

MAR 31 2022



S-222719
No.
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

Between:

Acciona Wastewater Solutions LP
by its General Partner, AWS General Partner Inc.

Plaintiff

and:

Greater Vancouver Sewerage and Drainage District

Defendant

NOTICE OF CIVIL CLAIM

This action has been started by the plaintiff for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must

- (a) file a Response to Civil Claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim on the plaintiff.

If you intend to make a counterclaim, you or your lawyer must

- (a) file a Response to Civil Claim in Form 2 and a Counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed Response to Civil Claim and Counterclaim on the plaintiff and on any new parties named in the Counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the Response to Civil Claim within the time for response to civil claim described below.

Time for Response to Civil Claim

A Response to Civil Claim must be filed and served on the plaintiff(s),

- (a) if you were served with the Notice of Civil Claim anywhere in Canada, within 21 days after that service,
- (b) if you were served with the Notice of Civil Claim anywhere in the United States of America, within 35 days after that service,
- (c) if you were served with the Notice of Civil Claim anywhere else, within 49 days after that service, or
- (d) if the time for Response to Civil Claim has been set by order of the court, within that time.

CLAIM OF THE PLAINTIFF

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PART 1: STATEMENT OF FACTS

I. THE PARTIES

1. Unless otherwise defined herein, capitalized terms in this Notice of Civil Claim have the meaning assigned to them in the project agreement defined below as the PA.
2. The Plaintiff, Acciona Wastewater Solutions LP ("**Acciona**"), by its General Partner, AWS General Partner Inc. claims against the Defendant, the Greater Vancouver Sewerage and Drainage District (the "**GVS&DD**"), in relation to the Design, Construction and financing of a wastewater treatment plant located at 1311-1321 West 1st Street, North Vancouver, British Columbia (the "**North Shore WWTP**").
3. Acciona is a limited partnership formed under the laws of the Province of Manitoba that carries on business in the Province of British Columbia. The General Partner of Acciona, AWS General Partner Inc., is a corporation incorporated under the laws of Canada. Acciona and AWS General Partner Inc. have an address for service in this action at 20th Floor, 250 Howe Street, Vancouver, British Columbia, V6C 3R8.
4. The partners of Acciona, Acciona Agua Canada Inc. and Acciona Infrastructure Canada Inc., are members of the Acciona family of companies, who are global leaders in the design and construction of wastewater treatment plants and large infrastructure projects,

having successfully delivered some of the most complex wastewater treatment plants and infrastructure projects in the world.

5. The GVS&DD is a corporation incorporated by the *Greater Vancouver Sewerage and Drainage District Act*, S.B.C. 1956 c.59, with a head office located at 4730 Kingsway, Burnaby, British Columbia.

II. OVERVIEW OF ACCIONA'S CLAIMS

6. Acciona entered into a project agreement with the GVS&DD dated April 5, 2017 (the "PA"), based on a public private partnership contracting model, to design, construct, partially finance, and operate the North Shore WWTP (the "Project") for a DB Price of \$504,177,233.61 and certain other payments.
7. Under the PA, Acciona provided several estimated completion dates, including a Target Acceptance Date for the completion of the Design and the Construction and the achievement of Acceptance under the PA of January 6, 2021.
8. Under the PA, the GVS&DD was to pay the DB Price to Acciona by way of Milestone Payments based on the progress of Acciona's Work under the PA.
9. Commencing in or about April 2017, Acciona diligently performed its obligations under the PA, including its obligations to perform the Design and the Construction of the North Shore WWTP, in accordance with the PA, all applicable Laws, and Good Industry Practice.
10. The GVS&DD selected the Project Site for the North Shore WWTP. In the PA, the GVS&DD expressly represented and warranted to Acciona that it was possible to design and construct the North Shore WWTP on the Project Site in accordance with Acciona's obligations under the PA.

11. In fact, it was not possible to design and construct the North Shore WWTP on the Project Site in accordance with Acciona's obligations under the PA without numerous and significant changes to the PA, including changes to the GVS&DD's highly prescriptive, conflicting, and error-ridden Design and Construction Specifications in the PA.
12. By 2019, the GVS&DD recognized that numerous and significant changes were required to be made to the PA in order for the North Shore WWTP to be designed and constructed on the Project Site.
13. By October 28, 2020, Acciona and the GVS&DD had agreed to significant Changes to the PA, resulting in an amended DB Price of \$621,613,706.10 and a new Target Acceptance Date of September 19, 2023, with further Changes expected to be agreed.
14. However, in breach of its obligations under the PA, the GVS&DD refused to agree that further changes to Acciona's obligations under the PA, including additional work to address the numerous conflicts and errors in the GVS&DD's Design and Construction Specifications, were Changes under the PA. The GVS&DD wrongfully refused to pay additional compensation to Acciona in respect of such changes and to grant extensions to the target completion dates in the PA.
15. Under the PA, Acciona had the complete responsibility for the Design and the Construction of the North Shore WWTP. However, in breach of its obligations under the PA, the GVS&DD interfered extensively with Acciona's performance of its Design and Construction obligations. The GVS&DD breached its obligation to collaborate with Acciona, and it failed to exercise the discretions granted to it under the PA reasonably and in good faith. Rather, the GVS&DD exercised the discretions granted to it under the PA in a capricious, arbitrary and high-handed manner, including to seek commercial advantages.

16. The GVS&DD, including through the acts and omissions of its consultant, AECOM Canada Ltd. (“AECOM”), repeatedly and wrongfully conducted itself in the design review process set out in the PA in a manner that subverted the achievement of the commercial purposes of the PA. The GVS&DD consistently failed to conduct its design reviews in a timely and reasonable manner, as it was required to do under the PA.
17. Further, the GVS&DD wrongfully refused to agree to pay additional compensation to Acciona or to grant extensions to the target dates in the Project Schedule on account of the GVS&DD’s breaches of its obligations under the PA, and other multiple Supervening Events under the PA.
18. The GVS&DD’s conduct in relation to the Change process, the design review process, and Acciona’s claimed Supervening Events breached the GVS&DD’s obligations under the PA to work collaboratively and cooperatively with Acciona to achieve prompt and equitable resolution of Project issues, as well as the GVS&DD’s implied obligations of good faith, including its duty of honest performance of the PA.
19. By mid-2021, it became evident that it was impossible to build the North Shore WWTP on the Project Site selected by the GVS&DD in accordance with the requirements in the PA without further significant changes to the PA, including to the Target Acceptance Date, as a result of, but not limited to, the following:
 - (a) the discovery of rampant errors and conflicts in the GVS&DD Design and Construction Specifications;
 - (b) Acciona’s development of the detailed design, which resulted in:
 - (i) a doubling of the amount of reinforcing steel required to be placed within the major structures of the North Shore WWTP, with no additional space

available to hold it, resulting in severe productivity losses in the construction of those structures; and

- (ii) a recognition that all the elements of the process design required under the PA would not fit into space in the buildings left after all the additional reinforcing steel had been installed.
 - (c) the GVS&DD's delays and requests for additional work throughout the design review process, and its refusal to implement Changes under the PA; and
 - (d) the total square footage required to accommodate all of the equipment required by the PA to be installed in accordance with all the requirements in the PA exceeded the total square footage available on the Project Site by more than 30%.
20. By mid-2021, Acciona's estimated date to achieve Acceptance under the PA was November 4, 2025 (the "**2021 Estimated Target Acceptance Date**"), and its estimated costs to complete the Project was in excess of \$1 billion.
21. The delay to the Target Acceptance Date and the increased costs to complete the Project were caused by the Project Site being unsuitable for the construction of the North Shore WWTP, the wrongful conduct of the GVS&DD, and the emergence of Project risks not contemplated at the time of the execution of the PA, and of amendments thereto, that changed the fundamental nature of the Project and rendered performance in accordance with all the requirements in the PA impossible, which risks Acciona did not assume under the PA.
22. When Acciona advised the GVS&DD that it was impossible to meet all the requirements in the PA and also achieve the 2021 Estimated Target Acceptance Date, the GVS&DD demanded that Acciona complete the Construction of the North Shore WWTP by

September 19, 2023, which was, to the knowledge of the GVS&DD, physically impossible to achieve.

23. In addition, the GVS&DD breached its obligations of good faith in relation to the Milestone Payment process under the PA, with the intended purpose and effect of delaying payments to Acciona for Work that Acciona had performed.
24. On or about July 27, 2021, Acciona applied for payment of the Milestone Payment for Milestone 5 under the PA in the amount of \$95 million, having completed the Milestone 5 Criteria in general conformance with the PA. The GVS&DD wrongfully withheld or instructed AECOM to withhold 'REVIEWED' comments on Shop Drawings for the improper purpose of preventing Acciona from meeting specific Milestone 5 Criteria for commercial reasons, and in order to avoid the GVS&DD's obligation to pay the Milestone Payment for Milestone 5.
25. The GVS&DD deliberately breached the PA in relation to the Milestone Payment for Milestone 5, for the improper purpose of depriving Acciona of significant funds to which it was entitled for Work it had performed. This conduct of the GVS&DD was reprehensible and constitutes misconduct.
26. Notwithstanding that Acciona's design of the North Shore WWTP complied with the PA (to the extent compliance was not impossible), and all applicable Laws and Good Industry Practice, and that Acciona's Construction met all the quality and safety requirements in the PA, the GVS&DD terminated the PA, wrongfully, pursuant to a termination notice dated October 15, 2021.
27. The GVS&DD purported to terminate the PA on the basis that Acciona's updated Project Schedule did not show that Acciona would achieve certain completion dates under the

- PA, including the Target Acceptance Date of September 19, 2023, even though the GVS&DD had wrongfully refused to provide reasonable extensions to those dates, and even though, to the knowledge of the GVS&DD, such dates were impossible to achieve.
28. In fact, at all material times, Acciona's updated Project Schedule, as required under the PA, provided an accurate and realistic representation of Acciona's plan to complete its obligations under the PA. Acciona's updated Project Schedule did not show the GVS&DD's desired Target Acceptance Date due to the GVS&DD's own breaches of the PA in refusing to grant reasonable extensions to the Target Acceptance Date.
 29. In breach of its express and implied duties of good faith in the PA, the GVS&DD sought to take advantage of its own breaches of the PA in terminating the PA. The GVS&DD's termination of the PA was wrongful, and Acciona seeks recovery of all of its losses flowing from such wrongful termination, including, but not limited to its full costs of performing the Work on the Project plus reasonable markups for overhead and profits, and damages suffered as a result of lost opportunities to perform other projects.
 30. The GVS&DD's conduct in terminating the PA was reprehensible and constitutes misconduct.
 31. In further breach of the PA, the GVS&DD wrongfully made a demand on the Design and Construction Letter of Credit (the "**Design and Construction LC**") that Acciona had delivered to secure its obligations under the PA in the amount of \$50 million.
 32. In addition, the GVS&DD tortiously interfered with Acciona's contractual relations with the financing and design-builder entities on the Project by providing notices to those entities alleging rights that the GVS&DD did not have. In particular, the GVS&DD:

- (a) wrongfully issued a Termination Notice to Acciona's Lender pursuant to the Lender's Remedies Agreement, thereby causing an Event of Default under Acciona's Credit Agreement with its Lender; and
 - (b) wrongfully issued a Proposed Transfer Notice to Acciona's design builder on the Project, a joint venture of Acciona Agua Canada Inc. and Acciona Infrastructure Canada Inc. (the "**Design-Builder**"), in order to effect an assignment of the Design Construction and Services Agreement between Acciona and the Design-Builder (the "**DCS Agreement**") from Acciona to the GVS&DD, and then wrongfully terminated the DCS Agreement.
33. Acciona is entitled to judgment against the GVS&DD in an amount exceeding \$250 million.

III. BACKGROUND FACTS

A. Project Conception

34. In or about April 2007, the GVS&DD retained Stantec Consulting Ltd. ("**Stantec**") to advise on the feasibility of designing and constructing a new secondary wastewater treatment plant for the North Shore Sewerage Area at five locations. One of the locations was known as the BC Rail Passenger Lands Site.
35. In or about September 2007, Stantec issued a report to the GVS&DD (the "**Stantec Feasibility Report**"), which concluded, among other things, that constructing the proposed wastewater treatment plant at the BC Rail Passenger Lands Site was not the most feasible option, and that it would be more expensive to construct the proposed plant above ground at this site than at any of the other sites, based on certain assumptions as to the type of wastewater technology that would be used.

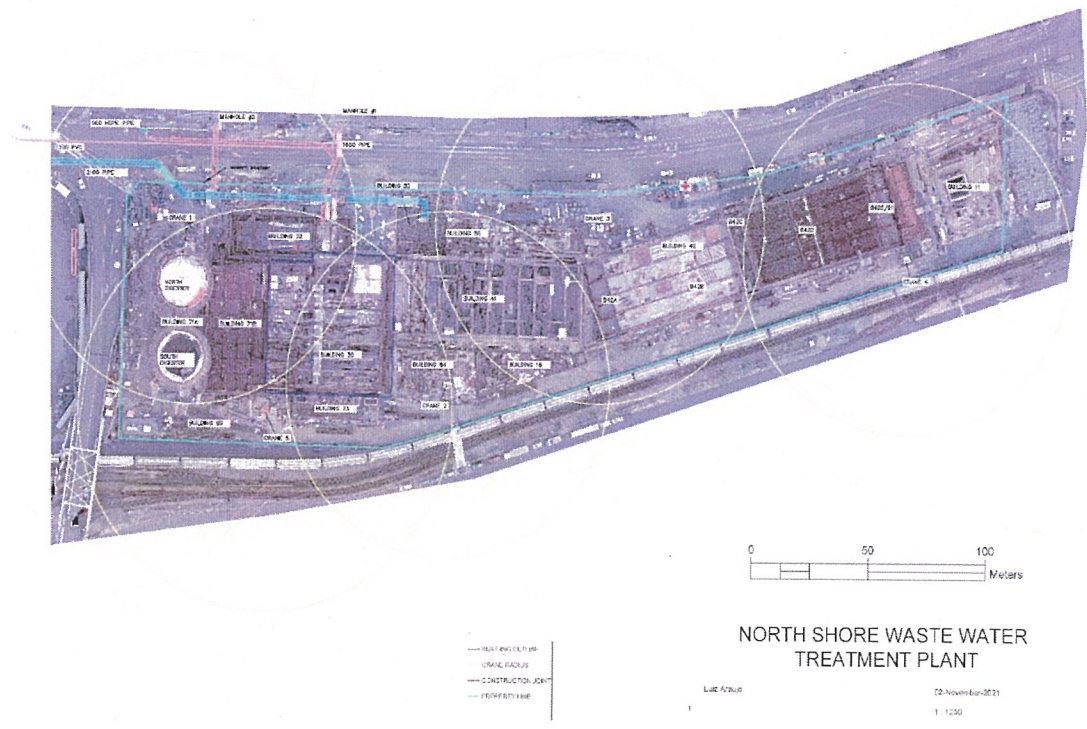
36. Despite the findings of the Stantec Feasibility Report, in or about 2012, the GVS&DD decided to pursue the design and construction of the North Shore WWTP at the BC Rail Passenger Lands Site, the Project Site. At this time, the North Shore WWTP was intended to provide secondary wastewater treatment for approximately 250,000 residents in the District of West Vancouver, the City of North Vancouver, the District of North Vancouver, the Squamish Nation, and the Tsleil-Waututh Nation.

B. The Project Site

37. The Project Site selected by the GVS&DD is approximately 2.9 hectares in size. It is significantly smaller than sites usually selected for projects of a comparable scale. The Project Site is irregular in shape, and is surrounded by existing infrastructure in close proximity. The following is a simplified plan of the location of the Project Site from the AECOM Final Project Definition Report described below.



