

## SCHEDULE 22

### VARIATION PROCEDURE

#### 1. VARIATIONS

##### 1.1 Definitions

- (a) The following terms shall have the following meanings:
- (i) “**Capital Expenditure**” means capital expenditure as interpreted in accordance with Canadian GAAP.
  - (ii) “**DB Co Variation Notice**” has the meaning given in Section 2.1(a) of this Schedule 22.
  - (iii) “**Direct Cost**” has the meaning given in Appendix A of this Schedule 22.
  - (iv) “**Estimate**” has the meaning given in Section 1.4(a) of this Schedule 22.
  - (v) “**Variation**” means a variation, addition, reduction, substitution, omission, modification, deletion, removal or other change to the whole or any part of the Works.
  - (vi) “**Variation Confirmation**” has the meaning given in Section 1.7(a)(ii) of this Schedule 22.
  - (vii) “**Variation Directive**” means a written instruction which is issued on a form designated as a “Variation Directive Form” and signed by the City Representative directing DB Co to immediately proceed with a Variation pending the finalization and issuance of a Variation Confirmation for that Variation.
  - (viii) “**Variation Enquiry**” has the meaning given in Section 1.3(a) of this Schedule 22.

##### 1.2 General

- (a) City has the right from time to time to propose and require DB Co to carry out and implement a Variation, and any such Variation shall be subject to the provisions of this Schedule 22 provided that City shall not be permitted to withdraw a Variation Enquiry (nor will a Variation Enquiry be deemed to have been withdrawn) with respect to those circumstances specified in the Project Agreement for which City is obligated to proceed with a Variation.
- (b) City shall be obligated to proceed with a Variation in certain circumstances specified in this Project Agreement, and any such Variation shall be subject to the provisions of this Schedule 22.
- (c) DB Co will not be entitled to any payment, compensation or extension of the Scheduled Substantial Completion Dates or other schedule milestones for a Variation except to the extent provided in a Variation Confirmation or Variation Directive in accordance with this

Schedule 22.

### 1.3 Variation Enquiry

- (a) If City proposes or is obligated pursuant to the terms of this Project Agreement or Applicable Law to initiate a Variation it shall deliver to DB Co a written notice of the proposed Variation (a “**Variation Enquiry**”).
- (b) A Variation Enquiry shall:
  - (i) describe the proposed Variation with sufficient detail to enable DB Co to prepare a detailed Estimate;
  - (ii) in the event that the proposed Variation will require a Capital Expenditure, state whether City intends to pay for the Variation by way of lump sum payment or payments, adjustment to the Guaranteed Price, (and, if applicable, with a request for DB Co to obtain financing for all or part of the Variation), or a combination thereof; and
  - (iii) provide a preliminary indication of any provisions of this Project Agreement (including the Output Specifications or the DB Co Proposal Extracts) that will be affected by the proposed Variation, as well as the amendments to this Project Agreement (including the Output Specifications or the DB Co Proposal Extracts) that may be necessary to accommodate the Variation.

### 1.4 Delivery of Estimate

- (a) As soon as practicable and in any event within 15 Business Days after receipt of a Variation Enquiry, or such longer period as the Parties agree acting reasonably, DB Co shall deliver its detailed breakdown, estimate and other information (an “**Estimate**”) prepared in accordance with and meeting the requirements of Section 1.6.

### 1.5 DB Co Grounds for Objection

- (a) DB Co may only refuse to deliver an Estimate if DB Co can demonstrate to City’s satisfaction, acting reasonably, within the period for delivery of an Estimate specified or agreed pursuant to Section 1.4(a), that:
  - (i) the implementation of the Variation would materially and adversely affect the health and safety of any person;
  - (ii) the implementation of the Variation would:
    - (A) infringe Applicable Law;
    - (B) cause to be revoked any of the existing Permits, Licences, Approvals or Agreements required by DB Co to perform the Works, and any such Permit, Licence, Approval or Agreement is not, using commercially reasonable efforts, capable of amendment or renewal; or
    - (C) require any new Permits, Licences, Approvals or Agreements for DB Co to

perform the Works, any of which will not, using commercially reasonable efforts by DB Co or City, as applicable, be obtainable;

