

## SCHEDULE 21

## Change Procedure

## Part 1

## General Provisions

## APPLICATION OF THIS CHANGE PROCEDURE

This Schedule 21 (Change Procedure) is divided into 6 Parts as follows:

- Part 1:** Applies to all HPTE and Concessionaire Changes.
- Parts 2- 4:** Apply to HPTE Changes affecting the Services or the Snow and Ice Control Services and all references to "Services" in this Schedule shall be construed to include a reference to the Snow and Ice Control Services.
- Part 5:** Applies to Concessionaire Changes at any time during the Contract Period.
- Part 6:** Applies to Construction Changes (i.e. an HPTE Change which affects the Phase 2 Construction Work and which takes effect during the period from the date of this Contract until the end of the Phase 2 Warranty Period as defined in the Construction Sub-Contract in each case as shall be processed in accordance with Part 6 of this Schedule 21 (Change Procedure).

For the avoidance of doubt, Qualifying Changes in Law shall be treated as HPTE Changes for the purposes of this Schedule 21 (Change Procedure) (but not for Part 2 of Schedule 11 (Base Case Financial Model)).

## GENERAL PROVISIONS

## 1. DEFINITIONS

In each part of this Schedule 21 (Change Procedure) the following expressions (in addition to those specified in Schedule 1 (*Definitions*)) shall, save where the context or the express provisions of this Contract otherwise requires or admits, have the following meanings:

**"Agreed Abatement"** means:

- (a) In the case of a Low Value Change, \$20,000 indexed;
- (b) In the case of a Medium Value Change, \$50,000 indexed; and
- (c) In the case of a High Value Change, \$80,000 indexed;

**"Alterations"** means any alteration, demolition, extension or addition to the Managed Lanes in each case of a structural nature;

**"Approval Criteria"** means the criteria against which any Concessionaire Stage 2 Response will be evaluated by HPTE and which will be specified by HPTE in the HPTE Change Notice and which shall be based on:

- (d) Compliance with HPTE's specifications for the Change;
- (e) Evidencing value for money;
- (f) Affordability to HPTE in terms of developing a final price within the Concessionaire's Stage 2 Response; and

(g) Compliance with all relevant Law, Guidance and Necessary Consents;

and such Approval Criteria shall be reasonable and achievable taking into account Good Industry Practice and the scope and price of the required High Value Change;

**“Benchmarking Process”** means the process set out in paragraph 8 of Part 4 (*High Value Changes*) of this Change Procedure;

**“Benchmarking Report”** means the report produced by the Concessionaire in accordance with the requirements of paragraph 8 of Part 4 (*High Value Changes*) (which shall, for the avoidance of doubt, include the information required by paragraph 8.2 of Part 4 (*High Value Change*)) of this Change Procedure;

**“Change”** means any Alteration, change, variation, extension or reduction in the Managed Lanes (whether before or after the Full Services Commencement Date) and/or the Services which Change has been requested by the Concessionaire or HPTE in accordance with this Schedule and/or any matter or circumstance deemed to be an HPTE Change by virtue of an express provision of the Contract;

**“Change Notice”** means an HPTE Change Notice and/or Concessionaire Change Notice as the context shall require;

**“Change Order”** means a written notice issued by HPTE pursuant to the relevant provision of this Change Procedure setting out the agreed details of the Change, including the agreed cost, method of payment and the times of its;

**“Change Procedure”** means the protocol for Changes as set out in this Schedule 21 (*Change Procedure*).

**“Comparable Market”** means roads operated under public-private partnerships;

**“Competitive Tendering Process”** means the process set out in paragraph 7 of Part 4 (*High Value Changes*) of the Change Procedure;

**“Concessionaire Change”** means a Change that is initiated by the Concessionaire by submitting a Concessionaire Change Notice to HPTE;

**“Concessionaire Change Notice”** means a written notice submitted by the Concessionaire requesting a Change and setting out the information required by the relevant paragraph of this Change Procedure;

**“Concessionaire Initial Response”** means the written response of the Concessionaire referred to in paragraph 2.1 of Part 4 (*High Value Change*) of this Change Procedure;

**“Concessionaire Response”** means the written response of the Concessionaire to an HPTE Change Notice which shall include the information listed in the relevant paragraph of this Change Procedure;

**“Concessionaire Stage 1 Response”** shall have the meaning given in paragraph 2.1 of Part 4 (*High Value Changes*) of this Change Procedure;

**“Concessionaire Stage 2 Response”** shall have the meaning given in paragraph 4.1 of Part 4 (*High Value Changes*) of this Change Procedure;

**“Construction Change”** means an HPTE Change which affects the Phase 2 Work and which takes effect during the period from the date of this Contract until the end of the Phase 2 Warranty Period under the Construction Subcontract as shall be processed in accordance with Part 6 of this Schedule 21 (*Change Procedure*);

**“High Value Changes”** means a Change which is not a Low Value Change or a Medium Value Change, and which is likely either

- (a) To cost more than \$350,000 (indexed) to implement, or
- (b) To require an annual amount of Revenue Compensation Payment (or an adjustment to any existing Revenue Compensation Payment) that is greater than 2% of the projected Toll Revenues during the Year when the first payment of such Revenue Compensation Payment will be made (as set out in the Base Case Financial Model (as the case may be);

**“HPTE Change”** means:

- (a) A Change that is initiated by HPTE by submitting a Low Value Change Request or an HPTE Change Notice to the Concessionaire;
- (b) A Material Phase 1 Change Order; or
- (c) Qualifying Change in Law (which shall also be treated as an HPTE Change, subject to paragraph 2.1 of Part 1 below);

**“HPTE Change Notice”** means

- (a) A written notice submitted by HPTE requiring a Medium Value Change a High Value Change, Construction Change, and setting out the information specified in the relevant paragraph of this Change Procedure; or
- (b) In the case of Qualifying Changes in Law a notice issued by either party in the form specified in Section 44.1;

**“HPTE Initial Confirmation”** has the meaning given in paragraph 2.4 of Part 4 (*High Value Change*);

**“HPTE Stage 1 Confirmation”** has the meaning given in paragraph 3.2(a) of Part 4 (*High Value Changes*) of this Change Procedure;

**“HPTE Stage 2 Confirmation”** has the meaning given in paragraph 6.1(a) of Part 4 (*High Value Changes*) of this Change Procedure;

**“Independent Technical Advisor”** means a person who is independent of HPTE or any Concessionaire Party who has not less than five (5) years’ experience in projects operated under PPP expertise in pricing works and/or services of the type required by the relevant High Value Change and has relevant experience in the services similar to those being provided for the Project.

**“Low Value Change”**: means:

- (a) Works (or a series of related works) of a minor nature, or the provision of plant and equipment, having a cost, not exceeding \$20,000 (indexed); or
- (b) Any change or amendment (or series of related changes or amendments) (whether temporary or permanent) of the Services or any of them where the cost of each change or amendment (or series of related changes or amendments), in the reasonable opinion of HPTE, does not exceed \$20,000 (indexed) and does not require payment or adjustment of a Revenue Compensation Payment and which does not affect achievement of the Planned Full Services Commencement Date;

**“Low Value Change Request”** means a request for a Low Value Change in the form set out in the Appendix to this Change Procedure;

**“Low Value Change Threshold”** means where the Low Value Changes which are not Construction Changes in any Year exceeds 15 in number or cost or in excess of the aggregate sum of \$350,000 (indexed);

**“Medium Value Change”** means a Change, which is not a Low Value Change, and which, in the reasonable opinion of HPTE, is likely either

- (a) To cost less than \$350,000 (indexed) to implement, or
- (b) Require payment of, or an adjustment to a Revenue Compensation Payment that is less than 2% of the maximum Toll Revenues in the relevant Year (as shown in the Base Case Financial Model) (as the case may be);

**“Medium Value Change Threshold”** means where the Medium Value Changes in any Year exceeds 5 in number or cost in excess of the aggregated sum of \$750,000 (indexed);

**“Project Management Fee”** means a fee in respect of project management services calculated in accordance with paragraph 2.5 of Part 4 (High Value Changes) of this Change Procedure;

**“Reference Price”** means a high level price calculated by the Independent Technical Advisor which is his estimate of the cost of implementing a proposed High Value Change and which shall include and show separately the information specified in paragraph 9.3 of Part 4 (*High Value Changes*) of this Change Procedure;

**“Tendering Report”** means a report prepared by the Concessionaire which shall include the information required by paragraph 7.6 of Part 4 (*High Value Changes*) of this Change Procedure;

**“Third Party Costs”** means the costs incurred by a third party which shall include but not be limited to any sub-contractor, consultant or advisor (including the Operating Sub-Contractor when the Operating Sub-Contractor is an affiliate of the Concessionaire);

**“Whole Life Costs”** means, in relation to any Medium Value Change or High Value Change, the estimated and (to the extent that such information is available) the actual cost of operating and maintaining such Medium Value Change or High Value Change over its intended design life (consistent with the Concessionaire Response);

## 2. LIMITS ON CHANGES

2.1 Neither party may propose or implement an HPTE Change, or Concessionaire Change:

- (a) Which requires the Phase 2 Work to be carried out and/or the Services to be performed or a Change to be implemented in a way that infringes any Law or is inconsistent with Good Industry Practice;
- (b) Which would cause any Necessary Consent to be revoked (or a new Necessary Consent required to implement the relevant Change to be unobtainable) in accordance with the principles set out in paragraph 3;
- (c) Which would materially and adversely affect the Concessionaire’s ability to deliver the Services carried out (except for that part of the Service which has been specified as requiring to be amended in the Change Notice) in a manner not compensated pursuant to this Change Procedure;
- (d) Which would materially and adversely affect the health and safety of any person;
- (e) Which would require the Concessionaire to implement the Change in an unreasonable period of time;
- (f) Which would (if implemented) materially and adversely change the nature of the Project (including its risk profile) ; and/or
- (g) Whereby HPTE does not have the legal power or capacity to require the implementation of such Change.

- 2.2 The Concessionaire may, within ten (10) Business Days of receipt of an HPTE Change Notice (or such longer period as reasonably set out by HPTE in the HPTE Change Notice in consultation with the Concessionaire and taking into account the characteristics of the HPTE Change and/or any modification to the HPTE Change) state in writing whether it objects to the HPTE Change Notice on any of the grounds set out in paragraph 2.1. The Concessionaire may request a further 10 day extension to the period if Senior Lender due diligence is required. HPTE shall, within ten (10) Business Days of receipt of such notice provide written confirmation that either:
- (a) The HPTE Change Notice is withdrawn; or
  - (b) The objection by the Concessionaire shall be referred for determination in accordance with the Dispute Resolution Procedure.

- 2.3 For the avoidance of doubt HPTE has an absolute discretion to accept or reject any Concessionaire Change unless such Change is required as a result of a Change in Law.

### **3. CONSENTS FOR HPTE CHANGES**

- 3.1 The Parties agree that where the implementation of any HPTE Change Order involves a requirement for the Concessionaire to obtain new Necessary Consents or the modification of existing Necessary Consents, the following overriding principles shall apply to the development and implementation of the relevant Change:

- (a) The Parties shall from time to time (as may be necessary) agree the estimated costs (if any) or (as may be appropriate) the revised estimated costs likely to be incurred in obtaining the relevant new Necessary Consents or the modification of the existing Necessary Consents and in relation to such relevant Change;
- (b) HPTE shall be entitled to withdraw that Change at any time on the basis that the estimated costs (or revised estimated costs as may be appropriate) are too high subjects to payment of any costs already incurred in accordance with paragraph (d);
- (c) The Concessionaire shall not be obliged to proceed with that Change (including the preparation of any Concessionaire Stage 1 Response or Concessionaire Stage 2 Response) if at any time, there is no agreement on costs;
- (d) The relevant Change shall establish a longstop date for obtaining of the relevant new Necessary Consents or the modification of the existing Necessary Consents and a definition of a satisfactory consent;
- (e) The Concessionaire shall be obliged to use all reasonable endeavors to obtain a satisfactory consent or the modification of the existing Necessary Consents by the longstop date;
- (f) Subject to compliance with paragraph (c) and provided that the Parties have agreed an estimate of such costs in accordance with paragraph (a), any additional costs and expenses (or any required modifications to the Change) arising from any delay in obtaining the relevant new Necessary Consent or the modification or any existing Necessary Consent or any deviation in the terms of the relevant Necessary Consent from the assumed terms shall be for the account of HPTE;

the Concessionaire shall not be required to implement the relevant Change in the event that, despite using reasonable endeavors the satisfactory Necessary Consents or the modification of the existing Necessary Consents cannot be obtained.

### **4. CHANGE PROCESS**

## EXECUTION VERSION

- 4.1 Either party may serve a Change Notice proposing a Change and such Change Notice shall be processed in accordance with the following paragraphs of this Change Procedure:
- (a) An HPTE Change to the Managed Lanes, the US 36 General Purpose Lanes or any Asset and/or the Services which is a Low Value Change shall be processed in accordance with Part 2 (Low Value Change) of this Change Procedure;
  - (b) An HPTE Change to the Managed Lanes, the US 36 General Purpose Lanes or any Asset and/or the Services which is a Medium Value Change shall be processed in accordance with Part 3 (Medium Value Change) of this Change Procedure;
  - (c) An HPTE Change to the Managed Lanes, the US 36 General Purpose Lanes or any Asset and/or the Services which is a High Value Change shall be processed in accordance with Part 4 of this Change Procedure;
  - (d) A Concessionaire Change to the Phase 2 Work, and/or the Managed Lanes, the US 36 General Purpose Lanes and/or any Asset, and/or the Services shall be processed in accordance with Part 5 of this Change Procedure;
  - (e) A change relating to a Material Phase 1 Change Order shall be processed as an HPTE Change, and processed according to subparagraphs (a) through (c) above; and
  - (f) An HPTE Change relating to the Phase 2 Work shall be processed in accordance with Part 6 of this Change Procedure.

## 5. FUNDING

- 5.1 In the case of a Medium Value Change, a High Value Change or, a Construction Change (including in any case Changes which arise from a Qualifying Change in Law) HPTE may request in the HPTE Change Notice that the Concessionaire shall use its reasonable endeavors to obtain funding for the whole of the estimated Capital Expenditure, on terms reasonably satisfactory to HPTE, the Senior Lenders and the TIFIA Lender.
- 5.2 If the Concessionaire has used its reasonable endeavors to obtain funding for the whole of the estimated Capital Expenditure, but has been unable to do so within forty (40) Business Days of the date that HPTE issued an HPTE Change Notice making such request the Concessionaire shall inform HPTE in writing of what funding (if any) it has managed to obtain. The Concessionaire shall have no obligation to carry out the HPTE Change, which shall be deemed to be withdrawn, unless HPTE confirms in writing within twenty (20) Business Days of receipt of such notice by the Concessionaire, that it will pay the Capital Expenditure for which funding is not available.
- 5.3 HPTE may, at any time notify the Concessionaire in writing that it will meet all or, to the extent the Concessionaire has obtained funding for part of the Capital Expenditure, the remaining part of the Capital Expenditure.
- 5.4 For the avoidance of doubt, HPTE shall pay the Capital Expenditure incurred in carrying out any Low Value Change required by HPTE.
- 5.5 In the case of a Concessionaire Change, any funding shall (unless otherwise agreed) be provided by the Concessionaire except to the extent a Qualifying Change in Law applies in which case the provisions of Section 44 (Change in Law) shall apply.

## 6. DUE DILIGENCE

- 6.1 To the extent the Senior Lenders or the TIFIA Lender have a right under the Funding Agreements to object to the implementation of any Change, the Senior Lender or the

TIFIA Lender may carry out legal, financial, technical and insurance due diligence on any proposal for an HPTE Change:

- (a) In the case of a Low Value Change, when the Low Value Change Threshold has been exceeded; or
- (b) In the case of a Medium Value Change where the Medium Value Change Threshold has been exceeded; or
- (c) In the case of a High Value Change as required.