38. The Project Site is bounded on the north by 1st Street, on the west by Philip Avenue, and on the east by Pemberton Avenue, and on the south by the CN Rail line running alongside and within approximately 3 metres of the south property line. The Philip Avenue Overpass is located within approximately 20 metres of the southwest corner of the Project Site, and the Philip Avenue north end overpass approaches are located immediately adjacent to the west property line. A plan of the Project Site depicting these boundaries and the infrastructure in close proximity is set out below:



39. The Project Site is located in Comprehensive Development 55 Zone under the District of North Vancouver’s Zoning Bylaw, which restricts the maximum building height to 12 metres, and restricts the maximum building coverage on the Project Site of 60%.

C. Project Definition

40. In or about January 2014, the GVS&DD received a report from KPMG on the feasibility of constructing the North Shore WWTP at the Project Site (the "**KPMG Feasibility Study**") which concluded that the North Shore WWTP could be designed and constructed at the Project Site for a cost of approximately \$585 million.
41. In or about February 2014, the GVS&DD received from AECOM a Final Project Definition Report and an Indicative Design for the North Shore WWTP to be constructed at the Project Site. The Indicative Design represented the GVS&DD's preferred design following a lengthy evaluation of multiple options. The Final Project Definition Report concluded that the North Shore WWTP could be designed, constructed and commissioned in a six year period, and that the construction cost before escalation and contingencies was estimated at \$418 million.
42. The Project contemplated in the KPMG Feasibility Study, the AECOM Final Project Definition Report, and the Indicative Design was based on:
 - (a) Secondary wastewater treatment technology that was different from and required more space than the technology assumed in the Stantec Feasibility Report; and
 - (b) A geotechnical report prepared by Golder Associates, which stated that soils up to the depth of 44 metres underlying the Project Site were considered to be susceptible to liquefaction, and included recommended foundation support options to address liquefaction induced settlements.

D. The Competitive Procurement for the Project

43. On or about September 28, 2015, the GVS&DD issued a Request for Qualifications (the “**RFQ**”) in order to identify a shortlist of three qualified proponents who would be invited to participate in a request for proposals process for the Project.
44. Acciona responded to the RFQ, and was ultimately selected by the GVS&DD as one of the three shortlisted proponents to participate in the request for proposals process. The other proponents were PCL Constructors Westcoast Inc. (“**PCL**”), and a partnership involving CH2M Hill Canada and EllisDon Inc.
45. On or about April 13, 2016, the GVS&DD issued a Request for Proposals (the “**RFP**”) inviting submissions from the shortlisted proponents for the Project. The RFP included the following key terms:
 - (a) Proponents were given access to a Data Room that contained the GVS&DD's Indicative Design of the Project, the AECOM Project Definition Report, a redacted version of the Stantec Report, the KPMG Feasibility Study, and other materials related to the Project;
 - (b) Proponents' technical submissions would be evaluated, among other things, based on a comparison between the Proponent's design and the GVS&DD's Indicative Design of the Project;
 - (c) The GVS&DD reserved the right to reject a proposal from any proponent that exceeded the affordability cap set out in the RFP of \$525 million as a total cost for the design, construction, financing and twelve months of operation of the North Shore WWTP;

- (d) Construction of the North Shore WWTP was expected to be complete by December 31, 2022; and
 - (e) Proponents were required to agree that, if selected as the successful proponent, they would enter into a contract generally in the form of the contract included with the RFP, which was a public private partnership form of project agreement.
46. Based on the documents and information provided by the GVS&DD through the RFP process, Acciona prepared its technical submission in response to the RFP, and submitted it to the GVS&DD on or about November 29, 2016.
47. Based on the documents and information provided by the GVS&DD through the RFP process, Acciona prepared its financial submission in response to the RFP, and submitted it to the GVS&DD on or about January 26, 2017.
48. In or about April 2017, the GVS&DD selected Acciona as the successful proponent to perform the Design and the Construction of the North Shore WWTP, to provide partial financing, and then to operate the North Shore WWTP for twelve months after the completion of the Construction.
49. The GVS&DD and Acciona entered into the PA on the assumption that the Project Site, including the subsurface conditions, had characteristics that would permit Acciona to design and construct the North Shore WWTP in accordance with all the requirements in the PA, including the agreed Project Schedule and the agreed completion dates.

IV. THE PA AND RELATED AGREEMENTS

50. As a public private partnership agreement, the PA had as one of its commercial objectives to give a GVS&DD the benefit of private sector expertise in the preparation of a design

that provides efficiencies and cost savings for the benefit of the GVS&DD in all phases of the life of a project, including in the construction and operations phases.

51. The competitive procurement process leading up to the execution of the PA was designed to facilitate the selection of a proponent with relevant expertise which had submitted a proposal that met the GVS&DD's needs as expressed in the RFP in a cost-effective manner. The procurement was structured to permit the competing proponents to identify and price the material risks of the Project, and for the GVS&DD and the successful proponent to allocate those risks under commercial terms that reflect the risks. Since the price of a risk is reduced if allocated to the party best able to minimize and manage the risk, the procurement process was designed to provide the best price for the GVS&DD for the scope of the project as described in the RFP.
52. Under the PA, Acciona agreed to deliver the complete project through all of the design, construction and operation phases for a fixed price and a fixed schedule. Acciona could assume this responsibility if it is given control over design and construction so that it can protect itself from cost overruns and schedule delays. Under a public private partnership agreement, the owner retains certain rights of review and comment on the private sector party's design and construction.
53. In order to achieve the commercial objectives of the PA, the GVS&DD and Acciona were required to perform their roles and responsibilities under the PA acting reasonably and in a collaborative manner consistent with the commercial objectives of the PA.
54. The PA consists of a main agreement and attached schedules, including, but not limited to, the following:
 - (a) SCHEDULE 1 – DEFINITIONS AND INTERPRETATION

- (b) SCHEDULE 2 – GENERAL REQUIREMENTS AND PROCEDURES
- (c) SCHEDULE 3 – DESIGN REQUIREMENTS
- (d) SCHEDULE 4 – DESIGN AND CONSTRUCTION SPECIFICATIONS
- (e) SCHEDULE 7 – CHANGES
- (f) SCHEDULE 9 – PAYMENTS
- (g) SCHEDULE 10 – COMPENSATION ON TERMINATION.

55. It was an express or implied term of the PA, among other things, that:

- (a) The GVS&DD represented and warranted that Acciona would be able to design and construct the North Shore WWTP on the Project Site in accordance with its obligations under the PA (Section 3.5(e));
- (b) Acciona would perform its obligations under the PA, including the Design and the Construction for the DB Price, defined as the sum of \$504,177,233.61 (Sections 3.1 and 4.1);
- (c) Acciona would enter into the Senior Financing Agreements and would keep those agreements in good standing (Section 5.1);
- (d) The parties would consult and cooperate in all matters related to the North Shore WWTP (Section 2.11);
- (e) Acciona would have complete responsibility for the Design and Construction of the Project (Section 1.1 of Schedule 2);

- (f) The parties would agree to a baseline Project Schedule, and then Acciona would periodically update the Project Schedule. The baseline Project Schedule showed a Target Acceptance Date of January 6, 2021 (Section 6.2 of Schedule 2);
- (g) Acciona would ensure that its updated Project Schedules were “*an accurate, reasonable and realistic representation*” of its plans to perform its obligations under the PA, and would include adjustments resulting from Supervening Events and Changes, if any, as permitted by the PA. Acciona would perform its obligations under the PA in compliance with the Project Schedule as amended and updated pursuant to the PA (Section 6.4 of Schedule 2);
- (h) The GVS&DD would make payment of the DB Price to Acciona in instalments known as Milestone Payments on the Target Milestone Completion Dates, upon the Independent Certifier appointed under the PA certifying that Acciona had achieved the Milestone Criteria for each such Milestone Payment (Section 3.2(a); Section 1 of Schedule 9);
- (i) Acciona would perform its obligations under the PA:
 - (i) in accordance with the terms of the PA;
 - (ii) in compliance with all applicable Laws, including applicable building codes and zoning bylaws, and Good Industry Practice; and
 - (iii) in order that the North Shore WWTP complied with certain performance specifications set out in the PA(Section 4.13; Section 1.1(b) of Schedule 2);

- (j) Acciona would develop the design in progressive phases, and would submit Design Phase Reports to the GVS&DD for review under Appendix 2B [Submittals and Review Procedure] of Schedule 2 [General Requirements and Procedures] (Sections 4.7 and 4.8 of Schedule 2);
- (k) Acciona would design and construct the Project in accordance with the Design and Construction Specifications in Schedule 3 and Schedule 4 of the PA;
- (l) When Acciona identified that the Design and Construction Specifications contained a conflict, including where such conflicts created impossibilities for Acciona to comply with all the requirements in the PA, Acciona would notify the GVS&DD, who had a duty to respond in a timely and reasonable way, to identify the required Change to the PA to resolve the conflict, and to follow the provisions of Schedule 7, Changes (Sections 1.11 and 4.14 of Schedule 2);
- (m) Acciona would supply and install Equipment:
 - (i) to the specifications specified by the manufacturers or suppliers of such equipment or in the Design and Construction Specifications (Schedule 2, Section 7.1);
 - (ii) that was Project Co Procured Equipment, only if a Submittal in respect of such Equipment had been approved by the GVS&DD (Appendix 2D to Schedule 2, Sections 3.2 and 3.3);
 - (iii) manufactured by Acceptable Manufacturers as identified in Schedule 4, Design and Construction Specifications (Schedule 1, Definition of Acceptable Manufacturer);

- (iv) that had been fabricated in accordance with the manufacturer's standard procedures by certified technicians using the best possible specified materials in accordance with the manufacturer's standard procedures (Section 2.2.2 of Division 11, Section 11000, General Requirements for Equipment of Schedule 4);
 - (v) that was new and of a quality equal to that specified or reviewed (Section 1.6.1 Division 11, Section 11000 of Schedule 4); and
 - (vi) that had been in successful regular operation under comparable conditions for a period of at least 5 years (Section 1.6.1 Division 11, Section 11000 of Schedule 4);
- (n) Upon receipt of Submittals from Acciona, including Design Phase Reports and Shop Drawings, the GVS&DD would:
- (i) review the Submittal, and would, acting reasonably, assign a comment 'REVIEWED', 'CORRECT DEFICIENCIES', 'REJECTED' or 'NOT REVIEWED' in accordance with the meaning of those terms set out in Section 11 of Appendix 2B, together with reasons for the comment and references to specific sections of the PA in all cases where a Reviewed comment was not assigned; and
 - (ii) complete its review of the Submittal within 15 Business Days, and in any event in a timely manner

(Section 1.12 of Schedule 2; Section 11 of Appendix 2B to Schedule 2);

- (o) The GVS&DD's duty to act reasonably in its review of Acciona's Submittals included the duty to take all commercially reasonable steps in good faith and with due diligence (Section 3(n) of Schedule 1);
- (p) Acciona would not commence construction until the 100% Design Phase Report had achieved 'REVIEWED' status under the Submittals and Review Procedures in Appendix 2B of Schedule 2 (Section 4.8 of Schedule 2);
- (q) Acciona would not, in the absence of written approval of the GVS&DD, proceed with any Design or Construction in relation to the portions of Submittals to which the comment 'CORRECT DEFICIENCIES' was assigned, and would not proceed with any Design or Construction in relation to Submittals to which the comment 'REJECTED' or 'NOT REVIEWED' was assigned;
- (r) If the GVS&DD required any Change to Acciona's obligations under the terms of the PA, defined to include any addition, alteration or substitution to Acciona's obligations under the terms of the PA, the GVS&DD would follow the process set out in Schedule 7 in respect of such Change, including to determine the value of the Change and any necessary adjustments to the Project Schedule (Section 7, definition of "Change" in Schedule 1, and Schedule 7);
- (s) **"Supervening Event"** was defined to include a Compensation Event and a Relief Event (Schedule 1);
- (t) **"Compensation Event"** was defined to include certain events if and to the extent they interfered adversely with, or caused a failure of Acciona's performance of its Design or Construction obligations, or caused Direct Losses to Acciona, including:
 - (i) a breach by the GVS&DD of any of its obligations under the PA,

- (ii) a breach of any representation or warranty by the GVS&DD under the PA,
 - (iii) misconduct of the GVS&DD or a GVS&DD Person; and
 - (iv) a negligent act or negligent omission of the GVS&DD or a GVS&DD Person
(Schedule 1);
- (u) **“Relief Event”** was defined to include certain events if and to the extent they interfered adversely with, or caused a failure of Acciona’s performance of its Design or Construction obligations, including delays caused by the compliance by Acciona with an order or direction by a medical health officer or comparable public authority (Schedule 1);
- (v) Upon the occurrence of a Supervening Event, Acciona could apply for relief from its obligations under the PA, and could claim an extension of time (adjustments to the Project Schedule) and additional compensation (Section 8.1) to the extent provided in Section 8;
- (w) Upon the occurrence of a Compensation Event or a Relief Event, and upon delivery of a Supervening Event Notice by Acciona to the GVS&DD:
- (i) Acciona would be deemed not to be in breach or default under the PA to the extent that such breach or default occurred as a result of the Supervening Event, and the GVS&DD would not be permitted to terminate the PA, except for convenience pursuant to Section 2.1(a);
 - (ii) Acciona would be relieved from any liability or consequence under the PA arising from any delay or failure in performing any of its obligations under the PA as a result of such Supervening Event; and

(iii) the Project Schedule would be amended to take account of the effect of the delay caused by the Supervening Event

(Sections 8.3, 8.4 and 8.6);

- (x) Upon the occurrence of a Compensation Event, and upon delivery of a Supervening Event Notice by Acciona to the GVS&DD, the GVS&DD would be obligated to pay compensation to Acciona (Section 8.3);
- (y) Acciona would conduct supplementary Project Site investigations, evaluate the geotechnical conditions at the Project Site, complete engineering analyses, and develop the geotechnical design for the North Shore WWTP (Section 3.3 of Schedule 2);
- (z) The GVS&DD would not interfere with Acciona's ability to perform its obligations under the PA;
- (aa) The GVS&DD would exercise all its rights and obligations under the PA, including but not limited to, responding to Acciona's Requests for Information or clarifications ("**RFIs**") in a timely, cooperative and collaborative manner;
- (bb) The GVS&DD would exercise all discretions granted to it under the PA reasonably, in a timely way, and in good faith;
- (cc) The GVS&DD would use all reasonable efforts to achieve the objects of the PA and to enable Acciona to perform its obligations under the PA;
- (dd) The GVS&DD had a duty of honest performance in relation to its obligations and the exercise of its rights under the PA; and

- (ee) The GVS&DD could terminate the PA for convenience, provided that it paid Acciona the compensation set out in Schedule 10 (Section 2.1(a); Section 1 of Schedule 10).
56. The Design and Construction Specifications in Schedule 3 and Schedule 4 of the PA included thousands of specific design requirements, tens of thousands of specific construction requirements, and hundreds of limitations as to which particular products and manufacturers could be employed on the Project.
57. Under the PA, all risks, costs and expenses in relation to Acciona's performance of its obligations under the PA were the responsibility of Acciona, except as expressly allocated to the GVS&DD or otherwise provided in the PA. The PA expressly allocated to the GVS&DD the risk of additional costs and time extensions for all additions, deletions, alterations, substitutions or otherwise to Acciona's obligations under the PA (Section 2.3; "Change" in Schedule 1; Schedule 7).
58. Under the PA, Acciona was deemed to have inspected the Project Site in relation to its obligations under the PA, and to have accepted all risks and responsibilities related to the Project Site, including geotechnical conditions, that such an inspection would have disclosed (Section 3.1 of Schedule 2).
59. Under the PA, Acciona would conduct further geotechnical investigations as part of its design, and to the extent such investigations resulted in changes to Acciona's obligations under the PA, the GVS&DD would pay additional compensation and grant time extensions (Section 3.3 of Schedule 2; "Change" in Schedule 1; Schedule 7).
60. Acciona and the GVS&DD entered into a Lenders' Remedies Agreement with Acciona's Senior Lenders on or about April 5, 2017.