- (iii) the proposed Variation would have a material and adverse effect on performance of the Works (except those Works which have been specified as requiring amendment in the Variation Enquiry) in a manner not compensated pursuant to this Schedule 22;
  - (iv) the implementation of the Variation would be a departure from Good Industry Practice;
  - (v) City does not have the legal power or capacity to require the Variation to be implemented or to do anything envisaged by this Schedule 22 in respect of or in connection with the Variation;
  - (vi) the Variation would, if implemented, result in a change in the essential nature of the Project;
  - (vii) the Variation Enquiry does not comply with the requirements of Section 1.3 (including a failure to include adequate information therein to enable DB Co to prepare an Estimate in respect thereof); or
  - (viii) in the case of a Variation relating to the Works, the time specified for commencement and/or completion of such Variation cannot be achieved by DB Co despite commercially reasonable efforts.
- (b) If DB Co refuses to provide an Estimate on the grounds set out in Section 1.5(a), DB Co shall, within the period for delivery of an Estimate specified or agreed pursuant to Section 1.4(a), deliver to City a written notice specifying the grounds upon which DB Co rejects the Variation and the details thereof.

## **1.6 Estimate Requirements**

- (a) Unless City in a Variation Enquiry requires only specified limited information, each Estimate shall include the following information, sufficient to demonstrate to City's reasonable satisfaction:
- (i) the steps DB Co will take to implement the Variation, in such detail as is reasonable and appropriate in the circumstances;
  - (ii) any impact on Scheduled Substantial Completion Dates, and any other schedule impact on Project and completion of the Works (including for certainty, any impact of the proposed Variation after taking into consideration other Variations);
  - (iii) any impact on the performance of the Works and any other impact on this Project Agreement (including for certainty, any impact of the proposed Variation after taking into consideration other Variations);
  - (iv) any amendments to this Project Agreement or any Project Document required as a consequence of the Variation, the objective of such amendments being to ensure

that (save for the obligation of City to make payments or altered payments in respect of the Variation) the Parties are in no better and no worse position in relation to the Project than they would have been in if the Variation had not been implemented and, in particular, that there will be no material adverse change to the risk profile of the Project as a result of the Variation;

- (v) any impact on the Direct Costs of DB Co and the Subcontractors, including:
  - (A) any Capital Expenditure that will be incurred, reduced or avoided and the impact on DB Co's cash flows from incurring, reducing or avoiding such costs (whether financed by DB Co or City); and
  - (B) any other costs that will be incurred, reduced or avoided and the impact on DB Co's cash flows from incurring, reducing or avoiding such costs;
- (vi) either, subject to Section 1.9:
  - (A) a confirmation that the proposed Variation will not affect DB Co's existing financing or that DB Co's existing financing is adequate to implement the Variation; or
  - (B) if new or additional financing is required to implement the Variation, an indication as to the availability of such new or additional financing and the cost and terms of such new or additional financing;
- (vii) DB Co's preliminary indication of the potential increase or decrease, if any, to the Guaranteed Price;
- (viii) any Permits, Licences, Approvals and Agreements that must be obtained or amended for the Variation to be implemented, and the latest date by which DB Co must receive a Variation Confirmation and obtain or amend such Permits, Licences, Approvals and Agreements for the Estimate to remain valid; and
- (ix) the proposed methods of certification of any aspect of the Works required by the Variation if not covered by the provisions of this Project Agreement,

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

- (b) In preparing its Estimate, DB Co shall include sufficient information to demonstrate to City's satisfaction, acting reasonably, that:
  - (i) DB Co has used or has obliged each Subcontractor (or will oblige any Subcontractor not yet selected) to use commercially reasonable efforts, including the use of competitive quotes or tenders (if appropriate or required by Sections 1.6(c) and 1.6(e)), to minimize any increase in costs and to maximize any reduction in costs;
  - (ii) except as otherwise set out herein, all costs of DB Co and the Subcontractors are limited to Direct Costs;