6.2 In the event that the Senior Lender or the TIFIA Lender needs to procure such legal, technical, financial or insurance due diligence, the parties shall agree a budget and capped cost for the due diligence provided that the costs for the due diligence shall not exceed 2% of the overall value of the relevant HPTE Change.

6.3 The Concessionaire shall procure that:

- (a) The Senior Lenders and the TIFIA Lender shall promptly give any consents which are required pursuant to the Financing Agreements to any Change and shall only withhold its consent on one (or more) of the grounds set out in paragraph 2.1;
- (b) The Insurance Broker shall be notified by the Concessionaire promptly of any material Change (materiality being judged in relation to the size and nature of the scope of the Change and any necessary authorization obtained).

## **7. IMPLEMENTATION**

7.1 Where HPTE has issued a Change Order in respect of a Change:

- (a) Where applicable, the parties shall execute any amendment to this Contract;
- (b) The Concessionaire shall promptly implement any Change within the timescales set out in the Change Order and shall do so in a manner which minimizes any inconvenience to HPTE;
- (c) The Concessionaire shall notify HPTE when it believes the Change has been completed; and
- (d) Where applicable, payment shall be made in accordance with paragraph 9.

7.2 No amendments of this Contract shall be made as a result of a Low Value Change or a Medium Value Change, unless otherwise agreed between the parties.

7.3 If the Concessionaire does not:

- (a) Respond to a Low Value Change Request an HPTE Change Notice (in the case of a High Value Change either at Stage 1 or Stage 2); or
- (b) Complete or implement the Change within the specified timescales,

then the amount paid in relation to the Change (as agreed or determined pursuant to this Schedule) shall be abated at the rate of the Agreed Abatement for every day of delay from the date the Concessionaire Response should have been submitted or the Change should have been completed or implemented until the date the Concessionaire Response is submitted or the Change is completed or implemented (as the case may be) or if there shall be no such amount to be paid in relation to the Change then the Concessionaire shall pay a share of the Toll Revenue which it receives in the same amount. The operation of this paragraph will be the sole financial remedy of HPTE in respect of such non-compliance (without prejudice to HPTE's rights under Section 50.5 (Termination for Concessionaire Default)) and provided that this Section will not apply to the extent that

the cause of such non-compliance was the act or omission of HPTE or any HPTE Related Party or due to a Relief Event or a Force Majeure Event or a Compensation Event..

7.4 All Changes shall be implemented under the terms of this Contract and in particular all provisions applying to the Phase 2 Work shall apply to the carrying out of any additional works or changes to the Phase 2 Work.

7.5 The Concessionaire shall keep a record of all Changes (both completed and outstanding) and provide HPTE with these records whenever reasonably required by HPTE.

**8. IMPLEMENTATION OF A CHANGE BY HPTE**

(a) HPTE may implement any Change itself pursuant to paragraph 4.5 of Part 2 (Low Value Changes), or paragraph 2.9 of Part 3 (*Medium Value Changes*) or paragraph 6.4 of Part 4 (*High Value Changes*) provided that where the Change is an Alteration it may only be implemented by HPTE If it comprises the provision of separate facilities and does not require any Alteration to the Managed Lanes or any Asset or other facilities used by the Concessionaire (other than any Alterations comprising connection into, or relocation of, utilities or other service media necessary to implement the relevant Change).

(b) HPTE shall undertake the Change in accordance with Good Industry Practice and without affecting the performance of the Phase 2 Work, the delivery of the Services or the delivery of the Snow and Ice Control Services by the Concessionaire in accordance with this Contract and shall pay to the Concessionaire any Losses (including any loss of Toll Revenue) incurred by the Concessionaire as a result of a failure to do so.

**9. PAYMENT**

9.1 HPTE shall pay the Concessionaire the agreed cost for carrying out or implementing any HPTE Change:

(a) Which is a Low Value Change, in accordance with paragraph 5 (*Payment*) of Part 2 (*Low Value Changes*) subject to paragraph 9.2, within twenty (20) Business Days of receipt of an invoice submitted by the Concessionaire for the agreed amount; or

(b) Which is a Medium Value Change, a High Value Change, or a Construction Change by way of one or other or a combination of:

(i) Paying or adjusting a Revenue Compensation Payment in accordance with Part 2 of Schedule 11 (Base Case Financial Model); and/or

(ii) Subject to paragraph 9.2, within twenty (20) Business Days of receipt of an invoice submitted by the Concessionaire for the agreed amount (or such agreed amount apart from any amount which is to be paid as a Revenue Compensation Payment),

provided that in the case of paragraph 9.1(b)(i) no Revenue Compensation Payment shall be made or adjusted until the aggregate value of the adjustment required exceeds the sum of \$100,000 (indexed) or, once a year if the aggregate sum is not achieved in any Year.

9.2 Where HPTE agrees to pay any Change in Costs incurred in carrying out a Change:

(a) HPTE and Concessionaire shall agree:

(i) A payment schedule in respect of the payment of the Change in Costs reflecting the amount and timing of the costs to be incurred by the Concessionaire in carrying out the HPTE Change, to the extent borne by HPTE; and



- (ii) Where payment for part of the HPTE Change reflects the carrying out of, or specific progress towards, an element within the HPTE Change, an objective means of providing evidence confirming that the part of the HPTE Change corresponding to each occasion when payment is due under the payment schedule has been duly carried out,

and such payment schedule and evidence shall be determined in accordance with the Dispute Resolution Procedure in the event of HPTE and Concessionaire failing to agree its terms;

- (b) HPTE shall make a payment to the Concessionaire within twenty (20) Business Days of receipt by HPTE of invoices presented to HPTE (complete in all material respects) in accordance with the agreed payment schedule (as may be varied by agreement from time to time) accompanied by the relevant evidence (where applicable) that the relevant part of the HPTE Change has been carried out; and
- (c) If payment is not made in accordance with paragraph 9.2(b), HPTE shall pay interest at the Prescribed Rate to the Concessionaire on the amount unpaid from the date twenty (20) Business Days after receipt of the relevant invoice until the date of payment.

9.3 Where, pursuant to paragraph 5.1, due diligence has been carried out by the Senior Lender or the TIFIA Lender, then HPTE shall reimburse the Concessionaire for the actual costs of the Senior Lender or the TIFIA Lender carrying out due diligence of a proposed HPTE Change, provided that:

- (a) In the case of a Low Value Change, the Low Value Change Threshold has been exceeded; or
- (b) In the case of a Medium Value Change, the Medium Value Change Threshold has been exceeded; and
- (c) The sums due shall never exceed the lower of the cap set out in to paragraph 6.2 and the caps or fixed sum set out in the relevant Concessionaire Response;

and, where the costs of the due diligence have not been included in the Change in Costs, HPTE shall pay such costs within twenty (20) Business Days of receipt of an invoice submitted by the Concessionaire for the agreed amount.

9.4 If a Change in Costs arising from an HPTE Change or a Qualifying Change in Law is negative (so that the Concessionaire and/or its sub-contractors make a cost saving) then the relevant provisions of Part 2 of Schedule 11 (Base Case Financial Model) shall apply in relation to passing that saving to HPTE.

9.5 Notwithstanding any other provision of this Change Procedure:

- (a) The provisions of Part 2 of Schedule 11 (Base Case Financial Model) shall apply to ensure that the Concessionaire is in a no better no worse position as defined therein nothing in this Schedule 21(Change Procedure) nor in any estimate or cost calculated herein shall take precedence over the principles of Part 2 of Schedule 11 (Base Case Financial Model); and
- (b) The provisions of Section 44 (Change in Law) shall apply to the payment of any costs incurred or any savings made in carrying out or implementing any Change which is required as a result of a Qualifying Change in Law.

## 10. **QUALIFYING CHANGES IN LAW**

10.1 Where a Change resulting from a Qualifying Change in Law is referred to this Change Procedure through the application of Section 44 (Change in Law), the provisions relating to an HPTE Change in this Change Procedure shall apply save that:

## EXECUTION VERSION

- (a) Notwithstanding anything to the contrary elsewhere in this Schedule 21 (Change Procedure), the HPTE Change relating to the Qualifying Change in Law may not be withdrawn by HPTE;
- (b) The provisions of Section 44.2 shall be taken into account and shall apply to the Concessionaire Response (Medium Value Changes) or the Concessionaire Stage 2 Response (High Value Changes); and
- (c) The provisions of Section 44 shall apply to funding of any capital expenditure.

### 11. **DISPUTES**

Any dispute arising in respect of this Change Procedure will be resolved in accordance with the Dispute Resolution Procedure.

**SCHEDULE 21**

**Change Procedure**

**Part 2**

**Low Value Changes**

**1. NOTIFICATION AND SPECIFICATION**

- 1.1 Subject to paragraph 2.1 limits in Change of Part 1 (*General Provisions*), the Concessionaire shall carry out any Low Value Change requested by HPTE.
- 1.2 If a Low Value Change is required by HPTE, it shall submit to the Concessionaire a Low Value Change Request.

**2. CONCESSIONAIRE RESPONSE**

- 2.1 Within five (5) Business Days of receipt of the Low Value Change Request, the Concessionaire shall in writing provide a fixed price for implementing the required Low Value Change which shall be calculated in accordance with paragraph 2.2 of this Part 2 of this Change Procedure together with a period for completion or implementation.
- 2.2 The cost of implementing any Low Value Change shall be calculated on the basis that:
  - (a) Wherever practicable the Concessionaire shall procure that such works are carried out by an existing on-site and suitably qualified employee of the Concessionaire or a Sub-Contractor and no labor element shall be charged to HPTE in respect of such works. Where the Low Value Change cannot be carried out by an existing on-site and suitably qualified employee of a Sub-Contractor without overtime being payable, the cost of the labor element shall be calculated in accordance with rates which are fair and reasonable; and
  - (b) The materials element shall be charged at the cost of materials to the Concessionaire or to the Concessionaire carrying out the work (net of all discounts) and there shall be no management fee, margin, overhead, contingency or other cost applied to such costs.
- 2.3 The Concessionaire shall make no additional charge to HPTE for processing, implementing or managing a Low Value Change unless the number of Low Value Changes in any Year exceeds 7. Any Low Value Changes in excess of this limit, shall be charged at a fee of \$1,000 (indexed) for each subsequent Change.
- 2.4 HPTE may, within five (5) Business Days of receipt, object in writing to the Concessionaire's response given pursuant to paragraph 2.1 of this Part 2 of this Change Procedure and in such circumstances the parties shall act reasonably to agree, as soon as practicable, how the Low Value Change is to be priced and/or implemented. If the parties cannot agree the Low Value Change, HPTE may withdraw the Low Value Change Request or (if HPTE chooses) carry out the Low Value Change itself or refer the matter to the Dispute Resolution Procedure in which case paragraph 4.3 of this Part 2 of this Change Procedure shall apply.

**3. DUE DILIGENCE**

The provisions of paragraph 6 (*Due Diligence*) of Part 1 (*General Provisions*) of this Part 2 of this Change Procedure shall apply.

**4. IMPLEMENTATION**

- 4.1 If HPTE has not objected pursuant to paragraph 2.4 of this Part 2 of this Change Procedure, the Concessionaire shall implement the required Low Value Change within the Schedule 21-1, Part 2

period specified in the Concessionaire Response or within such other period agreed between the parties.

- 4.2 The Concessionaire shall implement the required Low Value Change so as to minimize any inconvenience to HPTE to the extent reasonably practicable and shall notify HPTE when it believes the Low Value Change has been completed.
- 4.3 Paragraph 7.2, 7.3 and 7.4 of Part 1 of this Change Procedure shall apply and any dispute pursuant to this Part 2 of this Change Procedure may be referred by either party to the Dispute Resolution Procedure. Provided that the Concessionaire shall, where such dispute concerns the cost of the Low Value Change and if instructed so to do by HPTE, carry out or implement the Low Value Change within the prescribed timescales notwithstanding the dispute.
- 4.4 Where the Concessionaire has either:
- (a) Failed to provide a response pursuant to paragraph 2.1 within fifteen (15) Business Days of the date of the Low Value Change Request; or
  - (b) Has provided a response pursuant to paragraph 2.1 but has failed to fully implement the Low Value Change within ten (10) Business Days of the date that has been determined or agreed in accordance with paragraph 2.4 or paragraph 4.1 as being the date on which the Low Value Change should have been implemented

then HPTE may notify the Concessionaire that the Low Value Change Notice is withdrawn and following such notification, HPTE may procure the implementation of the Low Value Change without further recourse to the Concessionaire and the provisions of paragraph 8 (*Implementation of Change by HPTE*) of Part 1 (*General Provisions*) shall apply.

**5. PAYMENT**

- 5.1 Following the implementation of a Low Value Change, the Concessionaire shall include the costs of any Low Value Change in an invoice submitted in the next Month following completion or implementation of the relevant Low Value Change and HPTE shall pay such agreed costs within 20 Business Days.
- 5.2 No Revenue Compensation Payment shall be made or adjusted as a result of any Low Value Change unless agreed between the parties. Where it is agreed that a Revenue Compensation Payment (or an adjustment) is required, the Base Case shall be adjusted to give effect to such Low Value Changes once each Year and all relevant Low Value Changes that have occurred in the preceding Year shall be aggregated together into a single cumulative adjustment and the adjustment as set out in Part 2 of Schedule 11 (Base Case Financial Model).

**SCHEDULE 21**

**Change Procedure**

**Part 3**

**Medium Value Changes**

**1. NOTIFICATION AND SPECIFICATION**

- 1.1 If a Medium Value Change is required by HPTE, it shall serve an HPTE Change Notice on the Concessionaire.
- 1.2 The HPTE Change Notice shall, where applicable, include, but not be limited to, the following information:
- (a) A statement that it is a Medium Value Change and whether or not the Change is required as a result of a Change in Law;
  - (b) A description of any works (or alteration to the Managed Lanes, the US 36 General Purpose Lanes or any Asset) required in sufficient detail to allow the design and pricing of the Medium Value Change by the Concessionaire;
  - (c) Whether, in respect of any additional works, the Concessionaire is expected to provide maintenance and lifecycle services in respect of such additional works;
  - (d) The location for the works or services required;
  - (e) The timing of the works or services required together with any adjustments required to any fixed dates in the Contract;
  - (f) In respect of additional or varied services, a description of such service or variation to a Service together with the anticipated date of implementation of the variation or commencement of the new service in sufficient detail to allow the pricing of the Medium Value Change by the Concessionaire;
  - (g) Whether any amendments to, or new, Necessary Consents are required in order to implement the Change;
  - (h) Either confirmation that HPTE will fund the Medium Value Change itself and its proposals for payment (whether in stages or otherwise) or a request that the Concessionaire uses reasonable endeavors to raise finance for the HPTE Change as required by paragraph 9.1 (Payment) of Part 1 of this Change Procedure; and
  - (i) The date by which the Concessionaire shall provide the Concessionaire Response to HPTE (which shall be appropriate to the complexity of the Change required and shall not be less than ten (10) Business Days from the date of the HPTE Change Notice) or sixty (60) Business Days if HPTE requests that the Concessionaire obtain funding of the Capital Expenditure under paragraph 5.1 of Part 1.