61. Acciona and the GVS&DD entered into a Contractor Collateral Agreement with the Design-Builder dated as of April 5, 2017.

V. ACCIONA'S PERFORMANCE OF ITS OBLIGATIONS UNDER THE PA

A. The Design of the North Shore WWTP

62. In order to comply with the PA and the applicable Laws, the design of the North Shore WWTP was required to meet various requirements which combined to create unique and challenging features of the Project, including severe space constraints on the Project Site:

- (a) The total building coverage on the Project Site could not exceed 60% of the surface area;
- (b) The Project was required to include a public plaza, and education and community meeting spaces, which limited the space available for the water treatment facilities;
- (c) The building footprints were further restricted by the need to provide appropriate spacing between and around buildings, including to permit the necessary truck access and movements during the operations phase of the Project;
- (d) All the water treatment facilities were required to be enclosed within buildings;
- (e) All the buildings were required to be constructed at an elevation above 4.1 metres above sea level;
- (f) All the buildings could be no higher than 12 metres;
- (g) The water treatment facilities were required to be large enough to treat 102 million litres of waste water per day under average daily weather conditions, and up to

320 million litres per day to accommodate the addition of storm water in wet weather conditions;

- (h) Due to the limited space available on the Project Site, some heavy equipment could not be accommodated on the ground level, and had to be located on upper floors of the buildings;
- (i) Due to the location of the Project Site near the Vancouver harbour, next to an active railway line, and in an area of potential seismic activity, the design had to meet strict requirements to mitigate the potential hazards of a number of factors, including flood, wind, seismic, and potential train derailment events;
- (j) The North Shore WWTP was required to comply with the performance requirements of a post-disaster Facility, including to withstand an earthquake with a magnitude 9 on the Richter scale, which has a return period of 1 in 2475 years and is the most extreme earthquake criterion;
- (k) The buildings were required to comply with the post-disaster building regularity and stiffness requirements in the National Building Code of Canada (the “NBC”), which prohibit certain “irregularities” in the geometry of the buildings in order to minimize the impacts of seismic forces on the superstructures of the buildings; and
- (l) There were strict requirements within the buildings for clearance space surrounding particular equipment, as well as restrictions on the location of some of the equipment, both of which created further constraints on the design

(collectively, the “**Overall Design Requirements**”).

63. Acciona began the process to prepare the design of the North Shore WWTP in or about April 2017, including the commencement of the geotechnical investigations required for the design of the foundations of the structures.
64. In the course of conducting its subsurface geotechnical investigations, Acciona discovered that the actual subsurface geotechnical conditions on the Project Site were materially different from the conditions disclosed in the documents provided to Acciona in the RFP process. Specifically, the actual geotechnical conditions beneath the Project Site were different with respect to the extent of soil liquefaction and total settlement risks from what was described in the documents made available in the RFP process, including the Stantec Feasibility Report, the KPMG Feasibility Study, and the AECOM Project Definition Report.
65. The PA required that the total settlement of any element of the North Shore WWTP could not exceed 50 millimetres. It was impossible to prepare a design that complied with that requirement in light of the subsurface geotechnical conditions discovered at the Project Site. Acciona requested Changes to the PA to overcome this impossibility and to enable the structural design of the North Shore WWTP to be advanced.
66. In addition, Acciona began to discover numerous other errors, inconsistencies and impossibilities in the Design and Construction Specifications in the PA, which the GVS&DD required Acciona to address by issuing RFIs.
67. Acciona also began to propose optimizations to the PA requirements and to the Overall Design Requirements, including to eliminate some of the impossibilities in the PA requirements and to mitigate the impacts of the severe space constraints on the Project Site.

B. The Project Amendment Agreement (the "PAA")

68. As Acciona proceeded with the development of the design, it became apparent to the GVS&DD and Acciona that it was impossible for Acciona to perform its Design and Construction obligations in compliance with all of the requirements in the PA.
69. On or about July 12, 2019, Acciona and the GVS&DD entered into a framework agreement (the "**Framework Agreement**") setting out a process for advancing the Project while they identified and documented required amendments to the PA to address the impossibilities in the PA that had become apparent by that time.
70. The GVS&DD and Acciona agreed that any RFIs or requests for Changes by Acciona issued after July 12, 2019 to the PA would not be included in the amendments to the PA being negotiated at that time.
71. At the time of the execution of the Framework Agreement, the GVS&DD and Acciona agreed to change certain design criteria set out in the PA, including, but not limited to, the seismic performance and settlement criteria. They also agreed that further changes may be necessary based on the results of future studies, including in relation to the subsurface conditions, and that such further changes would be addressed through the Change process in the PA.
72. On or about October 31, 2019, at a time when much of the design of the North Shore WWTP was still under development, and before all geotechnical studies and seismic analyses had been completed, the GVS&DD and Acciona entered into the PAA, which implemented the agreement reached in the Framework Agreement. The PAA included, among others, the following key terms:

- (a) Changes were made to certain of the design requirements in the PA that had been identified as impossible to comply with, including seismic performance and settlement criteria, and the parties agreed that further changes may be required based on the results achieved in further studies;
- (b) The Submittals and Review Procedure, Appendix 2B, was amended to include a process for Acciona to seek GVS&DD approval of deviations to the Design and Construction Specifications in the PA by submitting Deviation Lists for Equipment, including where Acciona was requesting changes to the PA because the specified requirements in the PA were not available in the market from Accepted Manufacturers, or where Acciona's proposed deviation was equivalent to or surpassed the quality and performance requirements set out in the PA;
- (c) Acciona would provide the Design and Construction LC in the amount of \$50 million to the GVS&DD as security for Acciona's obligations under the PA;
- (d) The PAA resolved all requests for Changes to the PA made by Acciona before the date of the Framework Agreement, but did not resolve Changes following that date;
- (e) In light of the impossibilities in the PA and the expected need to make further changes, the GVS&DD and Acciona agreed to work collaboratively and cooperatively, including to resolve issues with the goal of achieving completion of the Project safely, on time, to quality and within budget, and to achieve the prompt and equitable resolution of issues affecting the conduct of the Project and the respective rights and responsibilities of the respective participants;

- (f) Tertiary Filtration, an additional stage of wastewater treatment, was added to the scope of the Project, which required additional equipment to be placed in the buildings comprising the North Shore WWTP;
- (g) The overall total DB Price was increased to \$621,687,128.52; and
- (h) The Project Schedule was amended, including by extending the Target Acceptance Date to June 19, 2023.

C. Design Development Following the PAA

- 73. Acciona completed further geotechnical investigations and seismic analysis in or about January 2020.
- 74. As a result of new information that became available from these further geotechnical investigations and seismic analysis, Acciona was required to make significant changes to the design in order for it to meet all the requirements in the PA. These changes to the design included, but were not limited to, the need to add more reinforcing steel into the major structures without enlarging those structures, and then to integrate all the other aspects of the design, including mechanical and electrical components, into the structures that were heavily congested with reinforcing steel.
- 75. In addition, over the course of 2020 and into early 2021, as Acciona developed the detailed design, it encountered thousands of errors, conflicts and impossibilities in the requirements in the PA. Acciona issued more than 350 RFIs following the Framework Agreement many of which sought the GVS&DD's agreement to deviate from a requirement in the Design and Construction Specifications with which it was impossible to comply.

76. Acciona developed the Design in accordance with Good Industry Practice, and proposed designs to the GVS&DD that substantially complied with the requirements in the PA, but those designs often required GVS&DD approval for deviations from particular requirements in the PA. The GVS&DD frequently breached its obligations under the PA by refusing to approve such deviations, in a timely manner, or at all.
77. On or about October 28, 2020, the GVS&DD agreed to Change Certificate CC-012, in relation to two Supervening Event Notices, pursuant to which the Target Acceptance Date was extended to September 19, 2023.
78. In the course of the development of the Design in late 2020 and early 2021, the extent of the materially higher quantities of reinforcing steel required in order for the Design to comply with all the requirements in the PA became evident.
79. By the end of 2020 and continuing into early 2021, as it completed the development of the 90% Design and commenced the Construction of the superstructures, Acciona began to realize that:
- (a) The amount of reinforcing steel required in the superstructures to comply with all the requirements in the PA was more than double the amount that Acciona anticipated at the time of the execution of the PA and the PAA;
 - (b) Due to the need to add the additional reinforcing steel to the design of the superstructures while still complying with the Overall Design Requirements, the density of the required reinforcing steel increased to a density far in excess of the typical reinforcing steel density in water treatment plants, which led to highly complex rebar arrangements and reinforcement congestion;

- (c) The additional quantities and density of reinforcing steel which had to be installed in the restricted spaces available in the buildings required Acciona to employ materially more time-consuming, labour-intensive and costly construction methodologies than it had planned to employ to install the reinforcing steel, with the effect of increasing the time required to construct the structures by at least 14 months; and
- (d) All the requirements in the PA for the process design could not be fit within the constrained space available in the buildings on the Project Site.

As a result, the nature of the Project changed radically from the project anticipated at the time of the execution of the PA and the PAA, and was impossible to construct in accordance with the requirements in the PA.

80. The project depicted in the GVS&DD's Indicative Design is significantly different from the Project in the Design that Acciona was required to prepare taking into account the actual Project Site conditions, while also being in compliance with all the requirements in the PA. The GVS&DD's Indicative Design failed to comply with the requirements set out in the PA in material respects, including, but not limited to, in the following ways:

- (a) The space shown as available in the Indicative Design in the buildings was as much as four times larger than the space that was actually available when all the requirements in the PA were met;
- (b) The Indicative Design did not show the complexity and congestion that would result if all the requirements in the PA were met;
- (c) The buildings shown in the Indicative Design did not meet the "regularity" requirements for a post disaster facility requirements in the NBC and the PA;

- (d) The location of the equipment depicted in the Indicative Design did not meet the minimum clearance requirements in the PA; and
 - (e) Significant components of the equipment that would be required for the wastewater treatment technology depicted in the Indicative Design were omitted, resulting in the Indicative Design failing to depict the severe space constraints if all the requirements in the PA were met.
81. Contrary to the assumptions of the parties at the time of the execution of the PA and the PAA, the Project could not be constructed in compliance with all the requirements in the PA on the Project Site, including by the Target Acceptance Date, without significant Changes to the PA.
82. Commencing in early 2021, Acciona notified the GVS&DD that the radically different nature of the Project would have significant impacts on the schedule for the Project and that significant Changes would be required to the PA. Acciona worked collaboratively with the GVS&DD and shared details of the causes and the nature of the differences, and the impacts on the cost and schedule for the Project, such that by mid-2021, the GVS&DD knew that it was impossible to design and construct the Project by the Target Acceptance Date.
83. In the face of the challenges on the Project, including the numerous conflicts, inconsistencies, and impossibilities in the requirements in the PA, the GVS&DD interfered with Acciona's ability to perform its Design obligations under the PA, failed to collaborate and cooperate with Acciona, and failed to exercise the discretions granted to it under the PA in a timely and reasonable way, all of which is further particularized below.

84. In particular, the GVS&DD breached the express and implied terms of the PA in its conduct in relation to:
- (a) the Submittals and Review Procedure in the PA;
 - (b) the Change provisions of the PA;
 - (c) the Supervening Event Notices issued by Acciona;
 - (d) Acciona's application for a Milestone Payment Certificate for Milestone 5;
 - (e) the GVS&DD's termination of the PA; and
 - (f) such further and other particulars of GVS&DD conduct as shall be provided prior to the trial of this action.
85. Acciona did not know, and could not have known at the time of the execution of the PA and the PAA, that it was impossible to design the Project in accordance with all the requirements in the PA, or that the GVS&DD would breach the terms of the PA, interfere with Acciona's ability to perform its Design and Construction obligations, fail to collaborate and cooperate with Acciona, and fail to exercise its discretions reasonably and in good faith.
86. Pursuant to Section 8 of the PA, Acciona issued Supervening Event Notices to the GVS&DD in respect of Compensation Events and Relief Events that seriously impaired the ability of Acciona to perform its Design and Construction obligations, procure key pieces of Equipment, and meet the Project Schedule. Except as identified below, the GVS&DD rejected all of Acciona's requests for relief, compensation and extensions of time pursuant to the Supervening Event Notices issued by Acciona on the Project.

87. Acciona issued the following Supervening Event Notices on the following dates, with the following responses by the GVS&DD (collectively the “**Unresolved Supervening Event Notices**”):

Date of Supervening Event Notice	Supervening Event	GVS&DD Response
May 6, 2020	Undisclosed Environmental Liabilities	Acknowledged as a Compensation Event, but declined to pay any compensation on the on basis of insufficient evidence, April 13, 2021
November 27, 2020	Second Wave of COVID-19	Rejected December 11, 2020, and again January 15, 2021
April 12, 2021	Compensation Event - HVAC System Controls Manufacturer's Delays	Rejected May 5, 2021
June 30, 2021	Global SEN including due to GVS&DD breaches preventing design and construction in accordance with the PA	Rejected July 14, 2021
July 12, 2021	Dual Ventilation Rates Requirements	Rejected August 17, 2021
July 26, 2021	Ethernet Cable Requirements for Motor Control Centres	Rejected August 27, 2021

Date of Supervening Event Notice	Supervening Event	GVS&DD Response
August 13, 2021	Cogeneration System Shop Drawings	Rejected August 24, 2021
October 6, 2021	GVS&DD Inaction concerning RFI 913	Rejected October 22, 2021

VI. THE GVS&DD BREACHES OF THE PA

A. The GVS&DD's Breach of Representation and Warranty

88. The GVS&DD's representation and warranty in Section 3.5(e) of the PA, that Acciona would be able to design and construct the North Shore WWTP on the Project Site in accordance with its obligations under the PA, was untrue.
89. It was not, at all material times, possible to design and construct the Project on the Project Site in accordance with all the requirements in the PA, even after all the amendments made to the PA.

B. GVS&DD Breaches in relation to the Submittals and Review Procedure

90. The GVS&DD breached the PA in its participation in the Submittals and Review Procedure in Appendix 2B of Schedule 2 of the PA, including, but not limited to, the following terms:
- (a) The express term that Acciona would have complete responsibility for the Design and Construction of the Project;
 - (b) The implied term that the GVS&DD would not interfere with Acciona's ability to perform its Design and Construction obligations under the PA;

- (c) The implied term that the GVS&DD would respond to RFIs in a timely manner;
- (d) The express and implied terms of Appendix 2B that the GVS&DD would complete its review of Submittals within 15 Business Days, or in a timely manner;
- (e) The express terms of Appendix 2B, in Section 11, that the GVS&DD would act reasonably in assigning comments to Acciona's design submittals under the Submittal Review Procedure, and in Section 3(n) of Schedule 1 to take all commercially reasonable steps in good faith and with due diligence;
- (f) The express and implied terms that the GVS&DD would collaborate and cooperate, including to take all commercially reasonable steps in good faith and with due diligence to meet the commercial objectives of the PA, including to work with Acciona to resolve issues with the goal of achieving completion of the Project safely, on time, to quality and within budget, including to achieve the prompt and equitable resolution of issues affecting the conduct of the Project;
- (g) The implied term that the GVS&DD would exercise all discretions granted to it under the PA reasonably and in good faith; and
- (h) The express and implied terms that the GVS&DD would respond in a timely and reasonable way to Acciona's identification of conflicts, inconsistencies and impossibilities in the PA requirements.