- (iii) DB Co and the Construction Contractor shall charge only the margins for overhead and profit as set out in Appendix B hereto (such margins each calculated on the basis of the applicable Direct Costs so that no margin of DB Co or the Construction Contractor is calculated on any other margin of DB Co or the Construction Contractor), and no other margins or mark-ups;
  - (iv) the margins for overheads and profit as set out in Appendix B hereto as applicable to DB Co's Direct Costs shall only be chargeable on Direct Costs of DB Co, such that DB Co shall not charge any margins on any amounts charged by the Construction Contractor;
  - (v) all costs of providing Works, including Capital Expenditures, reflect:
    - (A) labour rates applying in the open market to providers of services similar to those required by the Variation;
    - (B) any and all changes in the Output Specifications arising out of the proposed Variation; and
    - (C) any and all changes in risk allocation;
  - (vi) the full amount of any and all expenditures that have been reduced or avoided (including for any Capital Expenditure) and that all such expenditures, including all applicable margins for overhead and profit anticipated to be incurred but for the Variation, have been taken into account and applied in total to reduce the amount of all costs; and
  - (vii) DB Co has mitigated or will mitigate the impact of the Variation, including on the Works Schedule, the performance of the Works, the expected usage of utilities, and the Direct Costs to be incurred.
- (c) DB Co will use commercially reasonable efforts to obtain the best value for money when procuring any work, services, supplies, materials or equipment required by the Variation and will comply with all Good Industry Practice in relation to any such procurement, to a standard no less than DB Co would apply if all costs incurred were to its own account without recourse to City, including using commercially reasonable efforts to mitigate such costs.
- (d) As soon as practicable, and in any event not more than 15 Business Days after City receives an Estimate, DB Co and City shall discuss and seek to agree on the Estimate, including any amendments to the Estimate agreed to by the Parties.
- (e) If City would be required by Applicable Law or any policy applicable to City to competitively tender any contract in relation to the proposed Variation, City may require DB Co to seek and evaluate competitive tenders for the proposed Variation in accordance with such Applicable Law or policy.
- (f) City may modify a Variation Enquiry in writing at any time for any matter relating to the Estimate or the discussions in relation thereto, in which case DB Co shall, as soon as

practicable and in any event not more than 10 Business Days after receipt of such modification, notify City in writing of any consequential changes to the Estimate.

- (g) If the Parties cannot agree on an Estimate pursuant to Section 1.6(d), then any Dispute will be determined in accordance with Schedule 27 - Dispute Resolution Procedure.

### 1.7 Variation Confirmation

- (a) As soon as practicable, and in any event within 15 Business Days after the later of the date the Estimate was delivered and the date the Estimate was either agreed to or any Dispute in respect thereof was determined in accordance with Schedule 27 - Dispute Resolution Procedure, City shall either:
- (i) subject to Sections 1.2(b) and 1.7(e), withdraw the Variation Enquiry by written notice to DB Co; or
  - (ii) issue a written confirmation (the “**Variation Confirmation**”) of the Estimate, including any agreed modifications thereto or any modifications resulting for the determination of a Dispute in respect thereof, which Variation Confirmation may be subject to DB Co obtaining financing pursuant to Section 1.8.
- (b) If City does not issue a Variation Confirmation within such 15 Business Days, then, subject to Sections 1.2(b) and 1.7(e), the Variation Enquiry shall be deemed to have been withdrawn.
- (c) Upon the Variation Confirmation being issued, and if applicable upon DB Co obtaining financing pursuant to Section 1.8:
- (i) the Parties shall as soon as practicable thereafter do all acts and execute all documents to amend this Project Agreement necessary to implement the Variation, including in respect of any required extension of the Key Works Milestones and Work Schedules, and including provision for payment to DB Co as provided in Section 1.10;
  - (ii) DB Co shall implement the Variation as provided for in the Variation Confirmation, and subject to amendments pursuant to Section 1.7(c)(i), all provisions of this Project Agreement applicable to the Works shall apply to the Works as thereby changed and no additional claim with respect to the Variation or Variation Confirmation will be considered; and
  - (iii) payment in relation to the Variation shall be as provided for in Section 1.10 and pursuant to any amendments pursuant to Section 1.7(c)(i).
- (d) If a Variation Confirmation is subject to DB Co obtaining financing pursuant to Section 1.8, then the Variation Confirmation shall not be effective until:
- (i) DB Co obtains such financing acceptable to City in its sole discretion; or
  - (ii) City in its sole discretion waives such requirement.