**2. CONCESSIONAIRE RESPONSE**

- 2.1 Subject to paragraph 2 (*Limits on Changes*) of Part 1 (*General Provisions*) of this Change Procedure, within the period specified in the HPTE Change Notice (or a further 10 days if the Concessionaire requests the same because Senior Lender due diligence is required or such other period as the parties may agree ), the Concessionaire shall provide HPTE with a Concessionaire Response which shall include (where applicable) the following information:

## EXECUTION VERSION

- (a) A detailed program for the design, HPTE review of the design, construction and/or installation of the Medium Value Change (including the procuring of any Necessary Consents);
- (b) A detailed program for commissioning and implementing any change in, or addition to the Services, including the provision and/or training of any staff;
- (c) The proposed method of certification of any construction or operational aspects of the Medium Value Change if not covered by the procedures set out in this Contract.
- (d) The proposed consultants, sub-contractors and suppliers the Concessionaire intends to appoint to process the Medium Value Change;
- (e) Details of any impact of the Medium Value Change on the carrying out of the Phase 2 Work or the provision of the Services and in particular, details of any relief from compliance with any obligations of this Contract required during the implementation of the Medium Value Change;
- (f) Any Estimated Change in Costs that result from the Medium Value Change, taking into account any Capital Expenditure that is required or no longer required as a result of the Medium Value Change;
- (g) Where HPTE has specified in the HPTE Change Notice that the Concessionaire shall raise finance for the HPTE Change, the steps the Concessionaire has or will take to secure such finance;
- (h) Any Third Party Costs (approved in accordance with paragraph 1.2 (i) of Part 3 (*Medium Value Changes*)) and the details of the third-party activity that will be incurred in providing the Concessionaire Response including (where applicable pursuant to paragraph 6 (*Due Diligence*) of Part 1 (*General Provisions*)) of this Change Procedure the anticipated cost of the Senior Lender or the TIFIA Lender carrying out due diligence (which shall be a capped sum) together with a proposed process for approval of such costs by HPTE before they are incurred; and
- (i) Any amendment to this Contract or any Ancillary Document or any Financing Agreement required as a result of the Medium Value Change.
- (j) In calculating the Estimated Change in Costs (including the Whole Life Costs) and/or Capital Expenditure the Concessionaire shall ensure that:
  - (i) Any professional fees, contingencies, overheads and/or profit margins charged by any consultant, sub-contractor or supplier in respect of construction and/or installation and/or lifecycle and/or service provision shall be charged at fair and reasonable market prices to be agreed or determined;
  - (ii) The value of any Medium Value Change other than in respect of those matters in 3.2(a) above shall be calculated by reference fair, reasonable and comparable market rates.

### Agreement of Concessionaire Response

- 2.2 If HPTE requests to approve any Third Party Costs prior to that Third Party being appointed to prepare the Concessionaire's Response, the time period for the Concessionaire to submit its response in accordance with paragraph 2.1 shall be suspended from the date on which such Third Party Costs are submitted for approval until approval is granted (or the parties have otherwise agreed or such Third Party Costs or they have been determined through the Dispute Resolution Procedure).

- 2.3 As soon as practicable and in any event no later than ten (10) Business Days after HPTE receives the Concessionaire Response, the parties shall discuss and endeavor to agree the issues set out in the Concessionaire Response, and the Concessionaire shall:
- (a) Provide evidence that the Concessionaire has used reasonable endeavors (including, where practicable, and without prejudice to the provisions of paragraph 7 (*Competitive Tendering*) of Part 4 (*High Value Change*) of this Change Procedure, (the use of competitive quotes) to oblige sub-contractors and suppliers to minimize any increase in costs and maximize any reduction in costs;
  - (b) Demonstrate how any Change in Costs to be incurred or avoided is being measured in a cost effective manner, including showing that when such expenditure is incurred, foreseeable Changes in Law at that time would be taken into account by the Concessionaire; and
  - (c) Demonstrate that any expenditure that has been avoided, which was anticipated to be incurred that has been affected by the HPTE Change, has been taken into account in the Estimated Change in Costs.
  - (d) If the Concessionaire fails to provide the information required by paragraph 2.2 of this Part 3 of this Change Procedure or satisfy the provisions of paragraphs 2.3(a) – 2.3(c) (inclusive) of this Part 3 of this Change Procedure HPTE may (in writing) reject the Concessionaire Response, in which event the parties shall meet within ten (10) Business Days of the notice of rejection to discuss the reason for HPTE's rejection of the Concessionaire Response. The Concessionaire shall use reasonable endeavors to address HPTE's concern about the quality and content of the Concessionaire Response. In particular, the Concessionaire shall provide any additional information or documentation that HPTE shall reasonably require which relates to the contents of the HPTE Change Notice and/or the Concessionaire Response and/or the information required by paragraphs 2.3(a) – 2.3(c) (inclusive) of this Part 2 of this Change Procedure. HPTE may require the Concessionaire to resubmit the Concessionaire Response amended to take account of, and address, HPTE's concerns and the Concessionaire shall submit such revised Concessionaire Response within twenty (20) Business Days of such request.
- 2.4 If the parties cannot agree on the contents of the Concessionaire Response (as may be amended pursuant to paragraph 2.3(d) of this Part 2 of this Change Procedure), then either party may refer the dispute to the Dispute Resolution Procedure, provided that no determination shall oblige HPTE to issue an HPTE Confirmation in respect of the disputed Medium Value Claim.

#### **HPTE Confirmation**

- 2.5 HPTE shall, in writing, either confirm or withdraw the HPTE Change Notice or reject the Concessionaire Response and in the event that HPTE:
- (a) Confirms the HPTE Change Notice then HPTE shall issue a Change Order which shall set out the Change in Costs and agreed timescales for implementation and attach the agreed Concessionaire Response amended as agreed; or
  - (b) Withdraws an HPTE Change Notice, paragraph 2.7 of this Part 2 of this Change Procedure shall apply; or
  - (c) Rejects the Concessionaires Response, paragraph 2.8 of this Part 2 of this Change Procedure shall apply.
- 2.6 If HPTE does not issue a written notice pursuant to paragraph 2.5 of this Part 2 of this Change Procedure within twenty (20) Business Days of the contents of the Concessionaire Response having been agreed in accordance with paragraph 2.3(d) of

this Part 2 of this Change Procedure or determined pursuant to paragraph 2.4 of this Part 2 of this Change Procedure then the HPTE Change Notice shall be deemed to have been withdrawn.

- 2.7 Where an HPTE Change Notice is withdrawn pursuant to paragraph 2.5 of this Part 2 of this Change Procedure or deemed to have been withdrawn pursuant to paragraph 2.6 of this Part 2 of this Change Procedure or paragraph 5.2 of Part 1 (*General Provisions*), HPTE shall pay to the Concessionaire the Third-Party Costs incurred by the Concessionaire in preparing such Concessionaire Response provided that:
- (a) Such sums shall not exceed any agreed Third Party Costs;
  - (b) The Concessionaire included in the Concessionaire Response a cost breakdown of the estimate of Third Party costs to be incurred by the Concessionaire in preparing the Concessionaire Response and HPTE has;
  - (c) Acting reasonably approved such estimate of Third-Party Costs and the type of third-party prior to any Third-Party Costs being incurred; and
  - (d) Acting reasonably agreed that, given the nature of the proposed Medium Value Change, it was reasonable for the relevant third-party to incur costs in preparing the Concessionaire Response on the basis of the extent of the proposed Medium Value Change and the work required in submitting an accurate Concessionaire Response in compliance with this Change Procedure;
  - (e) Been provided with such evidence as it may reasonably require in order to verify such Third-Party Costs; and
  - (f) Confirmed that no cap or fixed fee given by the Concessionaire (whether in the Concessionaire Response or otherwise) in respect of any Third-Party Cost has been exceeded.
- 2.8 HPTE shall not be responsible for payment of any costs incurred by the Concessionaire in preparing the Concessionaire Response where HPTE has rejected the Concessionaire Response on the grounds of non-compliance in any material respects with the requirements of this Protocol.
- 2.9 Where:
- (a) The Concessionaire has either:
    - (i) Failed to provide a Contract Response in accordance with paragraph 2 within the time period specified in the HPTE Change Notice or such other time period as agreed between the parties; or
    - (ii) Provided a Concessionaire Response in accordance with paragraph 2 but has failed to fully implement the Medium Value Change within ten (10) Business Days of the date set out in the Change Order referred to in paragraph 2.6(a) as being the date by which the Medium Value Change should have been implemented; or
    - (iii) It is determined pursuant to paragraph 2.4 that the Concessionaire has failed to submit a fair and reasonable Concessionaire Response

then HPTE may notify the Concessionaire that the HPTE Change Notice is withdrawn and following such notification, may procure the implementation of the Medium Value Change without further recourse to the Concessionaire and the provisions of paragraph 8 (implementation of a Change by HPTE) of Part 1 (General Provisions) shall apply.



**3. DUE DILIGENCE**

The provisions of paragraph 6 (*Due Diligence*) of Part 1 (*General Provisions*) of this Change Procedure shall apply.

**4. IMPLEMENTATION**

4.1 The provisions of paragraph 7 of Part 1 (*General Provisions*) of this Change Procedure shall apply.

4.2 Where the Medium Value Change:

(a) Is implemented at a the Managed Lanes, the US 36 General Purpose Lanes or any Asset and constitutes works, the procedure set out and agreed in the Concessionaire Response for certifying the completion of the Medium Value Change shall apply to determine whether the Medium Value Change has been completed appropriately.

(b) Constitutes additional or varied Services, the processes set out in the Schedule 10 (Noncompliance Points) as adjusted in accordance with this Schedule 21 shall apply to determine whether the Medium Value Change has been properly implemented.

**5. PAYMENT**

The provisions of paragraph 9 of Part 1 (*General Provisions*) of this Change Procedure shall apply.

**SCHEDULE 21**

**Change Procedure**

**Part 4**

**High Value Changes**

**1. NOTIFICATION AND SPECIFICATION**

- 1.1 HPTE and the Concessionaire shall co-operate and collaborate to ensure that each party has early notification of the prospect of a High Value Change. Without prejudice to paragraph 1.2 of this Part 4 of this Change Procedure, HPTE shall involve the Concessionaire as early as is practicable in the specification of the High Value Change to ensure that the developed specifications reflect input from the Concessionaire and/or the relevant Concessionaire Parties.
- 1.2 HPTE may, at any time, issue an HPTE Change Notice which shall state:
- (a) That it is a High Value Change and whether it is required as a result of a Change in Law; or
  - (b) That the High Value Change shall be valued either:
    - (i) By means of the Competitive Tendering Process; or
    - (ii) By means of the Benchmarking Process and whether input should be obtained from a reputable source or the Comparable Market; or
    - (iii) By means of valuation by an Independent Technical Adviser (with the agreement of the Concessionaire)
  - (c) If applicable, affordability thresholds for the proposed works or services comprising the relevant High Value Change;
  - (d) If applicable, a specification of any proposed works, in the same format and with similar detail as that provided in the Phase 2 Work Requirements wherever possible, and where not possible, in sufficient detail to allow the design and pricing of a solution to the High Value Change;
  - (e) If applicable, a specification of the proposed services (or any change to the Services), in the same format with similar detail as that provided in the Service Requirements wherever possible and, where not possible, in sufficient detail to allow the pricing of the required works and/or additional services (or change to a Service);
  - (f) The location for the works or services required;
  - (g) The timing of the works or services required;
  - (h) Whether the Concessionaire is expected to provide maintenance and/or lifecycle services in respect of any additional works;
  - (i) An outline risk allocation matrix setting out HPTE's preferred risk profile in respect of the High Value Change;
  - (j) A time period for submission of the Concessionaire Stage 1 Response which shall be reasonable, taking into account the complexity of the High Value Change and, in any event, shall not be less than sixty (60) Business Days from the date of the HPTE Initial Confirmation;

- (k) In the event that the HPTE Change will require Capital Expenditure, whether HPTE intends to pay the Capital Expenditure involved in implementing the Change and its proposals for payment (whether in stages or otherwise) or whether HPTE requires the Concessionaire to use its reasonable efforts to obtain funding in accordance with paragraph 5 (Funding) of Part 1 (General Provisions) of this Change Procedure; and
- (l) The Approval Criteria.

2. **CONCESSIONAIRE INITIAL RESPONSE**

2.1 Subject to paragraph 2 (*Limits on Changes*) of Part 1 (*General Provisions*) within ten (10) (Business Days of receipt of the HPTE Change Notice (or such longer period as reasonably set out by HPTE in the HPTE Change Notice in consultation with the Concessionaire and taking into account the characteristics of the HPTE Change and/or any modification to the HPTE Change, the Concessionaire shall provide HPTE with a Concessionaire Initial Response which shall comprise:

- (a) An indication of the Estimated Change in Costs that will result from the implementation of the HPTE Change
- (b) The Third Party Costs that will be incurred with respect to the activities referred to in paragraph 2.1(c) of Part 4 (*High Value Changes*) below) as a firm or capped sum;
- (c) The details of the third-party activity that will be incurred in providing (and discussing with HPTE) the Concessionaire Stage 1 Response;
- (d) Where applicable pursuant to paragraph 6 (*Due Diligence* (of Part 1) (*General Provisions*), (the anticipated cost of the insurers carrying out due diligence) (which shall be capped or a firm sum); and
- (e) The Project Management Fee which shall be a capped sum, calculated in accordance with paragraph 2.5 that will be incurred in providing (and discussing with HPTE) the Concessionaire Stage 1 Response.

2.2 The time period for the initial Response shall be extended by 10 days if Concessionaire requests the same because Senior Lender or the TIFIA Lender due diligence is required.

2.3 HPTE shall consider in good faith the Concessionaire Initial Response. If HPTE finds that any material aspects of the Concessionaire Initial Response are unsatisfactory, it shall notify the Concessionaire of the same, giving reasons, and offer reasonable assistance to the Concessionaire to enable it to address such deficiencies and resubmit the Concessionaire Initial Response as soon as reasonably practicable.

2.4 HPTE shall, within ten (10) Business Days of receipt of the Concessionaire Initial Response (as may be amended pursuant to paragraph 2.3), confirm in writing (an HPTE Initial Confirmation) to the Concessionaire that either:

- (a) The Concessionaire should proceed with developing a Concessionaire Stage 1 Response and HPTE shall confirm in the HPTE Initial Confirmation:
  - (i) The agreed Project Management Fee in relation to the development of the Concessionaire Stage 1 Response and a reasonable period within which to discuss the same with HPTE pursuant to paragraph 3.1;
  - (ii) The agreed Third Party Costs in relation to the development of the Concessionaire Stage 1 Response; and
  - (iii) The agreed date by which the Contractor Stage 1 Response shall be submitted which date shall reflect the complexity of the High Value

Change and, where not agreed by the parties (each acting reasonably) shall be not more than sixty (60) Business Days from the date of the HPTE Initial Confirmation;

(b) Or that HPTE withdraws the HPTE Change Notice.

2.5 The Concessionaire may charge a Project Management Fee for the time incurred by its employees (or relevant Subcontractor) in project managing the development, procurement and implementation of the High Value Change. The Project Management Fee shall:

- (a) Be based on actual time spent (validated by timesheet records);
- (b) Be calculated at fair and reasonable market daily rates but capped in total at \$10,000 (Indexed) in relation to the Initial Response and the sum set out in the Concessionaire HPTE Stage 1 or Stage 2 Confirmation as applicable to those stages;
- (c) Not include the time of any person who is not an employee of the Concessionaire or relevant Sub-Contractor;
- (d) Not include any mark-up or profit cost or additional overheads; or
- (e) Be paid in two stages as follows:
  - (i) On HPTE issuing an HPTE Stage 1 Confirmation pursuant to paragraph 3.2; and
  - (ii) On HPTE issuing an HPTE Stage 2 Confirmation pursuant to paragraph 6.1 (a) or withdrawing the High Value Change pursuant to paragraph 6.1(b).

and at each stage, the Concessionaire shall charge (subject to the applicable cap) only for the time incurred by its staff up to completion of that stage.

