

## EXHIBIT 5

### EARLY WORK SCOPE DOCUMENT

#### 1. Conditions Precedent to Issuance of LNTP1

Design-Builder shall satisfy the following conditions precedent to achieve LNTP1 to commence the Early Work tasks as set forth in Section 2.A of this Exhibit 5 (Early Work Scope Document):

- A. Design-Builder has submitted, and Department has approved, the Early Work Schedule of Values; and
- B. Design-Builder has provided (i) proof that Design-Builder has obtained the insurance policies required pursuant to Sections 1.A of Exhibit 12 (Required Insurance) to the Agreement, (ii) the payment and performance security required pursuant to Section 10.2.1 of the Agreement (which insurance policies described in clause (i) and the payment and performance security described in clause (ii) must be maintained throughout the completion of all Early Work in accordance with the Agreement), and (iii) the Guarantee(s).

#### 2. Scope of Early Work

Early Work tasks shall not include (i) any construction-related activities (except as otherwise may be permitted pursuant to LNTP3) or (ii) other activities that could impact wetlands and waters identified by the Preliminary Jurisdictional Determination dated October 18, 2018.

Design-Builder may propose other Early Work tasks that may benefit the Project, and Department may approve such tasks in its sole discretion; *provided* that Department's payments in respect of all Early Work undertaken by Design-Builder shall not exceed the limitation set forth in Section 5.1.1.4 of the Agreement.

The Early Work tasks for each LNTP are described below.

##### A. LNTP1 – Early Work

Early Work authorized under LNTP1 shall consist of all activities necessary to advance the design and permitting processes, including:

- (i) the Design Work required in order to prepare a Joint Permit Application that satisfies the LNTP1 Completion Milestone;
- (ii) public hearings and outreach;
- (iii) establishment of a Project office;

- (iv) the hazing of migratory birds on the South Island;
- (v) activities relating to scope validation (as further described in Section 2.2 of the General Conditions of Contract);
- (vi) surveys and other investigations permitted in accordance with Nationwide Permit (6) dated November 13, 2017; and
- (vii) other activities related to the preparation and submission of a Joint Permit Application that satisfies the LNTP1 Completion Milestone.

**B. LNTP2 – Early Work**

Early Work authorized under LNTP2 shall consist of the activities relating to:

- (i) the acquisition, manufacturing, and delivery of the tunnel boring machine described in Section 6.3.1.1 of the General Conditions of Contract;
- (ii) the Design Work; and
- (iii) work authorized under LNTP1 that should continue following the Design-Builder’s satisfaction of the LNTP1 Completion Milestone.

**C. LNTP3 – Early Work**

Early Work authorized under LNTP3 shall consist of all activities relating to:

- (i) preparation of the launch pit for the tunnel boring machine;
- (ii) the assembly, set-up, and testing of the tunnel boring machine as further described in Section 6.3.1.2 of the General Conditions of Contract;
- (iii) the Design Work; and
- (iv) work authorized under LNTP1 that should continue following the Design-Builder’s satisfaction of the LNTP1 Completion Milestone.

**3. Payments to Design-Builder for Early Work Tasks**

- A. Design-Builder shall be entitled to a payment for mobilization following Department’s issuance of LNTP1 in the amount of twenty million dollars (\$20,000,000), which amount is inclusive of, and not in addition to, the total amount of compensation available with respect to LNTP1 pursuant to Section 5.1.1.1 of the Agreement.

- B. On the tenth (10th) day of each month, Design-Builder shall submit for Department's review and approval Design-Builder's Application for Early Work Payment requesting payment for all Early Work performed by Design-Builder in the prior month and coinciding with the progress reflected in the monthly Baseline Schedule update. Payment shall be made in accordance with the Early Work Schedule of Values.
- C. Department shall make payment within thirty (30) days after Department's receipt of each properly submitted and accurate Application for Early Work Payment in accordance with this Exhibit 5 (Early Work Scope Document), less amounts properly withheld under Section 6.4 of the General Conditions of Contract. Department agrees to use reasonable efforts to make payment within the same calendar month that Department receives a properly submitted and accurate Application for Early Work Payment but, notwithstanding the use of such reasonable efforts, Department shall have no obligation to make payment prior to the expiration of the thirty (30) -day period described in the immediately preceding sentence. Department shall not be obligated to make any payment for Early Work to the extent that such payment, when added to all previous payments under the Agreement, exceeds the Maximum Cumulative Compensation Amount for the month covered by the Application for Early Work Payment. In its sole discretion, Department may make payments to Design-Builder in excess of the Maximum Cumulative Compensation Amount.
- D. For all Early Work paid on a lump-sum basis, progress payments shall be determined as percentages of items on the Early Work Schedule of Values, comprising the Early Work completed since the Design-Builder's immediately prior Application for Early Work Payment. Design-Builder shall present a method for determining these percentages that is acceptable to Department.
- E. Quality assurance/quality control shall be an integral part of each activity. Design-Builder shall submit with each Application for Early Work Payment evidence of the quality assurance/quality control reviews, including any checklists, summary data, high-level/outline calculations or design checks, and evaluations of the work and the qualifications of the responsible personnel that completed the work, etc., that the relevant quality assurance or quality control reviewer relied on to make its determination that the Early Work is complete and conforms to the requirements of the Contract Documents. Furthermore, the QAM shall:
- (i) verify that the design included in each activity has been completed in accordance with the Contract Documents;
  - (ii) certify that the construction included in each activity, if any, has been completed in accordance with the Contract Documents; and
  - (iii) certify that all required quality assurance/quality control tests, measurements, permits or other requirements have been completed and all

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non-conformance reports relative to the respective activity have been resolved.

#### **4. Payments to Design-Builder Relating to Tunnel Boring Machine**

During performance of the Early Work, Design-Builder may request payments with respect to the purchase and fabrication of the tunnel boring machine pursuant to Section 6.3.1.1 of the General Conditions of Contract.