- (e) Except as hereinafter provided, until a Variation Confirmation has been issued:
- (i) the determination of whether or not to proceed with a Variation shall at all times be at City's sole discretion, despite any Dispute or any other matter in relation to a Variation being referred to or determined by Schedule 27 - Dispute Resolution Procedure; and
  - (ii) City may at any time withdraw a Variation Enquiry and, subject to Section 1.7(f), City shall not be obligated to DB Co in respect of a Variation until such time as City in its sole discretion issues a Variation Confirmation and, if applicable, DB Co has obtained the financing requested by City or City has waived such requirement,

provided that City may not withdraw (or be deemed to have withdrawn) a Variation Enquiry in circumstances where City is obligated pursuant to the terms of this Project Agreement to proceed with a Variation. In such circumstances Schedule 27 - Dispute Resolution Procedure shall be employed to finalize any aspects of the Variation which cannot otherwise be agreed to in accordance with the terms of this Schedule 22.

- (f) If a Variation Confirmation is not issued for any Variation Enquiry in respect of which DB Co has used commercially reasonable efforts to produce a fair and accurate Estimate, City shall reimburse DB Co for all Direct Costs reasonably and properly incurred by DB Co in connection with preparing the Estimate.

## 1.8 Financing

- (a) If DB Co in its Estimate confirms that existing financing is not available to pay for the proposed Variation and if City requests DB Co to obtain financing for a Variation, then a Variation Confirmation may be issued subject to DB Co obtaining financing. In such event, DB Co shall use commercially reasonable efforts to obtain the requested financing on terms satisfactory to DB Co, the Lenders and City, provided that, DB Co shall not be required to seek financing from any source other than the Lenders.
- (b) If DB Co has used commercially reasonable efforts to obtain the requested financing but has been unable to obtain an offer of financing on terms reasonably satisfactory to DB Co and City within 60 days of the date that City issues the Variation Confirmation, then DB Co shall have no further obligation to obtain financing for the Variation and any Variation Confirmation subject to financing shall no longer have any effect unless City, in its sole discretion, waives the requirement for financing or unless City is obligated to proceed with the Variation pursuant to the terms of this Project Agreement.
- (c) Subject to Section 1.9, if DB Co obtains an offer of financing on terms reasonably satisfactory to DB Co, DB Co shall provide City with details of such financing, and City shall, in its sole discretion, determine whether DB Co should proceed with such financing. If City determines that DB Co should not proceed with such financing, then DB Co shall have no further obligation to obtain financing for the Variation and any Variation Confirmation subject to financing shall no longer have any effect unless City, in its sole discretion, waives the requirement for financing or unless City is obligated to proceed with the Variation pursuant to the terms of this Project Agreement.
- (d) Subject to Section 1.9, City may at any time withdraw the requirement for DB Co to use

commercially reasonable efforts to obtain financing, after which DB Co shall have no further obligation to obtain financing for the Variation and any Variation Confirmation subject to financing shall no longer have any effect unless City in its sole discretion waives the requirement for financing or unless City is obligated to proceed with the Variation pursuant to the terms of this Project Agreement.

- (e) If City waives the requirement for financing or if DB Co has no further obligation to obtain financing for the Variation pursuant to Sections 1.8(b), 1.8(c) or 1.8(d), then DB Co shall proceed with the Variation as set out in the Variation Confirmation and City shall pay for the Variation as provided for in Section 1.10(a)(ii).

### **1.9 Increase or Decrease in the Cost of the Financing**

- (a) If there is an increase or a decrease in the Cost of the Financing as a result of a Variation, the Guaranteed Price shall be increased or decreased by the increase or decrease to the Cost of the Financing. DB Co shall provide the calculation of the increase or decrease in the Cost of the Financing, together with a certificate of the Lenders' Agent verifying such calculation. Where the increase in the Cost of the Financing includes breakage costs, but the impact of the Variation on the Cost of the Financing could also be accommodated without incurring breakage costs, calculations for both options shall be provided to City, together with a certificate of the Lenders' Agent addressed to DB Co (which will expressly provide that the certificate may be relied upon by City) verifying such calculations. City shall, in its Sole Discretion, within 5 Business Days of receiving such certificate from the Lenders' Agent, select its preferred option by providing written notice to DB Co and the Lenders' Agent. For greater certainty, the increases or decreases in the Cost of the Financing shall be calculated in a commercially reasonable manner and in accordance with the Lenders standard banking practices and the Lending Agreements, and without regard to the identity of the party paying such costs and expenses and, with respect to any swap breakage costs or gains, such costs or gains shall be calculated in accordance with standard market practices.