2.6 Subject to paragraph 2 of Part 1 (*Limits on Changes*) of this Change Procedure, within the period specified in the HPTE Change Notice (or if no time is specified within thirty (30) Business Days) the Concessionaire shall submit a report (a Concessionaire Stage 1 Response), which shall (where applicable) include, but not be limited to, the following information which shall contain sufficient detail to enable HPTE to make an informed decision pursuant to paragraph 3 and shall take account of HPTE's affordability thresholds set out in the HPTE Change Notice:

- (a) An outline program for implementation of the Change including time periods for design development, HPTE review of the design, anticipated dates of any applications for Necessary Consents (including planning applications) and time periods for the provision and training of staff;
- (b) A broad indication of the impact of carrying out and implementing of the High Value Change on the provision of the Services and in particular whether relief from compliance with any obligations set out in this Contract is likely to be required, including the obligations of the Concessionaire to meet the performance regime and any fixed dates during the Service Period during the implementation of the High Value Change;
- (c) An outline of the Estimated Change in Costs that will result from implementing the High Value Change, taking into account any Capital Expenditure that is required or no longer required as a result of the High Value Change;
- (d) Any Capital Expenditure that is required or no longer required as a result of the High Value Change and where HPTE has specified in the HPTE Change Notice

that the Concessionaire shall use its reasonable endeavors to raise financing for the HPTE Change, the steps the Concessionaire has or will take to secure such financing;

- (e) An estimate of any loss of, or increase in, third-party revenues that may result from the High Value Change;
- (f) The proposed Project Management Fee to develop a Concessionaire Stage 2 Response which shall be a capped fee<sup>6</sup> calculated in accordance with paragraph 2.5 of this Part 4 of this Change Procedure;
- (g) A budget (or budgets) together with a capped or fixed fee for Third-Party Costs and details of the third-party activity likely to be incurred by the Concessionaire, such as, third-party advice, the carrying out of surveys, obtaining Necessary Consents, the Senior Lender or the TIFIA Lender carrying out due diligence and independent certification that may be required to be completed prior to agreement of the High Value Change in relation to the development of a Concessionaire Stage 2 Response together with a proposed process for approval of such costs by HPTE before they are incurred;
- (h) A summary of any amendments required to this Contract or any Ancillary Document or the Financing Agreements as a result of the Change;
- (i) A value for money assessment explaining why the Concessionaire's proposals represent value for money taking into account both the proposed Capital Expenditure and Whole Life Cost; and
- (j) An estimate of the time period required by the Concessionaire to develop a Concessionaire Stage 2 Response for the High Value Change should HPTE notify the Concessionaire pursuant to paragraph 3.2(a) of its requirements for a Concessionaire Stage 2 Response.

2.7 In preparing the outline Estimated Change in Costs, including the calculation of any Capital Expenditure, the Concessionaire shall, as specified by HPTE in the HPTE Change Notice) either comply with the:

- (a) Provisions of paragraph 7 of this Part 4 of this Change Procedure if the Competitive Tendering Process is to apply;
- (b) Provisions of paragraph 8 of this Part 4 of this Change Procedure if the Benchmarking Process is to apply; or
- (c) Provisions of paragraph 9 of this Part 4 of this Change Procedure if an Independent Technical Advisor has been or will be appointed with the agreement of the Concessionaire.

2.8 The Concessionaire shall ensure that the performance risk involved in implementing the High Value Change and any interface risks involved in linking new facilities or services with the Managed Lanes, the US 36 General Purpose Lanes or any Asset and/or the Services are reflected (depending on the risk profile of the High Value Change in the Estimated Change in Costs and not priced separately over and above the Estimated Change in Costs. The Concessionaire shall not include any separate charge or fee payable to the Concessionaire or any sub-contractor of the Concessionaire in the costs included in the Estimated Change in Costs.

---

<sup>6</sup> The HPTE may agree to a fixed fee, and if so it should be fixed in stages. Note the provisions of Section 2.2.

- (a) In developing a Concessionaire Stage 1 Response the Concessionaire shall liaise with HPTE and relevant end users (being such persons or organizations as the Concessionaire in consultation with HPTE considers appropriate). HPTE shall provide to the Concessionaire such information as to its requirements as the Concessionaire may reasonably require and shall assist the Concessionaire in the review of any draft designs in relation to the Concessionaire Stage 1 Response. Any and all information and other input or feedback provided by HPTE to the Concessionaire shall, unless expressly stated otherwise by HPTE, be provided without warranty and shall be without prejudice to HPTE's rights under this Change Procedure.

**3. HPTE STAGE 1 CONFIRMATION**

- 3.1 HPTE shall consider in good faith, the Concessionaire Stage 1 Response. If HPTE finds that any material aspects of the Concessionaire Stage 1 Response are unsatisfactory to it, it shall notify the Concessionaire of the same and offer reasonable assistance to the Concessionaire to enable it to address such deficiencies and resubmit the Concessionaire Stage 1 Response as soon as reasonably practicable.

- 3.2 HPTE shall, within thirty (30) Business Days (or such longer period as the parties may agree) of receipt of the Concessionaire Stage 1 Response (as may be amended pursuant to paragraph 3.1 of this Part 4 of this Change Procedure), confirm in writing to the Concessionaire that either:

- (a) The Concessionaire should proceed with developing a Concessionaire Stage 2 Response by a date fixed by reference to the time the Concessionaire has estimated in the Stage 1 response (an HPTE Stage 1 Confirmation); or
- (b) HPTE withdraws the HPTE Change Notice,

and in the event HPTE does not give such written confirmation within the specific time period then the HPTE Change Notice shall be deemed withdrawn and paragraph 4.4 shall apply.

- 3.3 HPTE shall pay the Concessionaire the Project Management Fee and the Third Party Costs set out in the HPTE Initial Confirmation and due at Stage 1 within twenty (20) Business Days of receipt of an invoice for the agreed sum submitted by the Concessionaire.

**4. CONCESSIONAIRE STAGE 2 RESPONSE**

- 4.1 Within the time period specified in the HPTE Stage 1 Confirmation (or if no time is specified within sixty (60) Business Days of receipt of the HPTE Stage 1 Confirmation), the Concessionaire shall submit a report (a Concessionaire Stage 2 Response) which shall where applicable, include but not be limited to the following information:

- (a) (Where applicable) a detailed design solution;
- (b) The proposed consultants, sub-contractors and suppliers which the Concessionaire intends to appoint to process the High Value Change;
- (c) Details of any Necessary Consents required in order to implement the High Value Change;
- (d) Details of any impact (stoppage or changes) on the provision of the Services and in particular whether (and what) relief from compliance with obligations set out in this Contract is required, including the obligations to meet the performance regime during the implementation of the High Value Change and the duration of such relief;

## EXECUTION VERSION

- (e) The proposed method of certification of any construction or operational aspects of the High Value Change if not covered by the procedures in this Contract;
- (f) A detailed timetable for implementation of the High Value Change and/or an HPTE Change; the timetable should identify the different phases of the detailed design development, and indicate which of the deliverables will be issued in which phase, and the points at which the Concessionaire will require the HPTE to issue any further confirmations to proceed, to trigger the activities necessary to deliver the next phase of the implementation program;
- (g) Any surveys and investigations and associated reports that are reasonably necessary to ascertain (in relation to a High Value Change which involves the construction of additional buildings) information as to the nature, location and condition of the relevant land (including hydrological, geological, geotechnical and sub-surface conditions) together with information relating to archaeological finds, areas of archaeological, scientific or natural interest and (in relation to the refurbishment of any existing buildings) information on the condition and quality of existing structures and, in particular, the presence of any latent defects;
- (h) A completed risk register showing the potential risks identified in relation to the delivery of the High Value Change the occurrence of which are capable of adversely affecting the time for completion, cost and/or quality of the Project, the probability of such risks occurring and a financial estimate of the most likely consequences of each risk occurring together with the prioritization of all continuing risks and an action plan in respect of, and risk owners for, all risks prioritized as serious risks;
- (i) Any approval required from the insurers and/or the Senior Lenders and/or the TIFIA Lender together with details of the fixed or capped sum for the due diligence costs incurred or to be incurred in obtaining the same;
- (j) Details of any Third-Party Costs incurred in preparing the Concessionaire Stage 2 Response and/or to be incurred in implementing the High Value Change together with details of HPTE approvals given to sums already expended and confirmation that costs to be incurred are included in the Change in Costs;
- (k) A draft amendment agreement setting out any amendment(s) required to this Contract and/or any other Project Document required as a result of the High Value Change;
- (l) The amount of any loss of or increase in third-party revenues that may result from the High Value Change;
- (m) If requested by HPTE, details of any funding which the Concessionaire has been able to obtain by use of its reasonable endeavors and the amount of or adjustments required to a Revenue Compensation Payment together with a proposed revised financial model including the detailed price estimates;
- (n) A final Change in Costs that result from the High Value Change taking into account any Capital Expenditure that is required or no longer required as a result of the High Value Change, all reasonable Third-Party Costs incurred or likely to be incurred by the Concessionaire and any increase or decrease in operating costs and any loss of or increase in third-party revenue that results from the High Value Change;
- (o) Evidence that the Concessionaire has used reasonable endeavors (including, where practicable and without prejudice to the provisions of paragraph 7.4 of this Part 4 of this Change Procedure, the use of competitive quotes) to oblige sub-contractors and suppliers to minimize any increase in costs and maximize any reduction in costs;

## EXECUTION VERSION

- (p) A demonstration of how any Capital Expenditure to be incurred or avoided is being measured in a cost effective manner, including showing that when such expenditure is incurred, foreseeable Changes in Law at that time would be taken into account by the Concessionaire;
- (q) A demonstration that any expenditure that has been avoided, which was anticipated to be incurred that has been affected by the High Value Change, has been taken into account in the Capital Expenditure and/or Estimated Change in Costs;
- (r) A value for money assessment explaining why the Concessionaire's proposals represent value for money taking into account both the proposed Capital Expenditure and Whole Life Cost; and
- (s) An explanation (together with appropriate supporting evidence) as to why the Concessionaire Stage 2 Response meets the Approval Criteria.

The Concessionaire shall also include in the Concessionaire Stage 2 Response the following information:

- (a) If HPTE specified in the HPTE Change Notice that paragraph 7 of this Part 4 of this Change Procedure will apply, the Tendering Report;
- (b) If HPTE specified in the HPTE Change Notice that paragraph 8 of this Part 4 of this Change Procedure will apply, a Benchmarking Report demonstrating that the unit rates for construction, lifecycle and maintenance services used to calculate the Change in Costs fall within reasonable ranges compared to industry benchmarks obtained from a reputable, independent source, or
- (c) If HPTE and Concessionaire agreed that paragraph 9 will apply, the Reference Price with details of how the Reference Price was used to calculate the Change in Costs and any comments made by the Independent Technical Adviser on the Change in Costs.

4.2 In developing a Concessionaire Stage 2 Response, the Concessionaire shall continue to liaise with HPTE and relevant stakeholders (being such persons or organizations as HPTE in consultation with the Concessionaire considers appropriate).

4.3 Without prejudice to paragraph 4.2 of this Part 4 of this Change Procedure, HPTE shall co-operate with the Concessionaire in relation to any Concessionaire Stage 2 Response being developed by the Concessionaire, including (without limitation) promptly providing:

- (a) Written confirmation of any change to the affordability thresholds and any amendment to HPTE's requirements both as set out in the HPTE Change Notice;
- (b) Changes to funding which HPTE receives or to the way in which funding may be applied, either or both of which may affect whether a High Value Change is affordable;
- (c) Any information reasonably required by the Concessionaire to enable the Concessionaire to submit a full and complete Concessionaire Stage 2 Response and any such other information as the Concessionaire may reasonably require and shall assist the Concessionaire in the review of any draft designs and in the development of other aspects of the Concessionaire Stage 2 Response (but not where this would involve HPTE incurring additional material expense); and
- (d) Reasonable assistance to the Concessionaire in relation to procurement by the Concessionaire of all relevant Necessary Consents;



provided that any and all information and other input or feedback provided by HPTE to the Concessionaire shall be provided without warranty and shall be without prejudice to HPTE's rights under this Change Procedure.

- 4.4 The Concessionaire shall notify HPTE as soon reasonably practicable after it becomes aware of any matter which may have a reasonably foreseeable material adverse effect on the viability of any High Value Change including any planning issues likely to cause a material delay in the anticipated program for the High Value Change or material cost increases.

**5. AGREEMENT OF CONCESSIONAIRE STAGE 2 RESPONSE**

- 5.1 As soon as practicable and in any event not more than twenty (20) Business Days after HPTE receives the Concessionaire Stage 2 Response, the parties shall discuss and endeavor to agree the issues set out in the Concessionaire Stage 2 Response. HPTE may require (and the Concessionaire shall provide) further information it reasonably requires to enable HPTE to evaluate the Concessionaire Stage 2 Response and, in particular, decide whether the Concessionaire Stage 2 Response meets the Approval Criteria. In particular, the Concessionaire shall:

- (a) Provide *prima facie* evidence that the Concessionaire has used reasonable endeavors (including, where practicable (and without prejudice to the provisions of paragraph 5.4 of this Part 4 of this Change Procedure), the use of competitive quotes) to oblige sub-contractors and suppliers to minimize any increase in costs and maximize any reduction in costs;
- (b) Demonstrate how any Capital Expenditure to be incurred or avoided is being measured in a cost effective manner, including showing that when such expenditure is incurred, foreseeable Changes in Law at that time would be taken into account by the Concessionaire; and
- (c) Demonstrate that any expenditure which would have been incurred if the High Value Change had not been required but which will not be incurred because of the High Value Change, has been taken into account in the Change in Costs,

and the Concessionaire shall reply promptly and fully to all requests by HPTE for further information.

- 5.2 HPTE may modify the HPTE Change Notice (which modification shall be in writing). The Concessionaire shall, as soon as practicable and in any event not more than ten (10) Business Days or such other period as the parties may agree after receipt of such modification, notify HPTE that:

- (a) Either any such modification is sufficiently material as to amount to a new HPTE Change Notice (and demonstrate why this is the case) or otherwise
- (b) Of any consequential changes to the Concessionaire Stage 2 Response (which shall be deemed accordingly amended).

- 5.3 If acting reasonably, HPTE is of the view that any material aspect of the Stage 2 Response fails to meet the Approval Criteria and/or otherwise fails to satisfy any material requirement of this Change Procedure HPTE shall notify the Concessionaire of the same and shall specify in writing and explain to the Concessionaire in what respects the Concessionaire Stage 2 Response does not meet the Approval Criteria and/or fails to comply with any material requirement of this Change Procedure. The Concessionaire shall, within twenty (20) Business Days (or such other period as is agreed by the parties) of such notification, revise and re-submit the Concessionaire Stage 2 Response.

- 5.4 If the revised Concessionaire Stage 2 Response does not address the shortcomings notified by HPTE pursuant to paragraph 5.3 and HPTE is of the view, acting reasonably,

that revised Concessionaire Stage 2 Response does not satisfy the Approval Criteria or any other material requirement of this Change Procedure, then paragraph 6.1(c) of this Part 4 of this Change Procedure shall apply.

- 5.5 If the parties cannot agree on the contents of the Concessionaire Stage 2 Response, then either party may refer the dispute to the Dispute Resolution Procedure, provided that no determination shall oblige HPTE to issue a Stage 2 Confirmation in respect of the disputed High Value Change.

**6. HPTE STAGE 2 CONFIRMATION**

- 6.1 As soon as reasonably practicable after the receipt of the Concessionaire Stage 2 Response or the revised Concessionaire Stage 2 Response (as the case may be) HPTE shall either:

- (a) Issue written confirmation (an HPTE Stage 2 Confirmation) and shall pay the Concessionaire the Project Management Fee due at Stage 2 within twenty (20) Business Days of the date of issue of HPTE Stage 2 Confirmation or, if later, receipt of a valid invoice for the agreed amount; or
- (b) Issue a written notice withdrawing the HPTE Change Notice in which case provisions of paragraph 6.3 of this Part 4 of this Change Procedure shall apply; or
- (c) Issue a written notice rejecting the Concessionaire Stage 2 Response in which case HPTE shall not be responsible for any costs incurred by the Concessionaire in preparing the Concessionaire Stage 2 Response (including any outstanding part of the Project Management Fee or any due diligence costs incurred by the Senior Lender or the TIFIA Lender). Provided that HPTE may only reject the Concessionaire Stage 2 Response on the grounds that the Concessionaire Stage 2 Response has materially failed to meet one or more of the Approval Criteria or the Concessionaire has failed to comply with any material requirement of this Change Procedure.