91. The GVS&DD breached the PA in relation to the Submittals and Review Procedure, including but not limited to, by:

- (a) Refusing to provide 'REVIEWED' comments on Submittals from Acciona that were in compliance with applicable Laws and Good Industry Practice, and that were in

- compliance with the PA or that reasonably addressed conflicts, inconsistencies and impossibilities in the PA;
- (b) Refusing to provide 'REVIEWED' comments on Submittals from Acciona that included Deviation Lists in respect of specified requirements in the PA that were impossible or unduly onerous to comply with, including where proposed deviations were equivalent to or surpassed the quality and performance requirements set out in the PA;
 - (c) Providing comments that were contrary to applicable Laws;
 - (d) Providing comments that were inconsistent with other GVS&DD comments, or with other GVS&DD instructions to Acciona;
 - (e) Demanding that Acciona make changes to its designs, when those designs were compliant with Good Industry Practice and the PA, and in some cases compliant with the GVS&DD's previous instructions, before the GVS&DD would provide a 'REVIEWED' comment;
 - (f) Demanding that Acciona prepare designs that deviated from the requirements in the PA, were contrary to Good Industry Practice, and in some cases were impossible to construct, before the GVS&DD would provide a 'REVIEWED' comment;
 - (g) Demanding that Acciona prepare designs that were contrary to Good Industry Practice before the GVS&DD would provide a 'REVIEWED' comment;
 - (h) Demanding that Acciona engage in a lengthy and costly process of "optioneering", that is, identifying and conducting in-depth investigation of alternative design

options, in order to resolve conflicts in the requirements set out in the PA, including requiring the submission of analyses of potential alternative designs, before the GVS&DD would provide a 'REVIEWED' comment;

- (i) Demanding that Acciona include particular designs that the GVS&DD or AECOM preferred, including designs that included products or Equipment that did not include standard products, were not in accordance with Good Industry Practice, and in respect of which the GVS&DD Acceptable Manufacturers and other suppliers in the market were not willing or able to provide a warranty as required by the PA, before the GVS&DD would provide a 'REVIEWED' comment;
- (j) Rejecting PA compliant designs, or demanding that Acciona make changes to PA compliant designs or investigate options to make changes to PA compliant designs, for the purpose of giving the GVS&DD its preferred design, before the GVS&DD would provide a 'REVIEWED' comment;
- (k) Failing to accept Acciona proposed changes to certain requirements in the PA where it was impossible or unduly onerous to comply with all the requirements in the PA;
- (l) Imposing additional requirements or demanding changes to the design that were not required under the PA, before the GVS&DD would provide a 'REVIEWED' comment;
- (m) Failing to provide references to specific sections of the PA in support of its comments;
- (n) Failing to provide comments on Submittals within 15 Business Days, or in a timely and efficient manner;

- (o) Failing to respond to RFIs in a timely manner;
- (p) Making unreasonable demands in exercising its discretions under the Submittals and Review Procedure, including in a capricious and arbitrary manner, with no reasonable regard to the impacts of such demands on the Project Schedule;
- (q) Providing contradictory instructions in response to Submittals and failing to clarify which instructions it wished Acciona to follow, so that Acciona could progress the Work;
- (r) Wrongfully withholding 'REVIEWED' comments on Submittals that were required to achieve 'REVIEWED' status for Acciona to be entitled to receive Milestone Payments under the PA;
- (s) Retracting 'REVIEWED' and 'CORRECT DEFICIENCIES' comments, and replacing them with 'CORRECT DEFICIENCIES', 'REJECTED' or 'NOT REVIEWED' comments, without reasonable justification and for improper purposes, including to pressure Acciona to agree to prepare designs that were not in compliance with the PA, and including after Acciona had relied upon the GVS&DD's initial comments and incurred significant liabilities;
- (t) Refusing to approve new Acceptable Manufacturers under Schedule 4 of the PA, in a timely manner, or at all, including where the Acceptable Manufacturers listed in the PA were unwilling or unable to submit quotations, or were unwilling or unable to submit quotations in compliance with all the relevant requirements in the PA;
- (u) Failing to implement Changes under Schedule 7 in respect of GVS&DD demands and requests made in the Submittals and Review Procedure that were additions or other changes to Acciona's obligations under the PA; and

(v) Such further and other particulars as shall be provided before the trial of this action.

92. As a result of the GVS&DD breaches in relation to the Submittals and Review Procedure particularized herein, Acciona suffered impacts, including, but not limited to the following:

- (a) Acciona was required to delay its development of the Design;
- (b) Acciona was required to develop the Design in a time-consuming and inefficient piecemeal manner;
- (c) Acciona spent additional time and incurred additional cost to investigate alternative design options to Acciona's proposed designs;
- (d) Acciona spent additional time and incurred additional cost to prepare designs that were different from Acciona's proposed designs;
- (e) Acciona's ability to commence and advance the Construction was materially delayed;
- (f) The time and the cost for Acciona to perform its obligations under the PA in relation to the Design and the Construction increased significantly; and
- (g) Such further and other particulars as shall be provided before the trial of this action.

93. The GVS&DD breaches of the PA in the Submittals and Review Procedure in the manner particularized in paragraph 91 above were pervasive across multiple aspects of the Design, including but not limited to, in relation to:

- (a) Acciona's multiple design proposals to minimize and avoid conflicts between the structural, mechanical, electrical, controls and other aspects of the design to meet the requirements in the PA, including the Overall Design Requirements;

- (b) The inability of the GVS&DD's selected Acceptable Manufacturers set out in the PA to meet all the requirements in the PA;
- (c) The fact that the GVS&DD's selected Acceptable Products set out in the PA failed to meet all the requirements in the PA;
- (d) The heating ventilation and air conditioning ("**HVAC**") system controls, as further particularized below;
- (e) The Motor Control Centre Ethernet cable requirements, as further particularized below;
- (f) The design of the underground conveyance piping design, including, but not limited to, the seismic criteria and pressure testing requirements;
- (g) The ventilation design, including, but not limited to the odour control plan, room pressurization requirements, redundancy requirements, and ventilation rates, as further particularized below;
- (h) The hazardous area classification design criteria and its implementation, as further particularized below;
- (i) The Building 73 design;
- (j) The District Energy System ("**DES**") design;
- (k) Relocation of HVAC Equipment (in Areas 16 and 84);
- (l) The shop drawings for the Milestone Payment for Milestone 5, including for the lamella clarifiers, bio-trickling filters, heat pumps, cogeneration system, standby

diesel generators, rotary lobe blowers, MV transformers, as further particularized below;

- (m) The Project Schedule; and
- (n) Such further and other particulars as shall be provided before the trial of this action.

C. GVS&DD Breaches in Relation to the Change Process

94. The GVS&DD breached the PA in failing to follow the Change provisions in Schedule 7, including, but not limited to, the following terms:
- (a) The express and implied terms that the GVS&DD would implement a Change under Schedule 7 where there was an addition, alteration or substitution to Acciona's obligations under the PA, including paying additional compensation and agreeing to changes to the Project Schedule (Definition of Change in Schedule 1);
 - (b) The express and implied terms that the GVS&DD would collaborate and cooperate, including to take all commercially reasonable steps in good faith and with due diligence to meet the commercial objectives of the PA, and to work with Acciona to resolve issues with the goal of achieving completion of the Project safely, on time, to quality and within budget, including to achieve the prompt and equitable resolution of issues affecting the conduct of the Project;
 - (c) The implied term that the GVS&DD would exercise all discretions granted to it under the PA reasonably and in good faith; and
 - (d) The express and implied terms that the GVS&DD would respond in a timely and reasonable way to Acciona's identification of conflicts, inconsistencies and

impossibilities in the requirements set out in the PA, including to identify and implement Changes under Schedule 7.

95. Particulars of the GVS&DD's breaches of the PA in relation to the Change process include, but are not limited to:

- (a) Failing or refusing to implement a Change and to follow the provisions of Schedule 7 when it knew, or ought to have known, that certain aspects of the design and the construction of the North Shore WWTP performed by Acciona, including at the express request or direction of the GVS&DD, was a Change as defined in the PA, including, but not limited to as particularized in paragraphs 91 and 93 above;
- (b) Issuing "directives"; "clarifications", "relaxations to the PA requirements", comments in the Submittal and Review Procedure, and other demands and requests that in reality were Changes under the PA, and failing or refusing to implement a Change under the PA;
- (c) Refusing to agree in a timely way or at all, to reasonable Changes to the PA, including Changes that were required to resolve errors, conflicts, inconsistencies and impossibilities in the requirements set out in the PA;
- (d) Rejecting reasonable Deviations to the requirements set out in the PA proposed by Acciona, including to resolve errors, conflicts, inconsistencies and impossibilities in the requirements set out in the PA;
- (e) Failing to approve Changes and to respond to RFIs in a timely way; and
- (f) Such further and other particulars as shall be provided before the trial of this action.

96. Further particulars of the GVS&DD breaches of the PA in relation to the Change process, include but are not limited to its failure to implement a Change in respect of the designs that are the subject of RFIs, including, but not limited to:

- (a) RFI-00632-01 (request for a change in equipment for the polymer dosing system due to insufficient space to accommodate the PA required equipment);
- (b) RFI-00647 (request for changes in the design requirements for the digesters, as they were incompatible with the only acceptable mixing system in the PA);
- (c) RFI-00658 (request for a reduction of the requirement for spare capacity for future expansion in the DES electrical room due to insufficient space);
- (d) RFI-00667 (request for relaxation of the requirement for cable tray crossings due to insufficient space);
- (e) RFI-00688 (request for a change to the profile of the odour pipes due to insufficient space);
- (f) RFI-00708 (request for a change to the design requirements for the polymer system sizing for the hi-rate clarifier, due to insufficient space);
- (g) RFI-00736 (request for direction regarding irrigation, as the raw sewage contains chlorides that cannot be removed through the treatment technology in the PA);
- (h) RFI-00755 (request for reduction of the maximum operating conditions and test conditions for the conveyance pipelines so as to not cause damage to the flexible pipe connections);

- (i) RFI-00799 (request for commissioning without using engineered gates to facilitate diversion of processed flows from the SE conveyance pipe to the North Vancouver Interceptor under 1st Street);
- (j) RFI-00800 (request for a resolution of conflicts between Schedule 3, Table 2.9.1 of the PA and the National Fire Protection Agency standard NFPA 820);
- (k) RFI-00820-01 (request for HVAC reverse return distribution piping);
- (l) RFI-00840 (request for changes to the PA requirements for HVAC heat pumps to improve reliability and energy efficiency, and due to insufficient space);
- (m) RFI-00844 (request for changes to the PA requirements for HVAC on Building 73, the sludge dewatering building, due to insufficient space and adverse impacts on ability to meet maintenance requirements);
- (n) RFI-00869 (request for changes to HVAC equipment redundancy requirements due to insufficient space);
- (o) RFI-00913 (request for approval of BC Hydro's proposed solution to the fact that the PA requirements for the worst-case flood conditions resulted in an unacceptable stairway access to the electrical rooms);
- (p) RFI-00928-02 (request for a relaxation of the PA requirement for pipe routing not to be visible on the outside of buildings, due to insufficient space); and
- (q) RFI-00958 (request for a relaxation for the treatment plan ductwork sizes, due to insufficient space).

97. As a result of the GVS&DD breaches of the PA in respect of Changes, including those particularized above, Acciona incurred additional costs to comply with its obligations under the PA, and suffered delays to its performance of its obligations under the PA without receiving additional compensation or adjustments to the Project Schedule.

D. GVS&DD Breaches in Relation to Supervening Events

98. In relation to the Unresolved Supervening Event Notices, Acciona complied with the provisions of Section 8.2 of the PA, including by providing additional details of the claims and their impacts from time to time as they became known.
99. Acciona incurred significant costs, delays, and schedule and other impacts caused by the events that are the subject of the Unresolved Supervening Event Notices, including but not limited to investigation and design costs, and delays to the critical path of the Project Schedule to achieve the Target Acceptance Date and other completion dates under the PA.
100. In breach of Section 8 of the PA and its other obligations under the PA, the GVS&DD wrongly rejected Acciona's applications for relief from its obligations, extensions of time and compensation for the Supervening Events that are the subject of the Unresolved Supervening Event Notices for reasons that are not valid under the PA, further particulars of which are provided below.
101. The GVS&DD has wrongly refused to implement a Change pursuant to Schedule 7, in relation to the Unresolved Supervening Event Notices.

1. Undisclosed Environmental Liabilities

102. In or about April 2020, Acciona discovered soils material on the Project Site that contained petroleum hydrocarbon and chloride ions, which fell within the definition of Hazardous Substances under the PA.
103. The hazardous content of this soils material had not been disclosed by the GVS&DD to Acciona and constituted Undisclosed Environmental Liabilities under the PA.
104. Pursuant to Section 5.6 of Schedule 2 of the PA, Acciona is not responsible for Hazardous Substances on the Project Site.
105. The discovery of Undisclosed Environmental Liabilities falls within the definition of a Compensation Event under the PA.
106. Acciona incurred costs to excavate and remove the Hazardous Substances safely from the Project Site.
107. On or about May 6, 2020, Acciona issued a Supervening Event Notice to the GVS&DD identifying the nature and consequences of its claim that the Undisclosed Environmental Liabilities was a Supervening Event.
108. Commencing on May 21, 2020, Acciona provided the GVS&DD with further details and impacts of the Supervening Event, including particulars of its costs incurred to address the Hazardous Substances on the Project Site on August 26, 2020, September 15, 2020 and June 22, 2021.
109. The GVS&DD has acknowledged that Acciona's discovery of the above described Hazardous Substances constitute a Compensation Event, but has, in breach of the PA, refused to pay any compensation to Acciona on account of such event.

2. Second Wave of COVID-19

110. In or about the third week of November 2020, the Government of British Columbia reported a second wave of the COVID-19 virus in British Columbia, with materially higher case counts and deaths than in the month of October, 2020. In response to the second wave of the COVID-19 virus, the BC Government introduced new restrictions and requirements to mitigate the spread of the COVID-19 virus, many of which impacted Acciona's ability to perform its obligations under the PA.
111. Under Change Certificate 12, Acciona had released the GVS&DD from all claims in relation to known circumstances related to the COVID-19 pandemic, including those that were a continuation of or did not materially differ from the circumstances that occurred or existed prior to October 30, 2020.
112. The second wave of the COVID-19 pandemic in British Columbia is a Relief Event under the PA that was unknown as of October 30, 2020, and it differed materially from the circumstances related to the COVID-19 pandemic that occurred prior to that date.
113. Acciona incurred costs and delays as a result of the second wave of the COVID-19 pandemic in British Columbia.
114. On or about November 27, 2020, Acciona issued a Supervening Event Notice to the GVS&DD identifying the nature and consequences of the Supervening Event, including the impacts of the pandemic and the Government mandated self-isolation requirements on Acciona's ability to perform its obligations under the PA.
115. On or about December 11, 2020, and again on January 15, 2021, the GVS&DD wrongfully rejected Acciona's Supervening Event Notice related to the second wave of the COVID-19 pandemic for reasons that are not valid under the PA.