### **1.10 Payment**

- (a) If a Variation Confirmation has been issued and is not subject to financing, or if the requirement for financing has been satisfied by DB Co or has been waived by City, a price adjustment for the Variation, as set out in the Estimate and as adjusted and confirmed by the Variation Confirmation, shall be made as follows:
  - (i) the Guaranteed Price shall be adjusted as set out in the Variation Confirmation;
  - (ii) payment for Capital Expenditures as set out in the Variation Confirmation and not financed by DB Co shall be paid as follows:
    - (A) City shall pay such Capital Expenditures in lump sum payments based on a payment schedule agreed by City and DB Co, acting reasonably, to reflect the amount and timing of the Capital Expenditures to be incurred by DB Co in carrying out the Variation to the extent borne by City; and
    - (B) where payment for part of the Variation reflects the carrying out of, or specific progress towards, an element within the Variation, DB Co shall



provide satisfactory evidence confirming that the part of the Variation corresponding to each occasion when payment is due under the payment schedule has been duly carried out.

In the event City and DB Co fail to agree as to the terms of the payment schedule, the payment schedule shall be determined in accordance with Schedule 27 - Dispute Resolution Procedure, provided that, where all or any part of the Variation is being carried out by a third party under a contract with DB Co, subject to the terms of any contract between DB Co and that third party in relation to the implementation of the Variation having been approved by City (such approval not to be unreasonably withheld or delayed), the process under Schedule 27 - Dispute Resolution Procedure shall determine a payment schedule which would enable DB Co to be funded by City in time to make payments to that third party in accordance with its contract with DB Co.

- (b) City shall make payment to DB Co within 20 Business Days of receipt by City of invoices presented to City in accordance with the agreed payment schedule accompanied (where applicable) by the relevant evidence that the relevant part of the Variation has been carried out.
- (c) Payments by City in respect of a Variation shall be subject to applicable holdback provisions of the *Construction Act* (Ontario), as applicable.
- (d) DB Co shall not be entitled to any amount in excess of the amount of the Estimate confirmed in the Variation Confirmation.
- (e) Upon request by DB Co, City shall provide to DB Co copies of any consent or approval issued by City in connection with a proposed Variation.

#### **1.11 Reduction in Works**

- (a) If a Variation involves any reduction in Works which results in savings in Direct Costs to DB Co, such savings shall result in a reduction in the compensation payable to DB Co under this Project Agreement in an amount equal to such reduction in Direct Costs, and a Substantial Completion Payment or Substantial Completion Payments, or the balance of the Guaranteed Price, as applicable, shall be reduced accordingly.

#### **1.12 Variation Directive**

- (a) If an Estimate is not promptly agreed upon by City and DB Co or if there is a Dispute in relation thereto or if City, in its sole discretion, requires a Variation to be implemented prior to issuing a Variation Confirmation, then City may issue a Variation Directive and, following receipt of the Variation Directive:
  - (i) DB Co shall promptly proceed with the Variation;
  - (ii) the determination of the valuation and time extensions, if any, required in connection with such Variation, shall be made as soon as reasonably possible after commencement of the implementation of the Variation; and
  - (iii) pending final determination of the valuation and time extensions, if any, required in

connection with such Variation, the Independent Certifier, acting reasonably, shall determine the valuation in accordance with Appendices A and B hereto, with any Dispute to be determined in accordance with Schedule 27 - Dispute Resolution Procedure,

provided that, City shall fund all Variations implemented by way of a Variation Directive as provided for in Section 1.10(a)(ii).

## **2. DB CO VARIATIONS**

### **2.1 General**

- (a) DB Co shall deliver to City a written notice (a “**DB Co Variation Notice**”) for each Variation proposed by DB Co.