- 6.2 If HPTE does not issue a written notice pursuant to paragraph 6.1 of this Part 4 of this Change Procedure within twenty (20) Business Days of receipt of a written notice served by the Concessionaire (which notice may only be served after expiry of a period of three (3) Months from the date HPTE receives the Concessionaire Stage 2 Response) requiring HPTE either to confirm the Concessionaire Stage 2 Response or withdraw the HPTE Change Notice then the HPTE Change Notice shall be deemed to have been withdrawn.

- 6.3 Where an HPTE Change Notice is withdrawn pursuant to paragraph 6.1(b) of this Part 4 of this Change Procedure or deemed to have been withdrawn pursuant to paragraph 7.1 of this Part 4 of this Change Procedure, HPTE shall pay to the Concessionaire within twenty (20) Business Days of receipt of an invoice for such amount, the reasonable Third-Party Costs (which shall not be greater than that proposed in the Stage One Response including any costs incurred by the Senior Lender or the TIFIA Lender in carrying out due diligence) incurred by the Concessionaire in preparing the Concessionaire Stage 2 Response together with the outstanding balance of the Project Management Fee provided that:

- (a) The Concessionaire has satisfied the Approval Criteria and other requirements of this Change Procedure in all material respects;
- (b) The Concessionaire has included in the Concessionaire Stage 1 Response a cost breakdown of the estimate of third-party costs to be incurred by the Concessionaire in preparing the Concessionaire Stage 2 Response and HPTE has (acting reasonably);
- (c) HPTE approved such estimate of third-party costs and the type of third-party prior to any Third-Party Costs being incurred;

- (d) HPTE agreed that, given the nature of the proposed High Value Change it was reasonable for the relevant third-party to incur costs in preparing the Concessionaire Stage 2 Response on the basis of the extent of the proposed High Value Change and the work required in submitting an accurate Concessionaire Stage 2 Response in compliance with this Change Procedure;
- (e) HPTE has been provided with such evidence as it may reasonably require in order to verify such Third-Party Costs; and
- (f) No cap or fixed fee agreed with the Concessionaire (whether in the Concessionaire Stage 1 Response or otherwise) in respect of any Third-Party Costs has been exceeded.

6.4 Where the HPTE Change is either withdrawn or rejected, HPTE shall be entitled to procure the High Value Change outside the terms of the this Contract to the extent permitted by paragraph 8 (Implementation of a Change by HPTE) of Part 1 (General Provisions) shall apply.

## **7. COMPETITIVE TENDERING**

7.1 Where this paragraph 7 applies, the Concessionaire shall, in preparing the Concessionaire Stage 2 Response, as far as practicable structure the works and/or services required by the High Value Change into a number of discrete work packages (which may include the procurement of items of equipment only or be labor only package of works), and shall invite at least three (3) competitive tenders for each work package. Where legally required, the Competitive Tendering process shall be conducted in accordance with Good Industry Practice.

7.2 The Concessionaire and HPTE shall agree:

- (a) The work packages to be priced through competitive tendering based on what is judged to provide best value for money;
- (b) The procurement process;
- (c) The evaluation criteria;
- (d) Any additional interface risks between the carrying out of any additional works and/or services by a third party, and the Managed Lanes, the US 36 General Purpose Lanes or any Asset and/or carrying out of the Phase 2 Work and/or the delivery of the Services; and
- (e) That the preferred tenderer shall be selected on the basis of the most economically advantageous tender.

7.3 The Concessionaire shall be responsible for:

- (a) Running the competition for the work packages;
- (b) Evaluating and selecting the preferred tenderers;
- (c) Negotiating and finalizing appointment of the preferred tenderers; and
- (d) Managing the implementation of the works and services required as part of the High Value Change

provided that HPTE shall approve the preferred tenderer(s) acting reasonably within twenty (20) Business Days following the conclusion of the tendering process either appoint or object to the preferred tenderer(s) but no sub-contractor shall be appointed, until or unless, an HPTE Stage 2 Confirmation is issued.

- 7.4 On conclusion of the tendering process, the Concessionaire shall submit with the Concessionaire Stage 2 Response a Tendering Report and the Change in Costs shall be based on the prices determined through the tendering process.
- 7.5 The Tendering Report shall include, but not be limited to, the following information.
- (a) Details of the companies which were asked to tender for each work package, indicating whether a compliant bid was in fact submitted;
  - (b) The basis upon which each company was invited to tender including their appropriate experience and expertise;
  - (c) How details of how the evaluation process was carried out including the scoring for each tenderer;
  - (d) The basis of the recommendation of the successful tenderer for each work package;
  - (e) Confirmation that the tendered price is a fixed price which includes all costs, overheads, risks and contingencies and will not be liable to change or adjustment; and
  - (f) Any other relevant information.

**8. BENCHMARKING PROCESS**

- 8.1 Where this paragraph 8 applies, the Concessionaire shall benchmark all construction, facilities management and lifecycle costs (including professional fees, contingencies, overheads and profit margins) using benchmarks available from a reputable independent source that are generally recognized in the industry.
- 8.2 The Concessionaire shall submit with the Concessionaire Stage 2 Response a detailed Benchmarking Report which shall set out details of how the benchmarking exercise was carried out and providing evidence that the construction costs, operating costs and financing costs included in the Change in Costs has supported by actual input from a reputable independent source and the Comparable Market as specified in the HPTE Change Notice. In particular the Benchmarking Report shall include full supporting evidence of the assumptions, source of market price and information's and conclusions reached including:
- (a) The methodology and all assumptions by which the Estimated Change in Costs was determined;
  - (b) Assumptions made in respect of the Comparable Market
  - (c) Full details of sources of the information used including evidence as to reputation and independence of such sources;
  - (d) Such other details as the parties may agree.

**9. INDEPENDENT TECHNICAL ADVISER**

**Joint Appointment of Independent Technical Adviser**

- 9.1 Where this paragraph 9 applies, upon issue of an HPTE Change Notice or the parties agreeing that an HPTE Change Notice will shortly be issued in respect of a High Value Change, HPTE and the Concessionaire shall jointly appoint an Independent Technical Adviser to assist in the processing of the High Value Change. The terms of reference for the Independent Technical Adviser shall include:
- (a) Developing a Reference Price; and

- (b) Commenting on the Estimated Change in Costs and the Change in Costs.
- 9.2 Upon appointment of the Independent Technical Adviser (or if later, upon service of HPTE Change Notice pursuant to paragraph 1.2), HPTE and the Concessionaire shall instruct the Independent Technical Adviser to develop a Reference Price.
- 9.3 The Independent Technical Adviser shall develop a Reference Price in consultation with the Concessionaire and HPTE. The Reference Price shall include (as applicable) all finance, design development, construction, lifecycle, maintenance and operating costs and savings (including professional fees and charges, overheads, profits and contingencies and explicitly including the pricing for any performance risks associated with implementing the change based on the outline risk allocation matrix included in the HPTE Change Notice). The parties agree that the Reference Price shall include the pricing of performance risk and that no separate Concessionaire mark-up should be included in the Estimated Change in Project Cost or the Change in Costs.
- 9.4 The Independent Technical Adviser shall provide to the Concessionaire and HPTE the Reference Price. The Concessionaire shall use the Reference Price to produce the Estimated Change in Costs and, subsequently, the Change in Costs. The Independent Technical Adviser shall comment on the Estimated Change in Costs and the Change in Costs within the time periods to be agreed by the Concessionaire and HPTE and specified in the appointment of the Independent Technical Adviser.
- 9.5 HPTE shall be responsible for the payment of all fees payable to the Independent Technical Adviser. For the avoidance of doubt, any costs incurred by the Concessionaire pursuant to this paragraph 9 shall form part of the Project Management Fee or Third Party Costs and no additional sums shall be paid to the Concessionaire.
10. **FUNDING**
- The provisions of paragraph 5 (Funding) of Part 1 (General Provisions) of this Change Procedure shall apply.
11. **DUE DILIGENCE**
- The provisions of paragraph 6 (Due Diligence) of Part 1 (General Provisions) of this Change Procedure shall apply.
12. **IMPLEMENTATION**
- The provisions of paragraph 7 (Implementation) of Part 1 (General Provisions) of this Change Procedure shall apply.
13. **PAYMENT**
- The provisions of paragraph 9 (Payment) of Part 1 (General Provisions) of this Change Procedure shall apply.

**SCHEDULE 21**

**Change Procedure**

**Part 5**

**Concessionaire Change**

1. If the Concessionaire wishes to introduce a Concessionaire Change, it shall serve a Concessionaire Change Notice on HPTE.
2. The Concessionaire Change Notice shall:
  - (a) Set out the proposed Concessionaire Change in sufficient detail to enable HPTE to evaluate it in full;
  - (b) Specify whether the Concessionaire Change is:
    - (i) A Low Value Change;
    - (ii) A Medium Value Change;
    - (iii) A High Value Change; and/or
    - (iv) Is required as a result of a Change in Law;
  - (c) Specify the Concessionaire's reasons for proposing the Concessionaire Change;
  - (d) Indicate any implications of the Concessionaire Change;
  - (e) Indicate what savings, if any, will be generated by the Concessionaire Change and whether such savings will be paid by a lump sum or by regular payments of a revenue nature;
  - (f) If the Concessionaire Change is required as a result of a Qualifying Change in Law, what sums, if any, will be payable by HPTE;
  - (g) Indicate if there are any critical dates by which a decision by HPTE is required;
  - (h) Confirm all necessary consents have been obtained (or indicate the process for obtaining such consents) from the funders and the insurance brokers, to the extent required; and
  - (i) Request HPTE to consult with the Concessionaire with a view to deciding whether to agree to the Concessionaire Change and, if so, what consequential changes HPTE requires as a result.
3. HPTE shall evaluate the Concessionaire Change Notice in good faith, taking into account all relevant issues, including whether:
  - (a) One or more payments will be made by the Concessionaire;
  - (b) The Concessionaire Change may affect the quality of the Services and/or the Phase 2 Work or the likelihood of successful completion of the Phase 2 Work and/or delivery of the Services (or any of them);
  - (c) The Concessionaire Change may interfere with the relationship of HPTE with third parties;
  - (d) The financial strength of the Concessionaire is sufficient to perform the Services after implementation of the Concessionaire Change;

## EXECUTION VERSION

- (e) The value and/or life expectancy of any part of the Managed Lanes, the US 36 General Purpose Lanes or any Asset is reduced; or
  - (f) The Concessionaire Change materially affects the risks or costs to which HPTE is exposed.
4. If the Concessionaire Change causes, or will cause, the Concessionaire's costs or those of a sub-contractor to decrease, there shall be a regular payment made by the Concessionaire to HPTE such that any cost savings (following deduction of costs reasonably incurred by the Concessionaire in implementing such Concessionaire Change) shall be shared on the basis of fifty per cent (50%) of the saving being retained by the Concessionaire and fifty per cent (50%) of the saving accruing for the benefit of HPTE.
  5. As soon as practicable after receiving the Concessionaire Change Notice, the parties shall meet and discuss the matters referred to in it. During discussions HPTE may propose modifications to, or accept or reject, the Concessionaire Change Notice at its absolute discretion except in relation to Changes in Law.
  6. If HPTE accepts the Concessionaire Change Notice (with or without modification) the parties shall consult and agree the remaining details as soon as practicable and upon agreement of the Concessionaire Change, HPTE shall issue an HPTE Confirmation which shall set out the agreed Concessionaire Change and:
    - (a) The parties shall enter into any documents to amend this Contract or any relevant Ancillary Document which are necessary to give effect to the Concessionaire Change;
    - (b) If applicable, the provisions of Part 2 of Schedule 11 (Base Case Financial Model) shall be operated; and
    - (c) The Concessionaire Change shall be implemented within the period specified by HPTE in its notice of acceptance.
  7. If HPTE rejects the Concessionaire Change Notice, it shall not be obliged to give its reasons for such a rejection and the Concessionaire shall not be entitled to reimbursement by HPTE of any of its costs.
  8. Unless the HPTE Confirmation expressly agrees to make or adjust a Revenue Compensation Payment, there shall be no Revenue Compensation Payment (or no increase to an existing Revenue Compensation Payment) as a result of a Concessionaire Change and, subject to Section 44 (Change in Law), any funding shall be provided by the Concessionaire.
  9. HPTE shall not reject a Concessionaire Change which is required in order to conform to a Change in Law. The costs of introducing a Concessionaire Change resulting from a Qualifying Change in Law (including any resulting Revenue Compensation Payment) shall be dealt with in accordance with Section 44 (Change in Law) and to the extent not dealt with therein, all costs shall be borne by the Concessionaire.

## SCHEDULE 21

## Change Procedure

## Part 6

## Construction Changes

This Part 6 sets out the requirements for obtaining all Change Orders under for Construction Changes and applies only to Construction Changes.

**1. Circumstances Under Which Change Orders may be Issued**

1.1 The term "Change Order" shall also include any Utility Work Order that has been completed by HPTE to also function as a Change Order, as described in Schedule 22, Part 1. Except for Utility Work Orders functioning as Change Orders, Change Orders may be requested by the Concessionaire only pursuant to paragraph 3.

1.2 Change Orders may be issued for the following purposes (or combination thereof):

- (a) To modify the Phase 2 Work.
- (b) To revise the Planned Full Services Commencement Date and/or the Full Services Commencement Longstop Date.
- (c) To provide for Changes in Costs arising out of Relevant Events by the payment by HPTE of Capital Expenditure, or of a Revenue Compensation Payment or by an obligation on the Concessionaire to make a payment to HPTE.
- (d) To revise other terms and conditions of the Contract to the extent necessary as a consequence of modification of the Phase 2 Work.

1.3 Once the terms of a Change Order have been agreed or determined HPTE will execute the Change Order and it will come into effect in accordance with its terms. A Change Order may, at the sole discretion of HPTE, direct the Concessionaire to proceed with the Phase 2 Work with the amount of any adjustment of the Planned Full Services Commencement Date and/or the Full Services Commencement Longstop Date or of any financial adjustment to be agreed or determined in the future.

**1.4 Issuance of Directive Letter**

HPTE may at any time issue a Directive Letter to the Concessionaire in the event of any desired change in the Phase 2 Work or of any Dispute regarding the Phase 2 Work. The Directive Letter will state that it is issued under this paragraph 1.4, will describe the Phase 2 Work in question and will state the basis for determining compensation, if any. The Concessionaire shall proceed immediately with the Phase 2 Work as directed in the letter, pending the execution of a formal Change Order (or, if the letter states that the Phase 2 Work is within the original scope of the Phase 2 Work, the Concessionaire shall proceed with the Phase 2 Work as directed but shall have the right pursuant to paragraph 3 to request that HPTE issue a Change Order with respect thereto so that the issue of whether or not Change Order must be issued can be agreed or determined subsequently). Pending issuance of a Change Order if payment is required it shall be dealt with as a time and materials Change Order pursuant to paragraph 7.

**1.5 Performance of Changed or Extra Phase 2 Work**

As a condition precedent to the Concessionaire's right to receive additional payment or an extension of the Planned Full Services Commencement Date and/or the Full Services Commencement Longstop Date for changed or extra work, the Concessionaire shall have received either a Directive Letter from HPTE or a Change Order for such work executed by HPTE. To the extent that the Concessionaire undertakes any such work without receiving a



Directive Letter or Change Order executed by HPTE, the Concessionaire shall be deemed to have performed such work voluntarily and shall not be entitled to a Change Order in connection therewith. In addition, the Concessionaire may be required to remove or otherwise undo any such work, at its sole cost.