3. Heating, Ventilation and Air Conditioning (HVAC)

116. The PA required Acciona's design to include an HVAC system to supply and treat the air in the North Shore WWTP. The successful performance of the HVAC system, in conjunction with the Odour Control System, is critical to the ability of the North Shore WWTP to meet the operational requirements in the PA.
117. The GVS&DD's wrongful conduct in its review of Acciona's HVAC design and proposed Equipment caused lengthy delays to Acciona's ability to procure the HVAC Equipment, which in turn caused delays to the Design, the Construction, and the Target Acceptance Date. As further particularized below, the GVS&DD wrongfully rejected Acciona's design of the HVAC control system on multiple occasions over the course of one year, wrongfully directed Acciona to prepare a design for the HVAC control system that was not in compliance with the requirements in the PA, was not in accordance with Good Industry Practice and was unsafe, and refused to implement a Change under the PA in respect of such direction.
118. The requirements in the PA for the control system for the HVAC system for the North Shore WWTP include the following:
- (a) The indoor pre-manufactured air handling units ("**HVAC Units**") were required to have on-board controls to control devices and to receive signals for devices supplied with the make-up air unit (Schedule 4; Section 15800, s. 2.4.1);
 - (b) The HVAC systems and subsystems were to be controlled by and integrated with the central control system (Schedule 4, Section 15910, at Part 1, s.1.1.1);
 - (c) The HVAC systems serving process areas were required to be controlled and monitored by the central control system (Schedule 3, Section 14.2.9.1); and

- (d) Reasonable efforts would be made to integrate control software directly into the central control system, but exceptions were permitted in circumstances that included where the control logic was complex in order to meet the performance requirements in the PA (Schedule 3, Section 16.5.13(a)).
119. By March 2020, twenty HVAC manufacturers, including all four of the Acceptable Manufacturers identified in the PA, had declined to provide quotations to supply the HVAC Units with control software directly integrated into the central control system.
120. On or about May 19, 2020, Project Co delivered to the GVS&DD for review pursuant to the Submittals and Review Procedure, a 90% design submittal for the Building Services Piping & Instrumentation Diagrams (the "**May 2020 Submittal**"). The May 2020 Submittal included HVAC Units with on-board "programmable logic controllers" ("**PLCs**") that communicated via a Modbus/TCP system with the central control system, which was in compliance with the requirements in the PA.
121. In breach of the Submittals and Review Procedure, the GVS&DD failed to provide its review comment on the May 2020 Submittal within 15 days.
122. In further breach of the PA, on or about June 26, 2020, the GVS&DD assigned the comment 'REJECTED' to the May 2020 Submittal, which under the PA signifies that the GVS&DD considered that Acciona's design contained significant deficiencies or did not generally conform with the PA.
123. The GVS&DD purported to reject the May 2020 Submittal because the GVS&DD claimed that the on-board systems controllers in the HVAC Units, the PLCs, were not permitted by the PA, and that under Acciona's design the HVAC Units were not controlled and monitored by the central control system. The GVS&DD demanded that Acciona provide

an HVAC systems controls design that was directly “hard-wired” to the central control system.

124. The GVS&DD’s rejection of the May 2020 Submittal was wrongful because the Acciona design contained therein was compliant with the requirements in the PA. There is no requirement in the PA for the HVAC systems controls to be hard-wired to the central control system.
125. Further, or in the alternative, to the extent that the May 2020 Submittal was not compliant with all of the requirements in the PA, which is denied, such non-compliance was due to the fact that the Acceptable Manufacturers under the PA and other manufacturers declined to provide HVAC systems controls that were compliant with all the requirements in the PA. The May 2020 Submittal substantially complied with the requirements in the PA, fully complied with Good Industry Practice, and allowed the central control system to have control of the HVAC Units. Further, the design in the May 2020 Submittal complied with the provisions of the PA permitting deviation lists because the requirements in the PA were not available in the market from Acceptable Manufacturers, and the proposed deviation was equivalent to or surpassed the quality and performance requirements set out in the PA.
126. Between June 2020 and October 2021, the GVS&DD refused to provide a ‘REVIEWED’ comment in relation to multiple HVAC systems controls design documents submitted by Acciona that substantially complied with the PA, fully complied with Good Industry Practice, and allowed the central control system to have control of the HVAC Units.
127. Under the PA, a ‘REVIEWED’ comment was required for Acciona to complete the procurement of the HVAC Units.

128. Further, from June 2020 to November 2021, the GVS&DD, including through AECOM, demanded that Acciona investigate and prepare alternative designs for the HVAC systems controls that were of interest to GVS&DD and AECOM, but that were not in compliance with the PA and were contrary to Good Industry Practice.
129. Starting in or about September 2020, the GVS&DD requested Acciona to investigate and prepare an HVAC systems controls design using input/output modules instead of PLCs. This design was not in compliance with the PA. Acciona complied with the GVS&DD's request to investigate such a design, but notified the GVS&DD that such a design posed serious safety risks and was contrary to various requirements in the PA, including that it was not in accordance with manufacturers' standard procedures and had not been in regular operation under comparable conditions for at least 5 years, and that manufacturers were unable to provide warranties for such a system.
130. The GVS&DD assigned 'REJECTED', 'CORRECT DEFICIENCIES' and 'NOT REVIEWED' comments to a number of Acciona's Submittals related to the HVAC systems controls design between June 2020 and October 2021, notwithstanding that those Submittals complied with the provisions of the PA permitting deviation lists because the specified requirements in the PA were not available in the market from Acceptable Manufacturers, and the proposed deviation was equivalent to or surpassed the quality and performance requirements set out in the PA. The GVS&DD failed, contrary to its obligations in the Submittals and Review Procedure, to provide reasons for its comments and particulars of the PA sections it alleged had not been satisfied.
131. Under the PA, the comment 'CORRECT DEFICIENCIES' signifies that the GVS&DD considers the Submittal to generally conform to the requirements in the PA, including the

Design and Construction Specifications and the Proposal Extracts (Design and Construction), but that it found some deficiencies in the submittal.

132. The comment 'NOT REVIEWED' under the PA refers to Submittals that have not been reviewed by the GVS&DD in detail because the GVS&DD considers the Submittals to not comply with the requirements of Appendix 2B [Submittals and Review Procedure] of Schedule 2 [General Requirements and Procedures], be incomplete or otherwise insufficient for the purposes of a design review, or are received by the GVS&DD before the date scheduled in the Submittal Schedule. The GVS&DD's demands that Acciona prepare a design of the HVAC systems controls that were hard-wired to the central control system, and that included the use of input/output modules, rather than on-board controllers, were requests for a Change, but the GVS&DD refused to implement a Change under the PA.
133. By letter dated December 14, 2020, Acciona disputed the GVS&DD's review comments in relation to the HVAC systems controls design pursuant to Section 13 of the Submittals and Review Procedure (the "**HVAC Comments Dispute Notice**"), providing reasons why a different comment should be assigned, together with supporting documentation, and confirming that the HVAC systems controls design the GVS&DD was directing Acciona to prepare constituted a Change under the PA.
134. The GVS&DD rejected the claims in Acciona's HVAC Comments Dispute Notice, and refused to implement a Change under the PA for reasons that are not valid under the PA.
135. By January 2021, despite extensive procurement efforts by Acciona, only two HVAC manufacturers were willing to provide a quotation for the HVAC Units for the North Shore WWTP, neither of which was an Acceptable Manufacturer under the PA. Such manufacturers were prepared to provide a quotation for the HVAC Units only on the basis

of proposing deviations from the requirements in the PA that were necessary due to the inclusion in the PA of requirements that were impossible to satisfy. Acciona selected one manufacturer, Olympic International, and on January 29, 2021, issued a Submittal in respect of its proposed HVAC systems controls design to the GVS&DD for approval. This Submittal complied with the provisions of the PA permitting deviation lists because the specified requirements in the PA were not available in the market from Acceptable Manufacturers, and the proposed deviation was equivalent to or surpassed the quality and performance requirements set out in the PA

136. In breach of the PA, on or about February 12, 2021, the GVS&DD rejected Acciona's request that Olympic be approved as an Acceptable Manufacturer for the HVAC Units, and also rejected Acciona's proposed HVAC systems controls design on the basis that the on-board system controls depicted in the design were not in accordance with the PA.
137. In providing its review comments in relation to Acciona's various HVAC systems controls designs, the GVS&DD breached the PA, including but not limited to as particularized in paragraph 91 above.
138. By letter dated February 9, 2021 (the "**HVAC Directive**"), the GVS&DD took the position that Acciona's proposed approach to controlling the HVAC system was not in accordance with the PA. The GVS&DD directed Acciona to prepare an alternative design of the HVAC systems controls in accordance with the technical requirements set out in the letter including the incorporation of input/output modules to connect the HVAC Units to the central control system. The design requirements specified in the HVAC Directive were not in compliance with the requirements in the PA or Good Industry Practice, and constituted a Change under the PA, but the GVS&DD refused to implement a Change under the PA.

139. Acciona investigated the design in the HVAC Directive, but discovered that the Acceptable Manufacturers under the PA, and multiple other reputable manufacturers of HVAC systems, were unable to manufacture the HVAC Units in the design under the HVAC Directive and provide a warranty, as required by the PA, including because such a design was not in accordance with Good Industry Practice, created safety issues, and would result in HVAC Units that would not be manufacturer programmed and tested. Acciona reported these findings to the GVS&DD.
140. By Supervening Event Notice dated April 12, 2021, Acciona notified the GVS&DD that the GVS&DD's breaches in relation to the HVAC systems controls design, including the issuance of the HVAC Directive were a Compensation Event and were reasonably likely to cause additional costs and delays to the Target Acceptance Date, including due to the significant delays caused to Acciona's ability to procure the HVAC Units for almost one year.
141. On or about April 30, 2021, Acciona submitted an HVAC systems controls design, which was based on the May 2020 Submittal. This Submittal complied with the provisions of the PA permitting deviation lists because the specified requirements in the PA were not available in the market from Acceptable Manufacturers, and the proposed deviation was equivalent to or surpassed the quality and performance requirements set out in the PA.
142. On May 5, 2021, the GVS&DD rejected Acciona's April 12, 2021 Supervening Event Notice for reasons that are not valid under the PA. The GVS&DD also directed Acciona to proceed with a design of the HVAC systems controls called "the Alternate Solution", which included "on-board" controls, and was essentially the same as Acciona's design in the May 2020 Submittal, with the addition of some new requirements that were not in compliance with the PA.

143. On May 18, 2021, Acciona notified the GVS&DD that it was inappropriate to direct Acciona to proceed with the Alternate Solution so long as the HVAC Directive remained in effect, and requested the GVS&DD to confirm that the HVAC Directive had been withdrawn.
144. On May 21, 2021, the GVS&DD assigned a 'REJECTED' comment to Acciona's Submittal.
145. One month later, on June 18, 2021, the GVS&DD withdrew the HVAC Directive and directed Acciona to proceed with the Alternate Solution design.
146. Acciona initiated a further procurement process with multiple HVAC manufacturers for the Alternate Solution design, and again, no manufacturer was able to submit a quotation for that design that was in compliance with all the requirements of the GVS&DD for the Alternate Solution.
147. On or about October 1, 2021, following Acciona's further procurement efforts, Acciona submitted an RFI to the GVS&DD including technical information and the deviations to the requirements in the PA proposed by four manufacturers in relation to their proposed designs of the Alternate Solution, and requested that the GVS&DD identify which manufacturer would be preferable and which deviations would be acceptable to the GVS&DD, in order that Acciona could submit a final proposal to GVS&DD and proceed with the procurement of the HVAC Units. The content of this RFI complied with the provisions of the PA permitting deviation lists because the specified requirements in the PA were not available in the market from Accepted Manufacturers, and the proposed deviation was equivalent to or surpassed the quality and performance requirements set out in the PA.

148. The GVS&DD wrongfully refused to respond reasonably, or at all, to Acciona's requests for approval of the deviations required by any of the manufacturers, and also failed to approve any manufacturer for the HVAC Units.
149. By letter dated October 6, 2021, Acciona provided additional details and supporting documentation in relation to its April 12, 2021 Supervening Event Notice, including documentation related to the consequences of Acciona's claims in that Supervening Event Notice.
150. The GVS&DD continued, up until the termination of the PA, to wrongfully refuse to respond reasonably or at all to Acciona's requests for approval of the deviations required by any of the manufacturers providing proposals for the HVAC Units, and also failed to approve any manufacturer for the HVAC Units.
151. In breach of its obligations under the PA, the GVS&DD refused to implement a Change under the PA in relation to the HVAC systems controls design.
152. The GVS&DD's conduct in relation to the HVAC systems controls design was in breach of the PA, including but not limited to, the following obligations of the GVS&DD in the PA:
 - (a) when notified of conflicts and impossibilities in the PA requirements, to respond in a timely and reasonable way to identify necessary Changes to the PA and to implement a Change;
 - (b) to act reasonably in its review of Acciona's Submittals, including the duty to take all commercially reasonable steps in good faith and with due diligence, and including but not limited to, in its consideration of deviations from the Design and Construction Specifications, as required by Schedule 2, Appendix 2B, section 7.1;

- (c) not to interfere with Acciona's ability to perform the Design and the Construction;
- (d) to exercise all its rights and obligations under the PA, including but not limited to, responding to Acciona's RFIs in a timely, cooperative and collaborative manner;
- (e) to exercise all discretions granted to it under the PA reasonably, in a timely way, and in good faith;
- (f) to use all reasonable efforts to achieve the objects of the PA and to enable Acciona to perform its obligations under the PA;
- (g) of honest performance in relation to its obligations and its exercise of its rights under the PA; and
- (h) in light of the impossibilities in the PA and the expected need to make further changes, to work collaboratively and cooperatively, including to resolve issues with the goal of achieving completion of the Project on time and to achieve the prompt and equitable resolution of Project issues.

153. Acciona incurred costs, delays, and schedule and other impacts caused by the GVS&DD's breaches and in its efforts to comply with the GVS&DD's various directives and requests in relation to the HVAC systems controls design. These costs and impacts include but are not limited to:

- (a) investigation and design costs;
- (b) costs paid to HVAC manufacturers to investigate and prepare detailed designs for various designs requested by the GVSⅅ

- (c) cost and time impacts on other aspects of the design, including structural, electrical and controls designs;
- (d) the impacts of the delays to the installation of the HVAC Units on the Construction, including but not limited to delays and disruptions caused by the delayed installation of the HVAC Units until after the construction of the building roof;
- (e) delays to the critical path of the Project Schedule to achieve the Target Acceptance Date and other completion dates under the PA; and
- (f) such further and other particulars as shall be provided prior to the trial of this action.

4. Global Supervening Event Notice

154. By June 2021, a series of Compensation Events had combined to interfere adversely with Acciona's Design and Construction, to cause significant delays to the Project Schedule, and to cause Acciona to incur significant Direct Losses.
155. On June 30, 2021, Acciona issued a global Supervening Event Notice (the "**Global Supervening Event Notice**") to notify the GVS&DD of the cumulative impacts of multiple breaches by the GVS&DD of the PA, including its breaches of the representation and warranty in Section 3.5(e) of the PA, and its breaches of the GVS&DD's obligations under the PA, including but not limited to:
- (a) breach of the GVS&DD's obligation not to interfere with Acciona's ability to perform its obligations under the PA, particularly in the Submittals and Review Procedure;
 - (b) breach of the GVS&DD's obligation to implement the Change process under the PA, including to agree to Changes where Acciona was required to perform work that was beyond the scope of its obligations under the PA;

- (c) breach of the GVS&DD's obligation to cooperate and make best efforts to achieve the objects of the PA; and
 - (d) breach of the GVS&DD's obligation to pay compensation and grant time extensions in relation to previously issued Supervening Event Notices.
156. These breaches of the PA by the GVS&DD, as particularized in the Global Supervening Event Notice, were also negligent acts or omissions and misconduct by the GVS&DD.
157. The Global Supervening Event Notice provided particulars of these GVS&DD breaches, negligent acts or omissions and misconduct, including, but not limited to, as particularized in paragraphs 91, 93, 95, 96, 100 and 101 above.
158. The Global Supervening Event Notice also provided particulars of the types of losses suffered by Acciona as a result of the GVS&DD breaches, which include, but are not limited to:
- (a) Costs of investigating alternative designs and redesigning the Project;
 - (b) Costs of negotiations with approved vendors and of efforts to source new vendors to submit for approval by the GVSⅅ
 - (c) Costs to perform the work that the GVS&DD should have treated as a Change under the PA;
 - (d) Equipment cost escalation due to global market raw material price increase;
 - (e) Penalties or storage cost due to delay in release for manufacturing;
 - (f) Transport cost escalation; and

- (g) Direct Losses and costs resulting from the Supervening Events previously rejected by the GVS&DD.
159. The Global Supervening Event Notice also provided particulars of Acciona's mitigation efforts, which include but are not limited to:
- (a) Using float in the Project Schedule, and changing the plan for the Design and the Construction, including overlapping work, to reduce the impacts on the Target Service Commencement Date;
 - (b) Accelerating the Design and Construction, including by resequencing the Construction, adding additional resources, including manpower, auxiliary equipment, mobile cranes and adding overtime and night shifts for the Construction; and
 - (c) Accelerating the Construction by implementing the use of precast elements and auxiliary rebar elements as well as higher strength concrete and higher capacity rebar.
160. Also on June 30, 2021, Acciona provided the GVS&DD with an updated version of the Project Schedule pursuant to Section 6.2 of Schedule 2, setting out an accurate, reasonable and realistic representation of its plans to complete the Project taking into account the impacts known at that time of the Supervening Events that were the subject of the Global Supervening Event Notice. Under this Project Schedule, the Target Acceptance Date was November 4, 2025.
161. On July 9, 2021, in response to a request from the GVS&DD, Acciona provided the GVS&DD with an estimated completion cost breakdown, setting out its best judgment at the time of an accurate, reasonable and realistic estimate of the projected costs to

complete the Project in accordance with the update Project Schedule. The projected costs exceeded one billion dollars (\$1,000,000,000.00).