### **2.2 DB Co Variation Notice**

- (a) A DB Co Variation Notice shall:
- (i) set out details of the proposed Variation in sufficient detail to enable City to evaluate it in full;
  - (ii) specify DB Co’s reasons for proposing the Variation;
  - (iii) indicate all reasonably foreseeable implications of the Variation, including whether there are any costs or cost savings to City; and
  - (iv) indicate the latest date by which a Variation Enquiry must be issued.
- (b) If City, in its sole discretion, elects to consider the Variation proposed by DB Co, City may issue to DB Co a Variation Enquiry and the procedure set out in Section 1 will apply.

## **3. SMALL WORKS**

### **3.1 General**

- (a) DB Co shall carry out all Small Works requested by City.
- (b) If Small Works are requested by City, DB Co shall, within 10 Business Days of each such request and prior to carrying out the Small Works, provide City with a price for carrying out the Small Works.
- (c) If DB Co’s price is accepted by City, in its sole discretion, DB Co shall carry out the Small Works for such price.
- (d) City may at any time, in its sole discretion, including if City does not accept the price proposed by DB Co pursuant to Section 3.1(b), issue a Variation Enquiry or Variation Directive in respect of such Small Works, in which event the provisions of this Schedule 22, other than this Section 3, shall apply.
- (e) DB Co’s price shall include only its Direct Costs, as calculated in accordance with

Appendix A, together with applicable margins as set out in Appendix B.

**3.2 DB Co to Minimize Inconvenience**

- (a) DB Co shall notify City of the estimated duration of any Small Works so that City and DB Co can agree upon a convenient time for carrying out the same, so as to minimize and mitigate inconvenience and disruption to City. DB Co shall use commercially reasonable efforts to minimize the duration of any Small Works.

## APPENDIX A

### CALCULATION OF DIRECT COSTS

#### 1. DIRECT COSTS

1.1 Subject to Section 1.2 of this Appendix A, the term “**Direct Cost**” means the cumulative total, without duplication, of only the following amounts, as paid or incurred by DB Co or the Subcontractors, as applicable, to the extent that they specifically relate to, and are attributable to, the Variation under which DB Co is expressly entitled to its Direct Cost and would not otherwise have been incurred:

- (i) wages and benefits paid for labour in the direct employ of DB Co or the Subcontractors while performing that part of the Works on Site;
- (ii) salaries, wages and benefits of DB Co’s or the Subcontractors’ personnel when stationed at the Site office in whatever capacity employed, or personnel engaged at shops or on the road, in expediting the production or transportation of materials or equipment;
- (iii) salaries, wages and benefits of DB Co’s or the Subcontractors’ office personnel engaged in a technical capacity;
- (iv) without limiting Sections 1.1(i), 1.1(ii) and 1.1(iii) of this Appendix A, contributions, assessments or taxes incurred for such items as employment insurance, provincial health insurance, workers’ compensation, and Canada Pension Plan, insofar as such costs are based on the wages, salaries, or other remuneration paid by DB Co or a DB Co Party to employees pursuant to Sections 1.1(i), 1.1(ii) and 1.1(iii) of this Appendix A, but excluding for certainty all income taxes on such wages, salaries and other remuneration;
- (v) travel and subsistence expenses of DB Co’s or the Subcontractors’ officers or employees referred to in Sections 1.1(i), 1.1(ii) and 1.1(iii) of this Appendix A;
- (vi) the cost of materials (including hand tools which have a retail value of \$[REDACTED] or less), products, supplies, equipment, temporary services and facilities, including transportation and maintenance thereof, which are consumed in the performance of the Variation;
- (vii) the rental costs of all tools (excluding hand tools which have a retail value of \$[REDACTED] or less), machinery, and equipment used in the performance of the Variation, whether rented from or provided by DB Co or others, including installation, minor repair and replacement, dismantling, removal, transportation and delivery costs thereof;
- (viii) deposits lost;
- (ix) the amount of all Subcontracts with the Subcontractors;