**1.6 Directive Letter as Condition Precedent to Claim that HPTE-Directed Change Occurred**

In addition to provision of a PCO Notice and subsequent Change Order request pursuant to paragraph 3, receipt of a Directive Letter from HPTE is a condition precedent to the Concessionaire's right to claim that a HPTE-Directed Change has occurred, provided that no Directive Letter shall be required for alleged HPTE-Directed Changes directly attributable to delays caused by bad faith actions, active interference, gross negligence or comparable tortious conduct by HPTE. The fact that a Directive Letter was issued by HPTE shall not be considered evidence that in fact a HPTE-Directed Change occurred. The determination whether a HPTE-Directed Change in fact occurred shall be based on an analysis of the original Contract Document requirements and a determination whether the Directive Letter in fact constituted a change in those requirements. The foregoing requirements shall not imply that a Directive Letter would be required in order for the Concessionaire to have the right to receive compensation for Phase 2 Work within its original scope for which additional compensation is specifically allowed under this Part 6 (such as for relocation of previously misidentified underground Utilities, if a Change Order is allowed therefore pursuant to Schedule 22, Part 1).

**1.7 Qualifying Changes in Law**

Concessionaire shall be entitled to reimbursement of Changes in Costs for any Qualifying Change in Law and which:

- (a) requires a material modification in the Phase 2 Work;
- (b) requires the Concessionaire to obtain a major State or federal environmental approval not previously required for the Project; or
- (c) eliminates existing tax exemptions or increases applicable sales taxes.

If any Qualifying Change in Law that reduces the cost of the Phase 2 Work, if and to the extent that the change results in a net cost saving being reasonably achievable (including a saving arising by allowing a material modification in the design to occur which permits the saving to be achieved) the Concessionaire shall pay such saving to HPTE.

**2. Procedure for HPTE-Directed Changes**

This paragraph 2 concerns Change Orders issued by HPTE following a Request for Change Proposal and Change Orders unilaterally issued by HPTE.

**2.1 Request for Change Proposal (RCP)**

- (a) Issuance of Request

If HPTE desires to issue a HPTE-Directed Change or to evaluate whether to initiate such a change, then HPTE may, at its discretion, issue a Request for Change Proposal (RCP).

- (b) Initial Consultation

Within seven days after the Concessionaire's receipt of an RCP, HPTE and the Concessionaire shall consult to define the proposed scope of the change. Within seven days after the initial consultation, HPTE and the Concessionaire shall consult concerning an estimated rough order of magnitude cost (ROM) impacts in relation to all of the matters identified in paragraph 4.2. The Concessionaire shall provide data regarding such matters as requested by HPTE.

- (c) Notification by HPTE

Within seven days after the ROM consultation meeting and provision of any data as described in paragraph (b), HPTE shall notify the Concessionaire whether HPTE:

- (i) Wishes to issue a Change Order.
- (ii) Wishes to request the Concessionaire to prepare a Change Order form as discussed at the meeting.
- (iii) No longer wishes to issue a Change Order.

HPTE may at any time, in its sole discretion, require the Concessionaire to provide two alternative Change Order forms, one of which shall provide for a time extension if applicable and any additional costs permitted hereunder, and the other of which shall show all acceleration costs associated with meeting the original Full Services Commencement Date, as well as any additional costs permitted hereunder.

(d) Submittal of Change Order Form

If requested by HPTE, the Concessionaire shall, within 21 days after receipt of the notification described in paragraph (c), prepare and submit to HPTE for Approval a Change Order form for the requested change, complying with all applicable requirements of paragraph 4, and incorporating all requests made by HPTE. The Concessionaire shall bear the cost of developing the Change Order form, including any modifications thereto requested by HPTE, except that costs of design and engineering work required for preparation of plans or exhibits necessary to the Change Order form and pre-authorized by HPTE shall be included in the Change Order as reimbursable items. If the Change Order is agreed by HPTE then the design and engineering costs will be included within the Change Order, otherwise, they shall be separately reimbursed through a separate Change Order.

(e) Order To Proceed

If HPTE and the Concessionaire agree that a change in the requirements relating to the Phase 2 Work has occurred but disagree as to whether the change justifies additional compensation or time or disagree as to the amount of any Change in Costs or the Planned Full Services Commencement Date and/or the Full Services Commencement Longstop Date, HPTE may, in its sole discretion, order the Concessionaire to proceed with the performance of the Phase 2 Work in question on the basis that the outstanding matters shall be agreed or determined in the future. Such order may, at HPTE's option, be in the form of:

- (i) Time and Materials Change Order as provided in paragraph 7; or
- (ii) Directive Letter as described in paragraph 1.4.

**2.2 Unilateral Change Orders**

HPTE may issue a Change Order at any time in relation any part of the Phase 2 Work except for the Phase 2 Managed Lanes and the Phase 2 ETCS System, regardless of whether it has issued a Request for Change Proposal. Any such Change Order shall state that the Concessionaire shall be entitled to compensation in accordance with paragraph 6 for the additional Phase 2 Work required thereby. For deductive unilateral Change Orders, the Change Order may contain a requirement that the Concessionaire shall pay the saving generated by the deduction to HPTE, and the Concessionaire shall have the right to dispute the amount of payment in accordance with the Dispute Resolution Procedure.

**3. Procedure for Concessionaire Requested Change Orders**

**3.1 Matters for which the Concessionaire is entitled to a Change Order**

The Concessionaire's entitlement to a Change Order in relation to the matters referred to in paragraph (a) and the matters referred to in paragraph (b) is subject to the restrictions and limitations contained in this Part 6.

(a) Change in Costs

The Concessionaire may request a Change Order to obtain payment of Changes in Costs, subject to certain limitations with respect to delay and disruption damages as specified in paragraph 5, caused by the following matters:

- (i) HPTE-Directed Changes.
- (ii) Compensation Events.
- (iii) Differing Site Conditions, to the extent provided in paragraph 8.
- (iv) the cost of Remediation Work and the reimbursement of any Changes in Costs relating to HPTE Hazardous Substances Circumstances, as described in Section 9.4 to the extent provided therein.
- (v) Utility Phase 2 Work, as described in Schedule 22, Part 1, to the extent provided therein; and
- (vi) a Qualifying Change in Law.

(b) Time Extension

The Concessionaire may request a Change Order to extend the Planned Full Services Commencement Date and/or the Full Services Commencement Longstop Date only for the delays in the Critical Path caused by the following matters:

- (vii) Any matter referred to in paragraph (a).
- (viii) A Force Majeure Event.
- (ix) A Relief Event.

(c) HPTE's obligation to issue Change Orders

Upon the Concessionaire's fulfillment of all applicable requirements of this Part 6, and subject to the limitations contained herein, HPTE shall issue Change Orders to provide for payment of the Change in Costs (in relation to the matters referred to in paragraph (a)) and to provide for the extension of the dates (in relation to the matters referred to in paragraph (b)).

**3.2 Conditions Precedent**

The requirements in this paragraph 3.2 constitute conditions precedent to the Concessionaire's entitlement to request and receive a Change Order in all circumstances. The Concessionaire agrees that the filing of PCO Notices and subsequent filing of requests for Change Orders with HPTE pursuant to this paragraph 3.2 are necessary in order to begin the administrative process for Concessionaire-requested Change Orders. The Concessionaire understands that to the extent described in this paragraph 3.2 it shall be forever barred from recovering against HPTE under this Part 6 if it fails to give notice of any act, or failure to act, by HPTE or any of its representatives or the happening of any event, thing or occurrence pursuant to a proper PCO Notice, and thereafter complies with the remaining requirements of this paragraph 3.

(a) Delivery of Potential Change Order (PCO) Notice

The Concessionaire shall deliver to HPTE written notice ("PCO Notice") stating that an event or situation has occurred within the scope of paragraphs (a) or (b) and shall state

which subparagraph thereof is applicable. The first notice shall be labeled "PCO No. 1" and subsequent notices shall be numbered sequentially.

**(b) Importance of Prompt Delivery**

Each PCO Notice shall be delivered as soon as reasonably practicable after the occurrence of such event or situation. If any PCO Notice is delivered later than ten days after the Concessionaire first discovered (or should have discovered in the exercise of reasonable prudence) the occurrence which is described therein, the Concessionaire shall be deemed to have waived the right to collect any and all costs incurred prior to the date of delivery of the PCO Notice, and shall be deemed to have waived the right to seek an extension of the Planned Full Services Commencement Date and/or the Full Services Commencement Longstop Date with respect to any delay in the Critical Path which accrued prior to the date of delivery of the written notice. Furthermore, if any PCO Notice concerns any condition or material described in paragraph 5.3, the Concessionaire shall be deemed to have waived the right to collect any and all costs incurred in connection therewith to the extent that HPTE is not afforded the opportunity to inspect such material or condition before it is disturbed. The Concessionaire's failure to provide a PCO Notice within 30 days after the Concessionaire first discovered (or should have discovered in the exercise of reasonable prudence) the occurrence of a given event or situation shall preclude the Concessionaire from any relief, unless the Concessionaire can show, based on a preponderance of the evidence that:

- (i) HPTE was not materially prejudiced by the lack of notice; or
- (ii) HPTE's designated representative had actual knowledge of all material facts and matters, prior to the expiration of the 30-Day period, of the event or situation and that the Concessionaire believed it was entitled to a Change Order with respect thereto.

A PCO Notice shall be deemed delivered only if it fully conforms to the requirements of paragraph (c).

**(c) Contents of PCO Notice**

To the extent that the Concessionaire is then aware, or should reasonably be aware of these matters, the PCO Notice shall:

- (i) state in detail the facts underlying the potential Change Order, the reasons why the Concessionaire believes additional compensation or time will or may be due and the date of occurrence;
- (ii) state in detail the basis that the work is not required by the Contract, if applicable;
- (iii) identify particular elements of Contract performance for which additional compensation may be sought under this Part 6;
- (iv) identify any potential Critical Path impacts; and
- (v) provide an estimate of the time within which a response to the notice is required to minimize cost, delay, or disruption of performance.

**(d) Notices Under Other Contract Provisions**

The written notification under paragraph 5.3 may also serve as a PCO Notice provided it meets the requirements for PCO Notices.

**(e) Failure to Provide Information**

Any adjustments made to the Contract shall not include increased costs or time extensions for delay resulting from the Concessionaire's failure to provide requested additional information under this paragraph.

(f) Delivery of Requests for Change Orders (RCO)

The Concessionaire shall deliver all requests for Change Orders under this paragraph 3 to HPTE within 30 days after delivery of the PCO Notice. HPTE may require design and construction costs to be covered by separate Change Order requests. If the Concessionaire requests a time extension, then HPTE, in its sole discretion, may require the Concessionaire to provide two alternative Change Order requests, one of which shall provide for a time extension and any additional costs permitted hereunder, and the other of which shall show all acceleration costs associated with meeting the original Planned Full Services Commencement Date, as well as any additional costs permitted hereunder.

(g) Importance of Timely Delivery

The Concessionaire acknowledges and agrees that, due to the limited availability of funds for the Project, timely delivery of notification of such events and situations and requests for Change Orders and updates thereto are of vital importance to HPTE. HPTE is relying on the Concessionaire to evaluate, promptly upon the occurrence of any event or situation, whether the event or situation will affect schedule or costs and, if so, whether the Concessionaire believes a time extension and/or price increase is required hereunder. If an event or situation occurs which may result in a claim for a Change in Costs or the alteration of the Planned Full Services Commencement Date and/or of the Full Services Commencement Longstop Date, HPTE will evaluate the situation and determine whether it wishes to order any Changes so as to bring it within HPTE's funding and time restraints.

The following matters (among others) shall be considered in determining whether HPTE has been prejudiced by the Concessionaire's failure to provide timely notice:

- (i) The effect of the delay on alternatives available to HPTE (that is, a comparison of alternatives which are available at the time notice was actually given and alternatives which would have been available had notice been given within ten days after occurrence of the event or when such occurrence should have been discovered in the exercise of reasonable prudence).
- (ii) The impact of the delay on HPTE's ability to obtain and review objective information contemporaneously with the event.

(h) Subcontractor Claims

Prior to submission by the Concessionaire of any request for a Change Order to HPTE which is based in whole or in part on a request by a Sub-Contractor to the Concessionaire of any tier for a price increase or time extension under its Subcontract, the Concessionaire shall have reviewed all claims by the Subcontractor which constitute the basis for the request for Change Order and determined in good faith that each such claim is justified hereunder and that the Concessionaire is justified in requesting payment of a Change in Costs and/or change in the Planned Full Services Commencement Date and/or the Full Services Commencement Longstop Date in the amounts specified in the request for Change Order. Each request for Change Order involving Subcontractor Phase 2 Work shall include a sworn certification in form acceptable to HPTE signed by the Concessionaire's Project Manager stating that the Concessionaire has investigated the basis for the Subcontractor's claims and has determined that all such claims are justified as to entitlement and amount of money and/or time requested and has no reason to believe and does not believe that the factual basis for the Subcontractor's claim is falsely represented. Any request for Change Order involving Subcontractor Phase 2 Work shall be considered incomplete if it is not accompanied by such certification.

**3.3 Performance of Disputed Phase 2 Work**

If HPTE asserts that the matters identified in the Concessionaire's request do not contractually require HPTE to issue a Change Order, the Concessionaire shall nevertheless perform all work as specified in an appropriate Directive Letter, with the right to submit the issue of entitlement to a Change Order to the Dispute Resolution Procedure. The Concessionaire shall maintain and deliver to HPTE, upon request, contemporaneous records, meeting the requirements of paragraph 7.6(d) of this Schedule 21, Part 6, for all work performed which the Concessionaire believes constitutes extra work, until all Disputes regarding entitlement or cost of such work are resolved.

**4. Contents of Change Orders**

**4.1 Form of Change Order**

Each Change Order form and request for Change Order shall meet all applicable requirements of this Part 6 and shall include a Cost Analysis to be prepared in a form agreed between the Parties, acting reasonably.

**4.2 Scope of Phase 2 Work, Cost Estimate, Delay Analysis, and Information Regarding Change**

The Concessionaire shall prepare a scope of work, cost estimate, impacted delay analysis, if any and other information as required by this paragraph 4.2 for each Change Order form and request for Change Order.

**(a) Scope of Phase 2 Work**

The scope of work shall describe in detail reasonably satisfactory to HPTE all Activities associated with the Change Order, including a description of additions, deletions and modifications to the existing Contract requirements.

**(b) Change in costs of Phase 2 Works**

The cost estimate of the direct costs of the Phase 2 Work shall set out the estimated costs in such a way that a fair evaluation can be made. It shall include a breakdown for labor, materials, equipment, overhead (which includes all indirect costs) and profit, unless HPTE agrees that such a breakdown is not necessary. The estimate shall include costs allowable under paragraph 6, if any. If the work is to be performed by Subcontractors and if the work is sufficiently defined to obtain Subcontractor quotes, the Concessionaire shall obtain quotes (with breakdowns showing cost of labor, materials, equipment, overhead and profit) on the Subcontractor's stationery and shall include such quotes as back-up for the Concessionaire's estimate. No mark-up shall be allowed in excess of the amounts allowed under this Part 6.

**(c) Impacted Delay Analysis**

If the Concessionaire claims that such Relevant Event affects the Critical Path, it shall provide an impacted delay analysis indicating all activities represented or affected by the change, with Activity numbers, durations, predecessor and successor activities, resources and cost, and with a narrative report, in a form prepared in accordance with Good Industry Practice, which compares the proposed new schedule to the Original Baseline Schedule, Current Baseline Schedule or Revised Baseline Schedule, as appropriate. Except as otherwise provided in this Part 6, the impacted delay analysis shall only modify the activities, which have been impacted by the event which justifies the extension. The Concessionaire may reschedule activities not otherwise affected by the event, in order to take advantage of additional Float available as a result of the requested time extension. Any such rescheduling shall be reflected in the impacted delay analysis.

**(d) Changed tests for Completion of the Phase 2 Work**

If the Concessionaire claims that such Relevant Event has the consequence that revised tests must be carried out to demonstrate the successful completion of the Phase 2 Work and/or the proposed method of certifying completion of the Phase 2 Work in accordance with Section 19 then the Concessionaire shall set out in detail the reasons why such change is necessary and the nature of the change which is required.