162. By letter dated July 14, 2021, the GVS&DD wrongfully rejected Acciona's Global Supervening Event Notice.
163. Further, on July 16, 2021, Acciona issued a Notice of GVS&DD Event of Default pursuant to Section 13 of the PA based on Acciona's Global Supervening Event Notice and the GVS&DD's letter dated July 14, 2021.
164. In response to the Global Supervening Event Notice, in accordance with their obligations to cooperate and collaborate to resolve issues on the Project, the GVS&DD and Acciona agreed to participate in a series of workshops and meetings (the "**Collaborative Meetings**") in order for Acciona to provide further details of the reasons for, and the make-up of, the costs and schedule impacts of the GVS&DD's breaches identified in the Global Supervening Event Notice, and to propose solutions for the completion of the Project. Acciona participated in good faith in the workshops and meetings in July, August and September 2021, and provided the GVS&DD with fulsome particulars of the impacts of the Supervening Events described in the Global Supervening Event Notice on the Project Schedule, and of the costs to complete the Project. Acciona also proposed, at the request of the GVS&DD, alternative approaches for the completion of the Project.
165. In breach of its obligations under the PA, the GVS&DD refused to implement a Change under the PA in relation to any of the subject matter of the Global Supervening Event Notice. Further, the GVS&DD used the confidential information shared by Acciona in the Collaborative Meetings to formulate a strategy to wrongfully terminate the PA and to facilitate the GVS&DD's wrongful re-procurement of the Project to another contractor under different commercial conditions.

166. The GVS&DD's conduct in relation to the events identified in the Global Supervening Event Notice, and its subsequent conduct in relation to the Global Supervening Event Notice and the cost and schedule impacts reported by Acciona, including as further particularized below, was in breach of the PA, including, but not limited to, the following obligations of the GVS&DD in the PA:

- (a) When notified of conflicts and impossibilities in the PA requirements, to respond in a timely and reasonable way to identify necessary Changes to the PA and to implement a Change;
- (b) To act reasonably in its review of Acciona's Submittals, including the duty to take all commercially reasonable steps in good faith and with due diligence, and including but not limited to in its consideration of deviations from the Design and Construction Specifications, as required by Schedule 2, Appendix 2B, section 7.1;
- (c) Not to interfere with Acciona's ability to perform the Design and the Construction;
- (d) To exercise all its rights and obligations under the PA, including but not limited to, responding to Acciona's RFIs in a timely, cooperative and collaborative manner;
- (e) To exercise all discretions granted to it under the PA reasonably, in a timely way, and in good faith;
- (f) To use all reasonable efforts to achieve the objects of the PA and to enable Acciona to perform its obligations under the PA;
- (g) Of honest performance in relation to its obligations and its exercise of its rights under the PA; and

(h) In light of the impossibilities in the PA and the expected need to make further changes, to work collaboratively and cooperatively, including to resolve issues with the goal of achieving completion of the Project on time, and to achieve the prompt and equitable resolution of Project issues.

167. On September 30, 2021, Acciona delivered to the GVS&DD a Dispute Notice pursuant to Section 1.2 of Schedule 14, Dispute Resolution Procedure, in relation to Acciona's Unresolved Supervening Event Notices.

5. Dual Ventilation Rates Requirements

168. Pursuant to Section 14.2.5.p, of Schedule 3, Acciona was permitted to design the HVAC systems and the Odour Control Systems based on a fixed ventilation rate for the air in each room space in lieu of dual ventilation rates.

169. Section 14.2.5.p also provided that in the event Acciona designed these systems based on a fixed ventilation rate, Acciona was to include provisions in the HVAC control system to reduce the design ventilation rates in hazardous locations, and to meet certain criteria in those locations.

170. Acciona prepared the design of the HVAC systems and the Odour Control Systems in or about late 2020 based on a fixed ventilation rate for the air in each room space.

171. On or about January 15, 2021, the GVS&DD issued RFI-00011 asking Acciona to confirm the hardware and software provisions that would be included in the design "to enable for the dual ventilation system" for the HVAC systems.

172. On or about February 2, 2021, Acciona pointed out to the GVS&DD that the PA permitted a fixed ventilation rate design, and that there was no requirement in the PA to provide a

dual ventilation system. Acciona also explained the provisions included in its design to reduce the design ventilation rates in hazardous locations, and to meet the criteria in the PA regarding those locations, including the provision of manual dampers to allow the necessary adjustments.

173. On or about February 12, 2021, the GVS&DD assigned a 'REJECTED' comment on Acciona's Submittal which included the provision of manual dampers, and insisted on the provision of a motorized modulating damper.
174. On April 15, 2021, Acciona notified the GVS&DD that the dual ventilation design demanded by the GVS&DD would be a Change under the PA.
175. On or about June 9, 2021, almost 5 months after the GVS&DD required a dual ventilation system, the GVS&DD withdrew its demand for provision for a dual ventilation system in the design.
176. On or about June 14, 2021, the GVS&DD withdrew its demand for motorized modulating dampers.
177. The GVS&DD's demands for provision in the design for a dual ventilation system and for motorized modulating dampers, and its failure to withdraw those demands in a timely way amounted to breaches of the GVS&DD's obligations under the PA including in respect of the Submittals and Review Procedure, including as further particularized in paragraph 91 above.
178. By a Supervening Event Notice dated July 12, 2021, Acciona notified the GVS&DD that the GVS&DD's breaches in relation to the ventilation system design constituted a Compensation Event and set out details of the consequences of those breaches.

179. In breach of its obligations under the PA, the GVS&DD rejected Acciona's Supervening Event Notice, on or about August 17, 2021, and refused to implement a Change under the PA in relation to the ventilation system design.
180. The GVS&DD's conduct in relation to the ventilation system design was in breach of the PA, including but not limited to the following obligations of the GVS&DD in the PA:
- (a) To act reasonably in its review of Acciona's Submittals;
 - (b) Not to interfere with Acciona's ability to perform the Design and the Construction;
 - (c) To exercise all its rights and obligations under the PA, including but not limited to, responding to Acciona's RFIs in a timely, cooperative and collaborative manner;
 - (d) To exercise all discretions granted to it under the PA reasonably, in a timely way, and in good faith;
 - (e) To use all reasonable efforts to achieve the objects of the PA and to enable Acciona to perform its obligations under the PA;
 - (f) Of honest performance in relation to its obligations and its exercise of its rights under the PA; and
 - (g) In light of the impossibilities in the PA and the expected need to make further changes, to work collaboratively and cooperatively, including to resolve issues with the goal of achieving completion of the Project on time, and to achieve the prompt and equitable resolution of Project issues.

6. Ethernet Cable Requirements for Motor Control Centres

181. Under Schedule 4, the Motor Control Centres for the Equipment located in the electrical rooms were required to have Ethernet cable wiring in accordance with the communication cabling requirements in Section 16126 of the Design and Construction Specifications, and be rated for 600V, CSA Class 1 control circuit type applications.
182. Section 16126 allowed for two types of Ethernet cable wiring: Ethernet CAT 6A cable, and Ethernet armoured (sheathed) CAT 6A cable rated for 600V, the latter being specified for installation in cable tray.
183. Pursuant to PA Schedule 4 – Section 16010 (Electrical General Requirements), Acciona was required to use standard production materials for electrical equipment (subsection 2.2.1).
184. Pursuant to the PA, the “Acceptable Manufacturers” for the Motor Control Centres procurement included Schneider Electric (“SE”).
185. At all material times, CAT 6A Ethernet cabling for the Motor Control Centres was not available as a standard product in the market and was required to be custom manufactured. Consequently, CAT 6A Ethernet cable was not compliant with several requirements in the PA, including but not limited to the requirement that it be in accordance with Good Industry Practice, that it be a standard production material, that it have been in successful regular operation under comparable conditions for at least 5 years, and that it have been fabricated in accordance with the manufacturer’s standard procedures.

186. The GVS&DD demanded that for the Motor Control Centres, Acciona supply either armoured CAT6A Ethernet cable, or armoured Ethernet CAT 6 cables that were rated for 600 volts.
187. Between June 2020 and July 2020, Acciona obtained quotations for the supply of the Motor Control Centres from a number of manufacturers, including all the MCC Acceptable Manufacturers under the PA. All the quotations received by Acciona were subject to deviations from the Schedule 4 Construction Specifications.
188. On or about December 9, 2020, by way of an RFI, Acciona confirmed to the GVS&DD that SE, the manufacturer whose quotation contained the fewest deviations from the PA requirements, and whose equipment was the only equipment small enough to fit into the space available in the electrical rooms, did not manufacture the Motor Control Centres using armoured Ethernet CAT 6A cable, or armoured Ethernet CAT 6 cable rated for 600 volts. Acciona submitted to the GVS&DD for approval under the Submittals and Review Procedure a procurement package that Acciona proposed to issue to SE for the Motor Control Centres that included unarmoured Ethernet Cat 6 cables rated for 300 volts following SE's standard design ("**Acciona's Proposed MCC Cabling Design**"), together with detailed explanations related to the compliance and equivalence of that design to various requirements in the PA.
189. The content of Acciona's Proposed MCC Cabling Design complied with the provisions of the PA permitting deviation lists because the specified requirements in the PA were not available in the market from Accepted Manufacturers, and the proposed deviation was equivalent to or surpassed the quality and performance requirements set out in the PA.
190. On or about December 17, 2020, the GVS&DD responded to Acciona's RFI that armoured Ethernet CAT 6A cables were required for the Motor Control Centres, without giving

reasons, and assigned a 'CORRECT DEFICIENCIES' comment to the Submittal of Acciona's Proposed MCC Cabling Design.

191. Acciona conducted further investigations and provided further information to the GVS&DD in January and February, 2021 in support of the reasonableness of Acciona's Proposed MCC Cabling Design, including, but not limited to that:

- (a) None of the other Acceptable Manufacturers used the armoured cables the GVS&DD insisted upon in their Motor Control Centres;
- (b) SE had never before manufactured Motor Control Centres with armoured cable inside; and
- (c) The GVS&DD's request for armoured cables inside the Motor Control Centres was contrary to Good Industry Practice, since the Ethernet communication cables were protected inside the Motor Control Centres in vertical wireways.

192. On February 11, 2021 the GVS&DD responded to maintain its demands for armoured Ethernet CAT 6 cables in all locations, except for the Operations and Maintenance Building where unarmoured CAT 6A cables were acceptable provided that they were rated for 600 volts. The GVS&DD maintained the 'CORRECT DEFICIENCIES' comment on the Submittal of Acciona's Proposed MCC Cabling Design.

193. After Acciona provided further information on February 16, 2021, the GVS&DD changed its comment on February 17, 2021, to 'REJECTED' on the Submittal of Acciona's Proposed MCC Cabling Design.

194. Acciona continued to conduct investigations in the market to attempt to find manufacturers willing to meet all the requirements in the PA. Acciona reported to the GVS&DD that the

Motor Control Centres cables it was insisting upon were not readily available in the market, and that other alternatives available, including from other Acceptable Manufacturers apart from SE, were not compliant with the requirements in the PA, or were too large to fit in the restricted space available for the Motor Control Centres. SE provided confirmation to Acciona on or about July 21, 2021 that it did not and would not manufacture the Motor Control Centres cables specified in the PA.

195. In providing review comments in relation to the Submittal of Acciona's Proposed MCC Cabling Design, the GVS&DD breached the PA, including but not limited to as particularized in paragraph 91 above.
196. By Supervening Event Notice dated July 26, 2021, Acciona notified the GVS&DD that the GVS&DD's breaches in relation to the Motor Control Centres cables constituted a Compensation Event and set out details of the consequences of those breaches.
197. In breach of the PA, on or about August 27, 2021, the GVS&DD rejected the Supervening Event Notice. However, the GVS&DD acknowledged that its response to Acciona's RFI dated December 17, 2020 insisting that armoured Ethernet CAT 6A cables were required under the PA for the Motor Control Centres was incorrect, and withdrew that response. The GVS&DD advised for the first time that it was willing to consider unarmoured CAT 6 cable, provided it was rated for 600 volts.
198. The GVS&DD's new requested Motor Control Centres cable was not compliant with multiple requirements in the PA, including but not limited to the specific provisions in Schedule 4, Divisions 11 and 16 related to the cable, and the requirements that it have been in successful regular operation under comparable conditions for at least 5 years, that it had been fabricated in accordance with the manufacturer's standard procedures,

that it be in accordance with Good Industry Practice, and that it be standard production materials.

199. By letter dated November 24, 2021, Acciona communicated this information to the GVS&DD, and that SE had agreed to modify its standard design in order to manufacture unarmoured CAT6A Ethernet cables rated for 600V. Acciona also notified the GVS&DD of the deviations from the PA that such a new SE design would entail, and confirmed that such a design would be a Change under the PA.
200. The GVS&DD failed to provide any approval, or to implement a Change under the PA in relation to Acciona's proposed Motor Control Centres cables design.
201. The GVS&DD's conduct in relation to the Motor Control Centres Ethernet cables design was in breach of the PA, including but not limited to the following obligations of the GVS&DD in the PA:
 - (a) When notified of conflicts and impossibilities in the PA requirements, to respond in a timely and reasonable way to identify necessary Changes to the PA and to implement a Change;
 - (b) To act reasonably in its review of Acciona's Submittals, including the duty to take all commercially reasonable steps in good faith and with due diligence, and including but not limited to in its consideration of deviations from the Design and Construction Specifications, as required by Schedule 2, Appendix 2B, section 7.1;
 - (c) Not to interfere with Acciona's ability to perform the Design and the Construction;
 - (d) To exercise all its rights and obligations under the PA, including but not limited to, responding to Acciona's RFIs in a timely, cooperative and collaborative manner;

- (e) To exercise all discretions granted to it under the PA reasonably, in a timely way, and in good faith;
- (f) To use all reasonable efforts to achieve the objects of the PA and to enable Acciona to perform its obligations under the PA;
- (g) Of honest performance in relation to its obligations and its exercise of its rights under the PA; and
- (h) In light of the impossibilities in the PA and the expected need to make further changes, to work collaboratively and cooperatively, including to resolve issues with the goal of achieving completion of the Project on time, and to achieve the prompt and equitable resolution of Project issues.

