Province and any Indigenous group with respect to the Project to the extent that such terms and conditions are disclosed from time to time by the Province to Project Co and the Province requires Project Co to observe such terms and conditions, and Project Co shall not in the course of exercising its rights or performing its obligations under this Agreement take or omit to take or permit to be taken or omitted any action that would breach any such terms and conditions. Any requirement to comply imposed by the Province pursuant to this Section 2.2 shall constitute a Province Change.

2.3 Acknowledgement by the Province

As between the Province and Project Co, the Province acknowledges that it is responsible for responding to any court proceeding alleging infringement of Indigenous rights or alleging that the Province has failed to discharge legal obligations of consultation and accommodation.