(e) Necessary change in the Services

If the Concessionaire claims that such Relevant Event affects the nature of the Services to be provided, or if it affects the cost of provision of the Services then the Concessionaire shall set out the detail of such changed Services, and of the Estimated Change in Costs associated with them.

(f) Relief from compliance with other obligations

If the Concessionaire claims that such Relevant Event requires the Concessionaire to be relieved of any other obligation then the Concessionaire shall set out the detail the relief which it seeks and the reasons why that relief is necessary as a direct consequence of the Relevant Event.

(g) Loss of Toll Revenue

If the Concessionaire claims that such Relevant Event will cause a loss of Toll Revenue then the Concessionaire shall set out in detail the reasons why such loss will arise and the projected amount of the loss.

(h) Other Changes in Costs

If the Concessionaire claims that such Relevant Event will cause any other Change in Costs then the Concessionaire shall set out in detail the reasons why such loss will arise and the projected amount of the loss.

(i) Amendments to the Contract or any Ancillary Document

If the Concessionaire claims that such Relevant Event requires a change to the terms of this Contract or any Ancillary Document then the Concessionaire shall set out the detail the relief which it seeks and the reasons why that change is necessary as a direct consequence of the Relevant Event and specify the change which is required.

(j) Other Supporting Documentation

The Concessionaire shall provide such other supporting documentation as may be required by HPTE.

4.3 Justification

All requests for Change Orders shall include a narrative justification therefore, detailing all causes of the proposed change, making specific reference to the applicable provisions of this Part 6 which permit a Change Order to be issued, and describing the data and documents which establish the necessity of such proposed change.

4.4 Concessionaire Representation

Each Change Order (other than Change Orders issued unilaterally by HPTE) shall contain a sworn certification in form acceptable to HPTE by the Concessionaire that the amount of time and/or compensation requested includes all known and anticipated impacts or amounts, direct, indirect and consequential, which may be incurred as a result of the event or matter giving rise to such proposed change and that the Concessionaire has no reason to believe and does not believe that the factual basis for the Change Order is falsely represented.

4.5 Incomplete Change Orders

Each request for Change Order provided under paragraph 3 shall meet all requirements in this paragraph 4; provided that if any such requirements cannot be met due to the nature of the occurrence, the Concessionaire shall provide an incomplete request for Change Order, which shall:

- (a) Comply with all requirements capable of being met.
- (b) Include a list of requirements, which are not fulfilled together with an explanation reasonably satisfactory to HPTE stating why such requirements cannot be met.
- (c) Provide such information regarding projected impact on the Critical Path as is requested by HPTE.
- (d) In all events include sufficient detail to ascertain the basis for the proposed Change Order and for any price increase associated therewith, to the extent such amount is then ascertainable.

The Concessionaire shall furnish, when requested by HPTE, such further information and details as may be required to determine the facts or contentions involved. The Concessionaire agrees that it shall give HPTE access to any and all of the Concessionaire's books, records, and other materials relating to the Phase 2 Work, and shall cause its Subcontractors to do the same, so that HPTE can investigate the basis for such proposed Change Order. The Concessionaire shall provide HPTE with a monthly update to all outstanding incomplete requests for Change Order, describing the status of all previously unfulfilled requirements and stating any changes in projections previously delivered to HPTE, time expenditures to date and time anticipated for completion of the Activities for which the time extension is claimed. HPTE may reject the Concessionaire's claim at any point in the process. Once a complete request for Change Order is provided, HPTE's failure to respond thereto within 14 days of delivery of the request shall be deemed a rejection of such request. Although HPTE intends to review incomplete Change Orders for the purposes described in paragraph 3, HPTE shall have no obligation to review the backup associated with any request for Change Order until a complete request for Change Order is provided.

## **5. Certain Limitations**

### **5.1 Limitation on Estimated Changes in Costs**

Any Estimated Change in Costs allowed hereunder shall exclude:

- (a) Costs caused by the breach of contract or fault or negligence, or act or failure to act of any Concessionaire-Related Entity.
- (b) Costs, which could reasonably have been avoided by the Concessionaire-Related Entity, including by resequencing, reallocating, or redeploying its forces to other portions of the Phase 2 Work or to other activities unrelated to the Phase 2 Work (including any additional costs reasonably incurred in connection with such reallocation or redeployment).
- (c) Costs for any rejected Phase 2 Work which failed to meet the requirements of the Contract and any necessary remedial Phase 2 Work.

### **5.2 Limitation on Acceleration Costs; Delay and Disruption Damages**

- (d) Acceleration Costs; Delay, and Disruption Damages

Acceleration costs shall be compensable hereunder only with respect to Change Orders issued by HPTE as an alternative to allowing an extension of the Planned Full Services Commencement Date and/or the Full Services Commencement Longstop Date as contemplated by Paragraphs 1.2 and paragraph 3. Delay and disruption damages shall be compensable hereunder only in the case of a delay arising out of a Compensation



Event to the extent that it entitles the Concessionaire to an extension of the Planned Full Services Commencement Date and/or the Full Services Commencement Longstop Date. Costs of rearranging the Concessionaire's work plan not associated with an extension of the Planned Full Services Commencement Date and/or the Full Services Commencement Longstop Date shall not be compensable hereunder.

(e) Other Limitations

Delay and disruption damages shall be limited to direct costs directly attributable to the delays described in paragraph (d) and mark-ups thereon in accordance with paragraph 7 and any additional field office and jobsite overhead costs incurred by the Concessionaire's Construction Sub-Contractor directly attributable to such delays. In addition, before the Concessionaire may obtain payment of a Change in Costs to compensate for any delay and disruption damages or acceleration costs, the Concessionaire shall have demonstrated that:

- (i) Its schedule, which defines the affected Critical Path in fact sets forth a reasonable method for completion of the Phase 2 Work.
- (ii) The change in the Phase 2 Work or other event or situation, which is the subject of the requested Change Order, has caused or will result in an identifiable and measurable disruption of the Phase 2 Work, which impacted the Critical Path Activity.
- (iii) The delay or disruption damage was not due to any breach of contract or fault or negligence, or act or failure to act of any Concessionaire-Related Entity, and could not reasonably have been avoided by the Concessionaire, including by resequencing, reallocating or redeploying its forces to other portions of the Phase 2 Work or other activities unrelated to the Phase 2 Work (subject to reimbursement for additional costs reasonably incurred in connection with such reallocation or redeployment).
- (iv) The delay for which compensation is sought is not concurrent with any other delay excluding delay caused by a matter giving rise to a right to additional time.
- (v) The Concessionaire has suffered or will suffer actual Losses due to such delay, each of which Losses shall be documented in a manner satisfactory to HPTE.

5.3 Limitation on Time Extensions

Any extension of the Planned Full Services Commencement Date and/or the Full Services Commencement Longstop Date allowed hereunder shall exclude any delay to the extent that it:

- (a) Did not impact the Critical Path affecting the Planned Full Services Commencement Date and/or the Full Services Commencement Longstop Date.
- (b) Was due to the fault or negligence, or act or failure to act of any Concessionaire-Related Entity.
- (c) Could reasonably have been avoided by the Concessionaire, including by resequencing, reallocating or redeploying its forces to other portions of the Phase 2 Work (provided that if the request for extension involves a HPTE-caused delay, HPTE shall have agreed, if requested to do so, to reimburse the Concessionaire for its costs incurred, if any, in resequencing, reallocating, or redeploying its forces).

The Concessionaire shall be required to demonstrate that the change in the Phase 2 Work or other event or situation which is the subject of the request for Change Order seeking a change in

the Planned Full Services Commencement Date and/or the Full Services Commencement Longstop Date has caused or will result in an identifiable and measurable disruption of the Phase 2 Work which has impacted the Critical Path Activity affecting the Planned Full Services Commencement Date and/or the Full Services Commencement Longstop Date.

## **6. Pricing of Change Orders**

HPTE and the Concessionaire (on its own behalf and on behalf of its Subcontractors) shall endeavor to negotiate, in good faith, a reasonable cost for each Change Order, provided that Change Orders issued under paragraph 2.2 are not subject to negotiations. Subject to the foregoing exceptions, in general the element of compensation for a Change Order attributable to costs incurred by the Concessionaire's Construction Sub-Contractor shall be negotiated in accordance with this paragraph 6 or shall be based on Time and Materials records pursuant to paragraph 7.

### **6.1 Contents**

A negotiated Change Order shall specify, as applicable, scheduling requirements, time extensions, if any, and all costs of any nature arising out of the Phase 2 Work covered by the Change Order. Notwithstanding the foregoing, the parties may agree to use a multiple-step process involving issuance of a Change Order which includes an estimated design cost and which provides for another Change Order modifying the first Change Order to be issued after a certain design level has been reached, thus allowing a refinement and definition of the estimated construction cost.

### **6.2 Unit Price Change Orders**

HPTE and the Concessionaire may agree to negotiate unit prices for changed Phase 2 Work. Measurement of unit-priced quantities will be as specified in the Change Order. Unit prices shall be deemed to include all costs for labor, material, overhead and profit, and shall not be subject to change regardless of any change in the estimated quantities. Unit-priced Change Orders shall initially include an estimated amount of Capital Expenditure based on estimated quantities. Upon final determination of the quantities, HPTE will issue a modified Change Order setting forth the final amount of Capital Expenditure.

### **6.3 Added, Deleted, or Both Added and Deleted Phase 2 Work**

When the Change Order adds Phase 2 Work to the Concessionaire's scope, deletes Phase 2 Work from the Concessionaire's scope (including deletion of any Phase 2 Work contained in the Contract that is found to be unnecessary), or both adds and deletes Phase 2 Work, the Change in Costs, or payment by HPTE to the Concessionaire or by the Concessionaire to HPTE shall be negotiated based on estimated costs of labor, material and equipment, or shall be based on actual costs in accordance with paragraph 7. For negotiated Change Orders, mark-ups for profit and overhead shall be as provided in paragraph 7, and risk associated with the Phase 2 Work described in the Change Order shall be addressed through an additional amount agreed to by HPTE and the Concessionaire.

## **7. Time and Materials Change Orders**

HPTE may at its discretion issue a Time and Materials Change Order whenever HPTE determines that a Time and Materials Change Order is advisable. The Time and Materials Change Order shall instruct the Concessionaire to perform the Phase 2 Work, indicating expressly the intention to treat the items as changes in the Phase 2 Work, and setting forth the kind, character, and limits of the Phase 2 Work as far as they can be ascertained, the terms under which payments of the Change in Costs by HPTE to the Concessionaire or by the Concessionaire to HPTE will be determined and the Estimated Change in Costs or payments anticipated thereunder. Upon final agreement or determination of the allowable costs, HPTE shall issue another Change Order modifying the prior Change Order setting forth the final Change in Costs, or payments to be made by one Party to the other. The following costs and mark-ups (and no others) shall be used for calculating the Change in Costs, or payments. No direct

compensation will be allowed for other miscellaneous costs incurred by the Concessionaire's Construction Sub-Contractor for which no specific allowance is provided in this paragraph 7.

**7.1 Labor Costs**

The cost of labor shall be separated into construction-related Phase 2 Work and non-construction-related Phase 2 Work as described below. The use of a labor classification that would increase the extra work cost will not be permitted unless the Concessionaire establishes the necessity for such additional costs. The cost of labor shall be calculated based on straight time for all hours worked, unless the Concessionaire obtains HPTE's prior Approval for overtime.

**(a) Construction Labor**

The cost of labor for workers used in the actual and direct performance of construction-related Phase 2 Work, whether provided by the Concessionaire or a Subcontractor, will equal the sum of the following:

- (i) Actual unburdened wages (i.e. the base wage paid to the employee exclusive of any fringe benefits) plus actual costs paid to, or in behalf of, workers by reason of subsistence and travel allowance, health and welfare benefits, pension fund benefits, or other benefits, when the amounts are required by a collective bargaining agreement or other employment contract or generally applicable to the classes of labor employed on the work; plus
- (ii) A labor surcharge of 67 percent of actual wages and fringe benefits paid directly to the employees. This 67 percent will not be applied to subsistence, travel allowance, or to fringe benefits paid to a third party or a trustee

**(b) Non-Construction Labor**

The cost of labor for non-construction-related Phase 2 Work, whether provided by the Concessionaire or a Subcontractor, will equal the sum of the following: (i) Actual wages (i.e. the base wage paid to the employee exclusive of any fringe benefits); plus (ii) Actual direct costs paid to, or on behalf of, workers (subject to audit under Section 22.6), including all state and federal payroll, unemployment and other taxes, insurance, fringe benefits (including health insurance, retirement plans, vacation, sick leave and bonuses) and overhead, but not to exceed 140 percent.

**7.2 Material Costs**

Material costs shall be the actual cost of all materials to be used in the performance of Phase 2 Construction Work including normal wastage allowance as per industry standards, subject to the requirements in this paragraph 7.2. The material prices shall be supported by valid quotes and invoices from the Suppliers. The cost shall include applicable sales taxes, freight and delivery charges and any allowable discounts (exclusive of machinery rentals). HPTE reserves the right to approve materials and sources of supply of materials to be furnished by the Concessionaire or Subcontractors, and shall have the right to furnish such materials as it deems advisable. The price allowed for materials shall be adjusted as follows:

**(a) Affiliated Source of Supply**

If the materials are obtained from a supply or source owned in whole or in part by the Concessionaire or a Subcontractor, the cost of such materials shall not exceed the lesser of the lowest price charged by the Concessionaire or such Subcontractor (as applicable) for similar materials furnished to other jobs or the current wholesale price for such materials delivered to the Site.

**(b) Excessive Cost**

If the cost of such materials is excessive, then the cost allowed for such materials shall be the lowest current wholesale price at which such materials were available, in the quantities needed and delivered to the Site.

(c) Evidence of Cost

If the Concessionaire or any Subcontractor (as applicable) does not furnish satisfactory evidence of the cost of such materials from the actual supplier thereof within 60 days after the date of delivery of the material, HPTE reserves the right to establish the cost of such materials at the lowest current wholesale prices at which such materials were available, in the quantities needed and delivered to the Site.

7.3 Equipment

(a) Blue Book

Concessionaire will be paid for the use of equipment owned or rented by Concessionaire or any Subcontractor for actual use in construction of the Project at an hourly rate derived from the most recently published Rental Rate Blue Book for Construction Equipment by Dataquest, Inc., San Jose, California which is in effect at the time of commencement of the changed Phase 2 Work (the "Blue Book").

The total hourly rates derived from the above publication are computed from equipment costs currently in effect. The rates derived do not include costs for operating personnel. The rates require adjustment by a Regional Factor and a Depreciation Factor found in the front of each chapter in the Blue Book.

(b) Rate Categories

Equipment use rates fall in the following two categories:

- (i) Operating Rate: This rate applies to those hours the equipment is actually in use, includes ownership and operating costs, and shall equal the Blue Book monthly rate adjusted for year of manufacture divided by 176 times the Regional Factor of 1.06 plus the estimated hourly operating costs from the Blue Book.
- (ii) Standby Rate: This rate applies to equipment required to be at the Site but not operating, includes ownership costs only, and shall equal the Blue Book monthly rate adjusted for year of manufacture divided by 176 times the Regional Factor of 1.06 times 0.5. The duration of allowable standby time is to be approved in writing by HPTE with a maximum of eight hours per day or 40 hours in a normal week.

When the "manufacturer's rated capacity" falls between those shown in the Blue Book, the closest rated capacity will be used, without interpolation. All rates shall be agreed upon in writing before work is begun. Payment will not be made for pickup trucks used solely for transportation.

(c) Specialized Equipment

In cases where the equipment to be used is specialized in nature and is not available in Concessionaire's inventory and is rented or leased from an outside agency a 10 percent allowance will be added on the first \$5,000 plus 5 percent of the balance in excess of \$5,000 for overhead for all rented or leased equipment paid for by invoices. Where the rate charged by the agency exceeds the rate determined by the Blue Book, the rental or lease agreement shall be submitted to HPTE for Approval. The equipment operating costs from the Blue Book will be paid for rented or leased equipment for each hour the equipment was actually used.