7. Cogeneration System Shop Drawings

- 202. On or about April 27, 2021, the GVS&DD assigned the comment 'CORRECT DEFICIENCIES' to Acciona's Submittal of the cogeneration shop drawings on the basis that project-specific Factory Acceptance Test/Site Acceptance Test (FAT/SAT) plans had not been submitted. However, the PA does not require such plans to be submitted.
- 203. On or about June 11, 2021, the GVS&DD changed its review comment on Acciona's Submittal of the cogeneration shop drawings from 'CORRECT DEFICIENCIES' to 'REJECTED' on the basis that Acciona's Submittal allegedly did not comply with the FAT requirements in the PA.
- 204. As further particularized below in paragraph 223, Acciona required a 'REVIEWED' comment on the cogeneration shop drawings in order to meet the criteria for payment of the Milestone Payment for Milestone 5.

205. The GVS&DD's assignment of the above described comments to the cogeneration shop drawings amounted to breaches of the PA, including but not limited to as particularized in paragraph 91 above.
206. The GVS&DD's conduct in relation to the HVAC systems controls design was in breach of the PA, including but not limited to the following obligations of the GVS&DD in the PA:
- (a) When notified of conflicts and impossibilities in the PA requirements, to respond in a timely and reasonable way to identify necessary Changes to the PA and to implement a Change;
 - (b) To act reasonably in its review of Acciona's Submittals, including the duty to take all commercially reasonable steps in good faith and with due diligence, and including but not limited to in its consideration of deviations from the Design and Construction Specifications, as required by Schedule 2, Appendix 2B, section 7.1;
 - (c) Not to interfere with Acciona's ability to perform the Design and the Construction;
 - (d) To exercise all its rights and obligations under the PA, including but not limited to, responding to Acciona's RFIs in a timely, cooperative and collaborative manner;
 - (e) To exercise all discretions granted to it under the PA reasonably, in a timely way, and in good faith;
 - (f) To use all reasonable efforts to achieve the objects of the PA and to enable Acciona to perform its obligations under the PA;
 - (g) Of honest performance in relation to its obligations and its exercise of its rights under the PA; and

- (h) In light of the impossibilities in the PA and the expected need to make further changes, to work collaboratively and cooperatively, including to resolve issues with the goal of achieving completion of the Project on time, and to achieve the prompt and equitable resolution of Project issues.

207. By Supervening Event Notice dated August 13, 2021, Acciona notified the GVS&DD that the GVS&DD's breaches in relation to the cogeneration design constituted a Compensation Event and set out details of the consequences of those breaches.

208. On or about August 24, 2021, the GVS&DD wrongfully rejected Acciona's Supervening Event Notice related to the cogeneration design for reasons that are not valid under the PA.

8. GVS&DD Inaction Concerning RFI 913

209. On or about June 22, 2021, by way of RFI-00913, Acciona submitted BC Hydro's proposed solution to the fact that the requirements in the PA for the worst-case flood conditions resulted in an unacceptable stairway access to the electrical rooms.

210. The GVS&DD failed to respond to RFI-00913 in a timely way or at all.

211. The GVS&DD's conduct in relation to RFI-00913 was in breach of the PA, including but not limited to the following obligations of the GVS&DD in the PA:

- (a) To respond in a timely and reasonable way requests for Changes to the PA and to implement a Change;
- (b) To act reasonably in its review of Acciona's Submittals, including the duty to take all commercially reasonable steps in good faith and with due diligence;

- (c) Not to interfere with Acciona's ability to perform the Design and the Construction;
- (d) To exercise all its rights and obligations under the PA, including but not limited to, responding to Acciona's RFIs in a timely, cooperative and collaborative manner;
- (e) To exercise all discretions granted to it under the PA reasonably, in a timely way, and in good faith;
- (f) To use all reasonable efforts to achieve the objects of the PA and to enable Acciona to perform its obligations under the PA; and
- (g) In light of the impossibilities in the PA and the expected need to make further changes, to work collaboratively and cooperatively, including to resolve issues with the goal of achieving completion of the Project on time, and to achieve the prompt and equitable resolution of Project issues.

212. By Supervening Event Notice dated October 6, 2021, Acciona notified the GVS&DD that the GVS&DD's failures to respond to RFI-00913 constituted a Compensation Event and set out details of the nature and consequences of the Supervening Event,

213. On or about October 22, 2021, the GVS&DD wrongfully rejected Acciona's Supervening Event Notice related to the GVS&DD's failures to respond to RFI-00913 for reasons that are not valid under the PA.

E. GVS&DD Constructive Acceleration and Failure to Pay

214. GVS&DD's conduct in relation to the PA, including but not limited to its failure to grant extensions of time where required under the PA, its rejection of Acciona's updated Project Schedules depicting Acciona's plan to complete the Design and Construction, and its directions to Acciona to complete the Design and Construction, and achieve Target

Acceptance Date by the dates depicted in the Project Schedules approved by the GVS&DD amounted to constructive acceleration of Acciona's performance of its obligations under the PA, and a Change under the PA.

215. The GVS&DD has refused or failed to pay Acciona reasonable compensation for Acciona's efforts to accelerate its performance of its obligations under the PA.

F. GVS&DD Breaches Leading to Non-Payment for Milestone 5

216. Under the PA, the GVS&DD was required to pay the DB Price to Acciona by way of Milestone Payments based on the progress of Acciona's Work. Acciona was required to obtain a Milestone Certificate from the Independent Certifier for the relevant Milestone before invoicing the GVS&DD for a Milestone Payment.
217. The Milestone Payment for Milestone 5 was \$95 million and the Target Milestone Completion Date was May 4, 2021.
218. Section 1.5 of Appendix 9A of Schedule 9 of the PA required Acciona to complete, among other things, the following items generally in accordance with the PA and the Reviewed Drawings and Specifications in order to be entitled to payment of the Milestone Payment for Milestone 5:
- (a) Complete certain pipes and associated infrastructure on the west side of the Project; and
 - (b) Receive a 'REVIEWED' comment under Appendix 2B from the GVS&DD for the shop drawings for the nine (9) listed types of equipment.
219. Acciona applied to the Independent Certifier for a Milestone Certificate under the PA for Milestone 5 on July 27, 2021, having completed the Work identified in Section 1.5 of

Appendix 9A of Schedule 9 of the PA in general conformance with the PA and the approved Drawings and Specifications.

220. On August 20, 2021, the Independent Certifier rejected Acciona's application for a Milestone Certificate for Milestone 5, among other things, on the basis that:
- (a) a secondary effluent pipe on the West side of the Project (the "**Outfall Pipe**") was "deemed incomplete"; and
 - (b) all of the required shop drawings had not yet achieved 'REVIEWED' status under Appendix 2B to Schedule 2 of the PA.
221. In relation to the second basis for the rejection of Acciona's application, it was the wrongful conduct of the GVS&DD, as particularized in paragraph 91 above, and below, in refusing to provide 'REVIEWED' comments on the required shop drawings for the Milestone Payment for Milestone 5 in a timely way, or at all, that caused Acciona's inability to meet that the Milestone 5 Criteria.
222. In relation to the first basis for the rejection of Acciona's application, in fact, the construction of the Outfall Pipe had been completed before June 2021, and the Engineer of Record for the Outfall Pipe had certified that it had been completed in general conformance with the PA and the Reviewed Drawings and Specifications. Following the completion of the construction of the Outfall Pipe, there had been a flooding event from a District of North Vancouver watermain in or about June, 2021, which had caused damage to the Outfall Pipe. Acciona had repaired the damage to the Outfall Pipe to the satisfaction of the Engineer of Record as of July 20, 2021.
223. As set out above, on August 15, 2021, Acciona delivered a Supervening Event Notice in relation to the GVS&DD's refusal to provide a 'REVIEWED' comment on the cogeneration

system shop drawings, on which Acciona was required to achieve a 'REVIEWED' comment as one of the Milestone 5 Criteria, and the GVS&DD rejected that Supervening Event Notice on August 24, 2021.

224. On September 20, 2021, Acciona issued a Dispute Notice under Schedule 14, Dispute Resolution Procedure, of the PA in relation to the rejection by the Independent Certifier of Acciona's application for a Milestone Certificate for the Milestone Payment for Milestone 5.
225. Notwithstanding the acceptance of the Outfall Pipe by the Engineer of Record following its repair by Acciona, the GVS&DD demanded that Acciona perform additional work on the Outfall Pipe. Acciona completed that additional work and further successfully tested the Outfall Pipe on September 29, 2021.
226. On September 30, 2021, Acciona submitted supplementary information to the Independent Certifier confirming the additional work that it had performed on the Outfall Pipe, and demonstrating that the GVS&DD was demanding additional information in the Submittals and Review Procedure that was not justified under the PA, and unreasonably withholding 'REVIEWED' comments in relation to the shop drawings required to meet the Milestone 5 Criteria.
227. On or about October 22, 2021, following his consideration of the supplementary information provided by Acciona, the Independent Certifier confirmed his denial of Acciona's application for the Milestone Payment for Milestone 5 at that time was for the following reasons:
 - (a) He required confirmation from the GVS&DD of a Change to the Outfall Pipe involving the deletion of a particular valve, an issue which the GVS&DD had raised

in response to Acciona's application for the Milestone Payment for Milestone 5;
and

(b) The failure to have achieved 'REVIEWED' comments on all the required shop drawings.

228. In fact, the GVS&DD had agreed to the deletion of the valve from the design in 2020, and as set out above, the construction of the Outfall Pipe had been completed. The GVS&DD was declining to approve Change documentation in relation to the deletion of the valve due to a disagreement on the value of a credit claimed by the GVS&DD for the deleted valve.

229. On December 1, 2021, the GVS&DD provided written confirmation that it considered the valve issue in relation to the Outfall Pipe had been resolved for the purposes of Acciona's application for the Milestone Payment for Milestone 5.

230. On December 12, 2021, the Independent Certifier confirmed that the valve issue had been resolved, and that his denial of Acciona's application for the Milestone Payment for Milestone 5 was solely on the basis of Acciona's failure to achieve 'REVIEWED' comments from the GVS&DD in relation to all of the shop drawings listed in Section 1.5 of Appendix 9A of Schedule 9.

231. On December 23, 2021, the Independent Certifier determined that Acciona had achieved all of the requirements for the Milestone Payment for Milestone 5, except for the requirement to have received a 'REVIEWED' comment on shop drawings for three types of equipment: the lamella, the cogeneration system and the standby diesel generators.

232. On or about January 4, 2022, the GVS&DD assigned a 'REVIEWED' comment to the lamella shop drawings.

233. On or about January 7, 2022, the GVS&DD assigned a 'CORRECT DEFICIENCIES' comment on the cogeneration shop drawings and on the standby diesel generators shop drawings. The GVS&DD has wrongfully refused to provide a 'REVIEWED' comment in relation to these last two shop drawings required for the payment of the Milestone Payment for Milestone 5.
234. Acciona had in fact completed generally in conformance with the PA all of the requirements set out in the PA to achieve Milestone 5 by July 20, 2021, except for the requirement to have received 'REVIEWED' comments on the shop drawings that the GVS&DD wrongfully withheld.
235. The shop drawings in respect of which the GVS&DD had wrongfully withheld 'REVIEWED' comments were in general conformance with the requirements in the PA and contained no deficiencies.
236. In fact, the GVS&DD wrongfully instructed AECOM to withhold 'REVIEWED' comments on the required shop drawings in order to ensure that Acciona's application for the Milestone Payment for Milestone 5 would be denied by the Independent Certifier.
237. In breach of Section 11(b) of Appendix 2B of Schedule 2 and of its implied duty to act in good faith in relation to the Milestone Payment process and under the Submittals and Review Procedure, the GVS&DD repeatedly and wrongfully withheld, or instructed AECOM to withhold, 'REVIEWED' comments on Shop Drawings for the improper purpose of preventing Acciona from meeting specific Milestone 5 Criteria, for commercial reasons, and so as to avoid the GVS&DD's obligation to pay the Milestone Payment for Milestone 5. In addition, the GVS&DD wrongfully sought to impose various new criteria for the Milestone 5 Criteria that were not in the PA, for commercial purposes.

238. In the circumstances and based on Acciona's completion of the Works for Milestone 5, the GVS&DD's conduct in relation to the Milestone Payment for Milestone 5 was reprehensible and constitutes misconduct.

G. GVS&DD's Wrongful Termination of the PA

239. Pursuant to Section 2.3 of Schedule 14, when Disputes occurred, the GVS&DD had the obligation in good faith to carry out its obligations under the PA pending resolution of the Disputes. The GVS&DD breached this obligation, including as particularized in this Notice of Civil Claim, and instead, wrongfully terminated the PA.

240. On May 26, 2021, the GVS&DD issued a Notice of Project Co Material Breach (the "**First GVS&DD Notice of Material Breach**"), claiming that Acciona was in breach of its obligations under the PA by submitting updated Project Schedules that allegedly failed to comply with the requirements in Sections 6.1 and 6.2 of Schedule 2. The GVS&DD relied on Section 6.3 of Schedule 2 to declare these alleged breaches a Project Co Material Breach.

241. On July 14, 2021, the GVS&DD issued a Notice of Project Co Material Breaches (the "**Second GVS&DD Notice of Material Breach**"), claiming that Acciona was in breach of its obligations under the PA by "failing to achieve" certain target dates in the Project Schedule, including the Target Acceptance Date by September 19, 2023, and Acceptance by the Longstop Date in the PA. The GVS&DD claimed that such breaches were Material Breaches of the PA.

242. In fact, Acciona had not breached its obligations under the PA as alleged by the GVS&DD in either of the First GVS&DD Notice of Material Breach or the Second GVS&DD Notice of Material Breach, or at all, and accordingly, there was no Project Co Material Breach.

243. Specifically, in relation to the First GVS&DD Notice of Material Breach, at all material times, Acciona fully complied with the requirements in Sections 6.1 and 6.2 of Schedule 2 of the PA. At all material times, Acciona submitted Project Schedule updates that were, as required by Section 6.2, an accurate, reasonable and realistic representation of Acciona's plans for the completion of the Design, Construction, Performance Period Services and Handover in accordance with the requirements in the PA.
244. Further and in the alternative, Section 6.3 does not apply to the circumstances alleged by the GVS&DD. Consequently, there was no Project Co Material Breach.
245. In relation to the Second GVS&DD Notice of Material Breach, Acciona did not fail to meet the dates referenced by the GVS&DD as alleged by the GVS&DD. Those dates were all dates in the future that Acciona did not fail to meet.
246. Further, and in the alternative, to the extent Acciona breached the PA as alleged by the GVS&DD in either of the First GVS&DD Notice of Material Breach or the Second GVS&DD Notice of Material Breach, which is denied, such breaches were not Project Co Material Breaches, and such breaches were caused by the GVS&DD's breaches and wrongful conduct as particularized in this Notice of Civil Claim.
247. Pursuant to Section 12.1 of the PA, a Project Co Event of Default does not arise where the alleged Event of Default is caused by the non-compliance by the GVS&DD with any provision of the PA, or by any negligent act or negligent omission, or any willful misconduct, of the GVS&DD.
248. Acciona's updated Project Schedule did not show completion dates that had been agreed with the GVS&DD because of the GVS&DD's own breaches of the PA in refusing to grant

extensions to the completion dates in the PA, including but not limited to for Acciona claimed Supervening Events and Changes as set out in this Civil Claim.