- (x) the amount paid for any design services;
- (xi) the cost of third party quality assurance required by City, such as independent inspection and testing services;
- (xii) charges levied by Governmental Authorities, but excluding fines or penalties not related to the implementation of the Variation;
- (xiii) subject to Section 1.1(iv) of this Appendix A and without limiting the obligation of City to pay HST under this Project Agreement, Taxes, but excluding:
  - (A) HST;
  - (B) taxes imposed on DB Co or a Subcontractor based on or measured by income or profit or otherwise imposed under the *Income Tax Act* (Canada), the *Income Tax Act* (Ontario) or any similar statute in any other jurisdiction;
  - (C) capital taxes based on or measured by the capital of DB Co or a Subcontractor;
  - (D) taxes relating to withholdings on any payments by DB Co or a Subcontractor; and
  - (E) taxes relating to any business or activity other than the business or activities related to, and conducted for, the purposes of the Works;
- (xiv) the cost of removal and disposal of contaminants, hazardous substances, waste products and debris for which DB Co is not responsible under this Project Agreement;
- (xv) termination payments which are required under Applicable Law to be made to employees of DB Co or Construction Contractor reasonably and properly incurred by DB Co or Construction Contractor arising as a direct result of any Variation reducing the scope of the Works, except to the extent that such termination payments are provided for in contracts of employment, agreements or arrangements that were not entered into in the ordinary course of business and on commercial arm's length terms;
- (xvi) the cost of financing as calculated pursuant to Section 1.9 of Schedule 22, including additional financing costs related to any delay caused by the implementation of the Variation;
- (xvii) the cost of competitively tendering any contract in relation to the proposed Variation which is required by Applicable Law or any policy applicable to City;
- (xviii) the cost of any additional insurance or performance security required or approved by City;
- (xix) the cost of obtaining all DB Co Permits, Licences, Approvals and Agreements; and

- (xx) except as specified in Section 1.2(vii), reasonable fees and disbursements of Project Co's legal advisors, reasonable fees and disbursements of DB Co's legal and technical advisors.

**1.2** The Direct Cost otherwise payable shall be subject to and limited by the following:

- (i) the Direct Cost shall be net of all discounts, rebates and other price reductions and benefits, which relate to the Direct Cost incurred;
- (ii) the amount paid for materials, products, supplies and equipment incorporated into the Works as a result of the Variation shall not exceed commercially competitive rates available in the Province of Ontario for such materials, products, supplies and equipment from arms-length third party suppliers; provided this shall not restrict the cost of extending hire of equipment already in situ;
- (iii) the amount paid for any design services included in the Direct Cost, whether provided by DB Co's personnel, consultants, manufacturers or manufacturers' consultants, for hourly paid personnel shall not exceed **[REDACTED]** the actual salary received by those personnel (actual salary to be inclusive of all benefits, statutory remittances and holidays), and for salaried personnel, the actual salary per hour shall be calculated by dividing the annual salary (inclusive of all benefits, statutory remittances and holidays) by **[REDACTED]** hours;
- (iv) the amount paid for machinery and equipment rental costs shall not exceed the prevailing competitive commercial rate for which such equipment or machinery can be obtained in Ottawa, Ontario;
- (v) the Direct Cost shall not include any cost incurred due to the failure on the part of DB Co to exercise reasonable care and diligence in its attention to the prosecution of that part of the Works;
- (vi) the amount paid for salaries, wages and benefits of DB Co's or the Subcontractors' personnel shall reflect commercially competitive rates available in Ottawa; and
- (vii) the Direct Cost shall not include any reasonable fees and disbursements of Project Co's legal advisors incurred in connection with Small Works or the preparation of the Estimate.

**APPENDIX B**  
**APPLICABLE**  
**MARGINS**

Party	Total Overhead and Profit Margin (as % of Direct Cost)		
	For Projects under \$[REDACTED]	For Projects between \$[REDACTED] and \$[REDACTED]	For Projects over \$[REDACTED]
DB Co (Own Work)	[REDACTED]%	[REDACTED]%	[REDACTED]%
Construction Contractor (Own Work)	[REDACTED]%	[REDACTED]%	[REDACTED]%
Construction Contractor (Subcontracted Work)	[REDACTED]%	[REDACTED]%	[REDACTED]%
DB Co and Construction Contractor re: Cash Allowance Items	[REDACTED]%	[REDACTED]%	[REDACTED]%