(d) Rented Equipment

In those cases where the required equipment is in Concessionaire's or Subcontractor's available inventory but not on the Site, the equipment may be rented from a local source. HPTE may approve rental rates for equipment obtained from local sources when such rates are within 10 percent of rates in the Blue Book. When the equipment use is of short duration (less than a week) "move-in" and "move-out" costs for equipment owned by Concessionaire or Subcontractors may be considered when comparing rental costs of equipment obtained from local sources. This option will only be allowed when the cost of locally rented equipment would be less than using owned equipment, including "move-in" and "move-out" charges. Such rentals must be supported by a cost analysis indicating the method used was the least expensive. Should equipment be rented even though it is of a type that is in Concessionaire's or Subcontractor's inventory and the rental costs exceed that allowed by this paragraph, Concessionaire will be reimbursed for such equipment based on the rates in the Blue Book.

(e) Small Tools

The rates paid as above provided shall be deemed to include compensation for the cost of fuel, oil, lubricants, supplies, small tools, necessary attachments, repairs and maintenance of all kinds, depreciation, storage, insurance and all incidentals. Individual pieces of equipment or tools not listed in the Blue Book and having an individual replacement value of \$1,000 or less, whether or not consumed by use, shall be considered to be small tools. Equipment rental rates not provided by the Blue Book must be approved by HPTE before the start of any Change Order Phase 2 Work.

(f) Equipment Operators

Equipment operators will be paid for as stipulated in paragraph 7.1 and (h)

(g) Condition of Equipment

All equipment shall be in good working condition and suitable for the purpose for which the equipment is to be used.

(h) Classification of Equipment

Unless otherwise specified, manufacturer's ratings and manufacturer-approved modifications shall be used to classify equipment for the determination of applicable rental rates.

(i) Computation of Time

The time to be paid for use of equipment on the Site shall be the time the equipment is in operation on the Time and Materials Change Order Phase 2 Work being performed. The time shall include the reasonable time required to move the equipment to the location of the Time and Materials Change Order Phase 2 Work and return it to the original location or to another location requiring no more time than that required to return it to its original location. Moving time will not be paid for if the equipment is also used at the Site other than for Time and Materials Change Order Phase 2 Work. Loading and transporting costs will be allowed, in lieu of moving time, when the equipment is moved by means other than its own power. No payment for loading and transporting will be made if the equipment is also used at the Site other than for Time and Materials Change Order Phase 2 Work. Time will be computed in half and full hours. In computing the time for use of equipment, less than 30 minutes shall be considered one-half hour.

**7.4 Permit Fees**

The Concessionaire will be reimbursed for the cost of any additional permit fees payable as the result of the change in the Phase 2 Work. Back-up documentation supporting each cost item for

this category shall be provided by the Concessionaire and approved by HPTE prior to any payment authorization being granted.

**7.5 Subcontracted Phase 2 Work**

HPTE will pay the Concessionaire one, and only one, mark-up on Phase 2 Work which has been subcontracted by the Construction Sub-Contractor equal to five percent of the cost of the subcontracted Phase 2 Work, notwithstanding the actual number of intervening Subcontractors, provided that the Concessionaire may allocate all or any part of such mark-up among intervening Subcontractors. This mark-up shall fully compensate the Concessionaire (and all Subcontractors) for administration, general superintendence, overhead, profit and expenses not otherwise recoverable with respect to subcontracted Phase 2 Work. No mark-up shall be allowed for: (i) Subcontracts with Affiliates apart from the Construction Sub-Contractor; or (ii) Subcontracts with Suppliers in each case if those Subcontracts are not on an arm's length basis.

**7.6 Mark-Ups**

In addition to the added costs incurred by the Concessionaire's Construction Sub-Contractor as determined above, Concessionaire will be paid mark-up on those costs in accordance with Schedule 5, paragraph 20 (Specification 109.04).

**(a) Collection and Maintenance of Data**

The Concessionaire shall maintain its records in such a manner as to provide a clear distinction between:

- (i) the direct cost of Phase 2 Work for which it is entitled (or for which it believes it is entitled) to a payment of Capital Expenditure; and
- (ii) the costs of other operations.

The Concessionaire shall contemporaneously collect, record in writing, segregate, and preserve:

- (1) all data necessary to determine the costs described in this paragraph 7 with respect to all Phase 2 Work which is the subject of a Change Order or a requested Change Order, specifically including costs associated with design Phase 2 Work as well as Utility Relocations, but specifically excluding all negotiated Change Orders (except for lump sum Phase 2 Work Orders that are also Change Orders as described in paragraph (a)); and
- (2) all data necessary to show the actual impact (if any) of the change on the Critical Path affecting the Planned Full Services Commencement Date and/or the Full Services Commencement Longstop Date with respect to all Phase 2 Work which is the subject of a Change Order or a proposed Change Order, if the impact on the Critical Path affecting the Planned Full Services Commencement Date and/or the Full Services Commencement Longstop Date is in dispute. Such data shall be provided on forms approved by HPTE. The cost of furnishing such reports is included in the Concessionaire's predetermined overhead and profit mark-ups.

**(b) Daily Reports**

The Concessionaire shall furnish daily, on forms approved by HPTE acting reasonably, reports of Time and Materials Change Order Phase 2 Work. The cost of furnishing such reports shall be included in the Concessionaire's overhead and profit percentages. The reports shall include:

- (i) Name, classification, date, daily hours, total hours, rate, and extension for each worker (including both construction and non-construction personnel) and foreman.
- (ii) Designation, dates, daily hours, total hours, rental rate, and extension for each unit of machinery and equipment.
- (iii) Quantities of materials, prices and extensions.
- (iv) Transportation costs of materials, machinery, and equipment.
- (v) Invoices for materials used and for transportation charges.

The reports shall also state the total costs to date for the Time and Materials Change Order Phase 2 Work.

(c) **Materials**

If materials used on the Time and Materials Change Order Phase 2 Work are not specifically purchased for the Phase 2 Work but are taken from the Concessionaire's stock, the Concessionaire shall furnish an affidavit certifying that such materials were taken from the Concessionaire's stock, that the quantity claimed was actually used, and that the price and transportation costs claimed represent actual costs to the Concessionaire.

(d) **Reports as Basis for Payment**

All Time and Materials Change Order reports shall be signed by the Concessionaire's Project Manager. HPTE will compare its records with the Concessionaire's reports, make the necessary adjustments and compile the costs of Time and Materials Change Order Phase 2 Work. When such reports are agreed upon and signed by both parties, they will become the basis of payment, but shall not preclude subsequent adjustment based on a later audit. The Concessionaire's (and each Subcontractor's) cost records pertaining to Phase 2 Work paid for on a time and materials basis shall be open, during all regular business hours, to inspection or audit by representatives of HPTE during the life of the Contract and for a period of not less than seven years after Phase 2 Work Completion, and the Concessionaire (and each Subcontractor) shall retain such records for that period. If an audit is to be commenced more than 60 days after Phase 2 Work Completion, the Concessionaire will be given a 20-day notice of the time when such audit is to begin.

**7.7 Compliance with Federal Acquisition Regulation**

Reimbursable expenses shall be limited to and comply with the Federal Acquisition Regulation (FAR). Expenses excluded by the FAR shall not be reimbursed. If FHWA asserts that any claimed reimbursable expenses are not reimbursable under FAR, HPTE will allow the Concessionaire the opportunity to respond to FHWA and defend the allowability of the expenses.

**8. Differing Site Conditions**

**8.1 Responsibilities of HPTE**

Upon the Concessionaire's fulfillment of all applicable requirements of Section 12 and this Part 6, and subject to the limitations contained therein, HPTE shall be responsible for, and agrees to issue Change Orders to:

- (a) compensate the Concessionaire for a Change in Costs directly attributable to changes in the Phase 2 Work arising from Differing Site Conditions; and

- (b) extend the Planned Full Services Commencement Date and/or the Full Services Commencement Longstop Date as the result of any delay in the Critical Path caused by any such conditions.

## 8.2 Burden of Proof

The Concessionaire shall bear the burden of proving that a Differing Site Condition exists and that it could not reasonably have worked around the Differing Site Condition so as to avoid additional cost. Each request for a Change Order relating to a Differing Site Condition shall be accompanied by a statement signed by a qualified professional setting forth all relevant assumptions made by the Concessionaire with respect to the condition of the Site, justifying the basis for such assumptions, explaining exactly how the existing conditions are eligible for a Change Order under the terms of the Contract, and stating the efforts undertaken by the Concessionaire to find alternative design or construction solutions to eliminate or minimize the problem and the associated costs.

## 9. Hazardous Substances Management

Except as expressly provided in this paragraph 9, the consideration flowing to the Concessionaire under the Contract includes the cost of all activities to be performed by the Concessionaire as described in Schedule 5, paragraph 5. (Accordingly, compensation for certain activities required under Schedule 5, paragraph 5.0, including investigating, monitoring, characterizing and testing, are included in the consideration which the Concessionaire receives under the Contract and the Concessionaire shall not be entitled to additional payment under this paragraph 9 therefore.)

### 9.1 Payment of Change in Costs

Subject to paragraph 9.3, the Concessionaire shall be entitled to payment for any Change in Cost arising out of Remediation Work and to reimbursement of other Changes in Costs in accordance with Section 9.4 through a Change Order priced in accordance with paragraph 6 or 7 in relation to the elements of the Change in Costs which are the subjects of those paragraphs.

### 9.2 Time Extension

The Concessionaire shall be entitled to an extension of the Planned Full Services Commencement Date and/or the Full Services Commencement Longstop Date to the extent that any delay in the Critical Path affecting the Planned Full Services Commencement Date and/or the Full Services Commencement Longstop Date is directly attributable to Remediation Work compensable under paragraph 9.1.

### 9.3 Limitations on Change Orders

All Change Orders authorized by this paragraph 9 shall be subject to the restrictions, limitations and procedures in Part 6. The allowable Change in Costs shall be limited to the incremental costs associated with the fact that Hazardous Substances subject to Remediation Work compensable under paragraph 9.1 are present (deducting any avoided costs such as refuse and/or disposal of Non-Hazardous Substances) after completion of the testing process to determine whether Hazardous Substances are present. The Concessionaire shall take all reasonable steps to minimize any such costs. In addition, compensation for Remediation Work compensable under paragraph 9.1 will not be allowed unless the Concessionaire demonstrates that:

- (a) the Remediation Work could not have been avoided by reasonable design modifications or construction techniques; and
- (b) the Concessionaire's plan for the Remediation Work represents the approach which is most beneficial to the Project and the public.

The Concessionaire shall provide HPTE with such information, analyses and certificates as may be reasonably requested by HPTE in order to enable a determination regarding eligibility for payment.



10. **Waiver**

SUBJECT TO THE TERMS OF THIS PART, THE CONCESSIONAIRE HEREBY EXPRESSLY WAIVES ALL RIGHTS TO ASSERT ANY AND ALL CLAIMS BASED ON ANY CHANGE IN THE WORK, DELAY OR ACCELERATION (INCLUDING ANY CHANGE, DELAY, SUSPENSION OR ACCELERATION WHICH, BUT FOR THE EXPRESS TERMS OF THE CONTRACT DOCUMENTS, COULD BE INFERRED OR IMPLIED AT LAW) FOR WHICH THE CONCESSIONAIRE FAILED TO PROVIDE PROPER AND TIMELY NOTICE OR FAILED TO PROVIDE A TIMELY CHANGE REQUEST FOR CHANGE ORDER, AND AGREES THAT THE CONTRACTOR SHALL BE ENTITLED TO NO COMPENSATION OR DAMAGES WHATSOEVER IN CONNECTION WITH THE WORK EXCEPT TO THE EXTENT THAT THE CONTRACT DOCUMENTS EXPRESSLY SPECIFY THAT THE CONCESSIONAIRE IS ENTITLED TO A CHANGE ORDER OR OTHER COMPENSATION OR DAMAGES.

11. **Disputes**

- (a) If HPTE and the Concessionaire agree that a request to obtain payment of Change in Costs and/or extend the Planned Services Commencement Date and/or the Full Services Commencement Longstop Date by the Concessionaire has merit, but are unable to agree as to the amount of such Change in Costs and/or time extension, HPTE agrees to mark up the Change Order request or Change Order form, as applicable, provided by the Concessionaire to reduce the amount of the Change in Costs and/or time extension as deemed appropriate by HPTE. In such event, HPTE will execute and deliver the marked-up Change Order to the Concessionaire within a reasonable period after receipt of a request by the Concessionaire to do so, and thereafter will make payment and/or grant a time extension based on such marked-up Change Order pending the agreement or determination of the outstanding matters.
- (b) The failure of HPTE and the Concessionaire to agree to any Change Order under this Part 6 (including agreement as to the amount of compensation allowed under a Time and Materials Change Order and the disputed amount of the Change in Costs and/or extension of the Planned Full Services Commencement Date and/or the Full Services Commencement Longstop Date in connection with a Change Order as described above) shall be a Dispute to be resolved pursuant to the Dispute Resolution Procedure. Except as otherwise specified in the Change Order, execution of a Change Order by both parties shall be deemed accord and satisfaction of all claims by the Concessionaire of any nature arising from or relating to the Phase 2 Work covered by the Change Order.
- (c) The Concessionaire's Claim and any award by the dispute resolver shall be limited to the incremental costs and loss of revenues incurred by the Concessionaire with respect to the disputed matter (crediting HPTE for any corresponding reduction in the Concessionaire's other costs) and shall in no event exceed the amounts allowed by paragraph 7 with respect to the subject matter dealt with in that paragraph.

12. **No Release or Waiver**

12.1 Extension of Time for Performance

No extension of time granted hereunder shall release the Concessionaire's Surety from its obligations. HPTE shall not be deemed to have waived any rights under the Contract (including its right to abrogate the Contract for abandonment or for failure to complete within the time specified, or to impose and deduct damages as may be provided herein) as the result of any grant of an extension of time beyond the date fixed for the completion of any part of the Phase 2 Work, any acceptance of performance of any part of the Phase 2 Work after the Planned Full Services Commencement Date and/or the Full Services Commencement Longstop Date, or the making of any payments to the Concessionaire after such date.

12.2 No Change Order Based on Course of Conduct or Order by Unauthorized Person

No course of conduct or dealings between the parties, or express or implied acceptance of alterations or additions to the Phase 2 Work, and no claim that HPTE has been unjustly enriched shall be the basis for any claim, request for additional compensation or extension of the Planned Full Services Commencement Date and/or the Full Services Commencement Longstop Date. Further, the Concessionaire shall undertake, at its risk, work included in any request, order or other authorization issued by a person in excess of that person's authority as provided herein, or included in any oral request. The Concessionaire shall be deemed to have performed such work as a volunteer and at its sole cost. In addition, HPTE may require the Concessionaire to remove or otherwise undo any such work, at the Concessionaire's sole cost.

13. **Funding**

The provisions of paragraph 5 of Part 1 of this Change Procedure shall apply.

14. **Due diligence**

The provisions of paragraph 6 of Part 1 of this Change Procedure shall apply.

15. **Implementation**

The provisions of paragraph 7 of Part 1 of this Change Procedure shall apply.

16. **Payment**

The provisions of paragraph 9 of Part 1 of this Change Procedure shall apply.

SCHEDULE 21

Change Procedure

APPENDIX

Low Value Change Request

<b>Low Value Change Request</b>	<b>Dated</b> _____
<b>To be completed by HPTE Representative</b>	
Change No:	
Brief Description of the Change	
Change in Law/	
Budget for the Change	
Date for Completion/Implementation	
<b>To be completed by Concessionaire Representative</b>	
Confirmation of Price/Time (if applicable)	
Can be carried out within existing on site resources?	
If not, cost of labor rates	
Lifecycle cost (if appropriate)	
Additional operating cost (if appropriate)	
Plant/equipment costs (if appropriate)	
<b>Total cost</b>	