249. On October 15, 2021, notwithstanding that Acciona's Design of the North Shore WWTP complied with the PA (to the extent compliance was not impossible), and all applicable Laws and Good Industry Practice, and that Acciona's Construction met all the requirements in the PA, including the quality and safety requirements, the GVS&DD issued a notice to Acciona alleging ongoing Project Co Material Breaches and a Project Co Event of Default under the PA.
250. The GVS&DD purported to give notice of termination of the PA (the "**Termination Notice**"), and alleged that the Project Co Event of Default was Acciona's failure to remedy the Project Co Material Breaches identified in the First GVS&DD Notice of Material Breach and in the Second GVS&DD Notice of Material Breach.
251. However, as set out above, the allegations in the First GVS&DD Notice of Material Breach and the Second GVS&DD Notice of Material Breach were not Project Co Material Breaches under the PA, and consequently, the GVS&DD was not entitled to terminate the PA on the basis of a Project Co Event of Default.
252. Further, the GVS&DD knew at the time that it issued the First GVS&DD Notice of Material Breach and the Second GVS&DD Notice of Material Breach that it was impossible for Acciona to achieve the completion dates the GVS&DD was insisting upon, and that this impossibility was caused by the GVS&DD's own wrongful conduct, including as set out above its conduct in causing delay to the Design and Construction, and in wrongfully refusing to provide adjustments to the Project Schedule pursuant to Section 7 or Section 8.

253. Pursuant to Section 2.1 of the PA, the GVS&DD did not have the right to terminate the PA except as permitted by Section 2.1.
254. Pursuant to Section 2.1(g) and Section 12.4 of the PA, the GVS&DD was entitled to terminate the PA in the event of a Project Co Event of Default, provided it complied with the relevant provisions of the PA. However, as set out above, there was no Project Co Event of Default.
255. Pursuant to Section 2.1(a) of the PA, the GVS&DD was entitled to terminate the PA by issuing a notice stating that its termination was for convenience. However, the GVS&DD never issued such a notice.
256. The GVS&DD's termination was not in accordance with Section 2.1, and was wrongful.
257. Pursuant to Section 8.3(a)(2) the GVS&DD was not permitted to terminate the PA to the extent Acciona was delayed by Compensation Events, as a result of a termination right that has arisen other than pursuant to Section 2.1(a).
258. In breach of its express and implied duties of good faith in the PA, the GVS&DD sought to take advantage of its own breaches of the PA in terminating the PA.
259. Further, the GVS&DD proceeded to:
- (a) Wrongfully issue a Termination Notice to Acciona's Lender pursuant to the Lender's Remedies Agreement, thereby causing an Event of Default under Acciona's Credit Agreement with its Lender;
 - (b) Wrongfully issue a Proposed Transfer Notice to Acciona's Design-Builder in order to effect an assignment of the DCS Agreement from Acciona to the GVS&DD, and then wrongfully terminate the DCS Agreement; and

- (c) wrongfully make demand on the Design and Construction LC delivered by Acciona under the PA in the amount of \$50 million.
260. The Termination Notice issued by the GVS&DD to Acciona's Lender relied on the alleged Project Co Event of Default. However, as described above, there was no Project Co Event of Default. Consequently, the Termination Notice issued by the GVS&DD to Acciona's Lender was wrongful and in breach of the PA.
261. The Proposed Transfer Notice issued by the GVS&DD to Acciona's Design-Builder was made pursuant to the Contractor Collateral Agreement. However, that agreement gives the right to the GVS&DD to issue such a notice only where the GVS&DD has terminated the PA in accordance with its terms. As set out above, the GVS&DD's termination of the PA was not in accordance with its terms.
262. Consequently, the purported termination by the GVS&DD of the DCS Agreement was wrongful.
263. Pursuant to the PAA, the GVS&DD was only entitled to make demand on the Design and Construction LC in the amount of \$50 million where there was a Project Co Material Breach. As set out above, there has been no Project Co Material Breach. Consequently, the GVS&DD's demand on the Design and Construction LC was wrongful.
264. Further, the GVS&DD then engaged PCL, one of the proponents who responded to the original RFP, to complete the Project on a cost plus basis.
265. The GVS&DD's conduct in relation to terminating the PA and its subsequent steps taken as particularized above was reprehensible and constitutes misconduct.

266. On November 5, 2021, Acciona delivered a Dispute Notice under Schedule 14, Dispute Resolution Procedure, in relation to the Termination Notice.

H. GVS&DD Breach of Duty to Cooperate and Collaborate, to Use Reasonable Efforts to Achieve the Commercial Purposes of the PA, and Duty of Honest Performance

267. The Project described in the PA was impossible to design and construct on the Project Site selected by the GVS&DD in accordance with the terms of the PA.

268. In the face of the PA impossibilities, the GVS&DD adopted an approach of insisting on strict compliance with conflicting requirements in the PA that were impossible or unduly onerous to meet, dictating particular design solutions, demanding excessive and onerous investigations into possible design solutions, and refusing to implement Changes under the PA.

269. The GVS&DD's conduct, including as particularized in this Notice of Civil Claim was in breach of the GVS&DD's duty to cooperate and collaborate, including to achieve the prompt and equitable resolution of Project issues, its duty to use all reasonable efforts to achieve the objects of the PA and to enable Acciona to perform its obligations under the PA, and its duty of honest performance in relation to its obligations and its exercise of its rights under the PA.

VI. THE GVS&DD'S NEGLIGENCE AND MISCONDUCT

270. The GVS&DD owed a duty of care to Acciona to perform its obligations under the PA in accordance with the standard of care of a reasonable and prudent owner under a public private partnership agreement.

271. The breaches of the PA particularized in this Notice of Civil Claim also constituted GVS&DD negligent acts and omissions in breach of the standard of care and misconduct.

272. The conduct of the GVS&DD particularized in paragraphs 259(a) and (b), and 260 to 262 above constituted tortious interference with Acciona's contractual relations with its Lender and with the Design-Builder.

VII. ACCIONA'S MITIGATION AND DAMAGES

273. It was, or ought to have been, reasonably foreseeable to the GVS&DD that its breaches of the PA, its negligence, and its misconduct would cause Acciona to suffer significant loss and damage.

274. Acciona took all reasonable steps to mitigate the delay and damages caused by the GVS&DD's breaches, negligence, and misconduct, including but not limited to the following:

- (a) Steps taken with potential manufacturers to respond to various GVS&DD's demands and requests in relation to the Design as set out above;
- (b) The addition of resources to accelerate the preparation and finalization of designs, shop drawings, procurement packages and other submittals;
- (c) Steps taken to advance designs, procurement and construction before all necessary GVS&DD approvals had been received;
- (d) Steps to comply with the GVS&DD wrongful demands and requests in order to mitigate the impacts of the GVS&DD's breaches, including the investigation of alternative manufacturers and suppliers to satisfy such demands and requests;

- (e) Steps to accelerate the Project Schedule, including adding additional resources, adding additional work shifts, including night shifts, using the 'float' in the Project Schedule, compressing and overlapping work activities, changing designs to allow shorter construction periods, changing construction methodologies and sequences, changing materials to facilitate the acceleration of Construction, and procuring additional equipment; and
- (f) Such further and other particulars as shall be provided prior to the trial of this action.

275. Notwithstanding Acciona's efforts to mitigate the delays and damages caused by the GVS&DD's breaches, as a direct and foreseeable result of the GVS&DD's breaches, Acciona has suffered loss and damage, and claims amounts pursuant to the terms of the PA that include, but are not limited to:

- (a) Additional costs of the Design and Construction flowing from errors, conflicts and impossibilities in the PA, and the GVS&DD's breaches of the PA, negligent acts or omissions and misconduct;
- (b) Costs to perform the Design and Construction that were and should have been treated by the GVS&DD as Changes under the PA, including but not limited to:
 - (i) costs of investigating alternative designs and redesigning the North Shore WWTP as described in the PA;
 - (ii) costs to comply with directions of the GVSⅅ and

- (iii) costs of negotiations with Acceptable Manufacturers and efforts to identify other manufacturers willing to submit quotations on the Project to submit for the GVS&DD's approval;
- (c) Costs to perform the Design and Construction and Direct Losses incurred as a direct result of Supervening Events rejected by the GVSⅅ
- (d) Costs of delay, disruption and impacts to the Design and the Construction performed by Acciona, including but not limited to:
 - (i) additional material and equipment costs, including equipment cost escalation due to global market raw material price increases;
 - (ii) penalties or storage costs due to delays in release for manufacturing; and
 - (iii) transport cost escalation;
- (e) Direct Losses and costs resulting from the Supervening Events previously rejected by the GVSⅅ
- (f) Additional costs to remain on the Project Site to perform the construction longer than planned; and
- (g) Such further and other damages as will be proven at trial.

VIII. THE PARTIES WERE MISTAKEN ABOUT THE FEASIBILITY OF PERFORMING THE DESIGN AND CONSTRUCTION IN COMPLIANCE WITH THE PA

276. In the alternative, the GVS&DD and Acciona entered into the PA and the PAA under a common mistake about the characteristics of the Project Site and the feasibility of performing the Design and Construction in accordance with all the requirements set out

in the PA on the Project Site, leading them to believe that the North Shore WWTP is buildable on the Project Site in compliance with the PA, when it is not.

277. Acciona has performed design and construction work on the Project in compliance with, and in attempts to comply with, the PA:

- (a) At the request of the GVSⅅ
- (b) For which the GVS&DD has received the benefit; and
- (c) In the expectation that Acciona would be paid by the GVS&DD.

It would be inequitable and unconscionable for the GVS&DD to retain the benefit of Acciona's work on the Project without paying Acciona a fair and reasonable sum for the work it performed.

PART 2: RELIEF SOUGHT

278. Acciona claims:

- (a) Judgment against the GVS&DD in the amount of \$95 million, for the Milestone Payment for Milestone 5, plus applicable taxes, and interest pursuant to the PA from September 30, 2021;
- (b) Judgment against the GVS&DD in an amount to be determined by this Honourable Court as compensation pursuant to Sections 7 and 8 of the PA;
- (c) Damages for wrongful issuance of the Termination Notice to Acciona's Lender pursuant to the Lender's Remedies Agreement;

- (d) Damages for wrongful issuance of the Proposed Transfer Notice to the Design-Builder;
- (e) Damages for wrongful termination of the DCS Agreement;
- (f) An order that the GVS&DD return the amount drawn under the Design and Construction LC, and damages for wrongful demand on the Design and Construction LC, in the amount of at least \$50 million;
- (g) In the alternative, damages in an amount to be determined by the Honourable Court, currently estimated to exceed \$200 million, for breach of the PA, including for wrongful termination of the PA, or in the alternative for breach of common law duty, including, but not limited to:
 - (i) Acciona's unpaid costs to perform the Design and the Construction;
 - (ii) a reasonable markup for overhead and profit on those costs; and
 - (iii) compensation pursuant to Schedule 10, Section 1;
- (h) Damages for loss of opportunity as a result of Acciona's diminished reputation flowing from the GVS&DD's wrongful termination of the PA;
- (i) In the alternative, a declaration that the PA is void for common mistake, in equity, or alternatively at common law;
- (j) In the further alternative, compensation on a *quantum meruit* basis for work performed at the request of the GVS&DD or for the benefit of the GVSⅅ
- (k) In the further alternative, compensation on the basis of unjust enrichment for work performed at the request of the GVS&DD or for the benefit of the GVSⅅ

- (l) Pre-judgment interest on all amounts awarded to Acciona pursuant to the PA, or, in the alternative, pursuant to the *Court Order Interest Act*, R.S.B.C. 1996, c. 79, as amended;
- (m) Costs of this action on a solicitor-client indemnity basis, including due to the GVS&DD's deliberate breaches of the PA to obtain a commercial advantage, and its breaches of its duties to collaborate and cooperate with Acciona and its duty of honest performance, or, alternatively, costs on a party-party basis; and
- (n) Such further and other relief as this Honourable Court may deem just.

PART 3: LEGAL BASIS

- 279. Acciona and the GVS&DD entered into the PA for, among other things, the performance of the Design and the Construction of the North Shore WWTP.
- 280. Pursuant to the terms of the PA, Acciona is entitled to payment of the Milestone Payment for Milestone 5, together with interest pursuant to the PA from September 20, 2021.
- 281. The GVS&DD breached its express representation and warranty in the PA that the Project Site permitted the performance by Acciona of its obligations under the PA.
- 282. In addition, as described herein, the GVS&DD breached the PA in relation to:
 - (a) The Submittals and Review Procedure in the PA;
 - (b) The Change provisions of the PA;
 - (c) The Supervening Event Notices issued by Acciona;
 - (d) Acciona's application for a Milestone Payment Certificate for Milestone 5;

- (e) Its termination of the PA; and
 - (f) Its demand on the Design and Construction LC.
283. The GVS&DD's breaches of its obligations under the PA also constituted negligent acts or omissions, and misconduct.
284. The GVS&DD tortiously interfered with Acciona's contractual relations with Acciona's Lender and with the Design-Builder.
285. The GVS&DD's breaches of its obligations under the PA caused significant delays to the Project Schedule and have caused Acciona to suffer, and to continue to suffer, loss and damage.
286. Acciona is entitled to relief, compensation and adjustments to the Project Schedule pursuant to Section 7, Changes, or Section 8, Supervening Events, of the PA
287. In the alternative, Acciona is entitled to compensation from the GVS&DD on a *quantum meruit* basis for the work it performed in relation to the Project, which resulted in increased costs borne entirely by Acciona.
288. In the further alternative, Acciona is entitled to compensation from the GVS&DD on the basis of unjust enrichment, because the GVS&DD has been enriched by Acciona's actions, Acciona has suffered a corresponding deprivation through the increased costs for the work, and there is no juristic reason for the GVS&DD to retain the benefit it has obtained at Acciona's expense.
289. In the further alternative, Acciona seeks relief on the basis of common mistake, in equity, or alternatively at common law, as Acciona and the GVS&DD were both under a mutually mistaken belief at the time of signing of the PAA that the Project could be built at the

Project Site in accordance with the terms of the PA. This mistaken understanding was fundamental to what the parties bargained for, and as a result the PA is *void ab initio*, or in the alternative, voidable in equity. Acciona is entitled to compensation for the work it performed in relation to the Project on the basis of either *quantum meruit* or unjust enrichment, as set out above.

Plaintiff's address for service: c/o Dentons Canada LLP
20th Floor, 250 Howe Street
Vancouver, BC, V6C 3R8
Attention: Karen Martin

Fax number address for service (if any): N/A

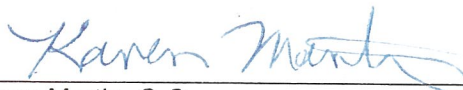
E-mail address for service (if any): karen.martin@dentons.com

Place of trial: Vancouver, BC

The address of the registry is: 800 Smithe Street
Vancouver, BC, V6Z 2E1

Dated in Vancouver, British Columbia, this 31st day of March, 2022.

Dentons Canada LLP



Karen Martin, Q.C.

Solicitors for the Plaintiff, Acciona
Wastewater Solutions LP by its General
Partner, AWS General Partner Inc.

Rule 7-1 (1) of the Supreme Court Civil Rules states:

(1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,

(a) prepare a List of Documents in Form 22 that lists

(i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and

(ii) all other documents to which the party intends to refer at trial, and

(b) serve the list on all parties of record.

APPENDIX

Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

PA and tort claims in relation to the design and construction of a wastewater treatment plant.

Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

A personal injury arising out of:

- a motor vehicle accident
- medical malpractice
- another cause

A dispute concerning:

- contaminated sites
- construction defects
- real property (real estate)
- personal property
- the provision of goods or services or other general commercial matters
- investment losses
- the lending of money
- an employment relationship
- a will or other issues concerning the probate of an estate
- a matter not listed here

Part 3: THIS CLAIM INVOLVES:

- a class action
- maritime law
- aboriginal law
- constitutional law
- conflict of laws
- none of the above
- do not know