
SCHEDULE 16

DISPUTES RESOLUTION PROCEDURE

Except as expressly provided in any other provision of this Agreement, all Disputes will be resolved in accordance with the provisions set out in this Schedule.

DISPUTE RESOLUTION

1. Construction Disputes

All Disputes in respect of all work necessary to design, construct, complete, commission and test the Works and complete the Decommissioning ("Construction Disputes") will be resolved in accordance with the procedure set out in paragraphs 10 through 20 [Construction Disputes] of this Schedule.

2. Amicable Negotiations

In the event of a Dispute, a Party may give notice of the Dispute to the other Parties and the Parties will use all reasonable efforts to resolve the Dispute by amicable negotiations and agree to provide frank, candid and timely disclosure of relevant information and documents to facilitate these negotiations.

3. Senior Executives

If the Dispute is not resolved to the mutual satisfaction of the Parties within 14 days following the notice referred to in paragraph 2, or such longer period as the Parties may agree, a Party may refer the Dispute to the President of the general partner of the Concessionaire and the official of the Province nominated for that purpose by the Province (collectively, the "Senior Executives") who will meet within 5 Working Days of the giving of such notice (or earlier if agreed) and attempt in good faith to resolve the Dispute. If the Dispute is resolved by the Senior Executives, the resolution will be recorded in writing and signed by a duly authorized representative of each of the Parties and that resolution will be final and binding on the Parties. If the Senior Executives are unable to resolve the Dispute within 5 Working Days of their meeting, then either Party may by written notice to the other Party refer the Dispute to mediation in accordance with paragraph 4.

4. Mediation

The Parties will jointly select and appoint a mediator to assist the Parties to reach a mediated agreement with respect to the Dispute. No person will be appointed to act as a mediator unless he or she is qualified by education, experience and training to mediate the matter in Dispute. The mediation will be conducted under such mediation rules,

times and period of mediation determined by the mediator and the cost of mediation is to be shared equally by the parties to the mediation. Any settlement reached by mediation must be in writing, must be signed by the Parties and is final and binding on them. If the Parties fail to agree on a mediator within 10 Working Days or the Dispute is not resolved to the satisfaction of the Parties within 30 days following the appointment of the mediator, then either Party may by written notice to the other Party require the Dispute to be resolved by arbitration in accordance with paragraph 5.

5. Arbitration Proceedings

- 5.1 The *Commercial Arbitration Act*, R.S.B.C. 1996, c. 55 applies to any arbitration conducted hereunder except to the extent that its provisions are modified by the express provisions of this Schedule or by agreement of the Parties.
- 5.2 A Party (the “Initiating Party”) may commence arbitration proceedings by giving a notice in accordance with paragraph 4 to the other Party (the “Responding Party”) stating the nature of the Dispute, any amount involved and the remedy sought. Within 10 Working Days following receipt of such notice by the Responding Party, the Initiating Party and the Responding Party will designate a single arbitrator acceptable to both of them. If the Parties fail to designate such a single arbitrator within such period of time, the Initiating Party will, by notice to the Responding Party, appoint an arbitrator. The Responding Party will, within 10 Working Days following receipt of such notice, appoint an arbitrator by notice to the Initiating Party and the two arbitrators so appointed will select a third arbitrator acceptable to both of them. If the Responding Party fails to appoint an arbitrator within such period of time (or such additional period of time as the Parties may agree), the Initiating Party may appoint an arbitrator on behalf of the Responding Party and is hereby appointed the agent of the Responding Party for such purpose. If the two arbitrators so appointed are unable to agree upon the third arbitrator within 10 Working Days following the appointment of the arbitrator by (or on behalf of) the Responding Party, either Party may apply under the *Commercial Arbitration Act* to a judge of the British Columbia Supreme Court to appoint the third arbitrator, and the provisions of the *Commercial Arbitration Act* govern such appointment.
- 5.3 The single arbitrator or panel of arbitrators appointed pursuant to paragraph 5.2 to act hereunder (the “Arbitrator”) will have appropriate qualifications by profession or occupation to decide the matter in Dispute.
- 5.4 Within 10 Working Days following the appointment of the Arbitrator pursuant to paragraph 5.2, the Initiating Party will send to the Responding Party and the Arbitrator a statement (the “Statement”) setting out in reasonable detail the facts and any contentions of law on which the Initiating Party relies and the relief that it claims. Within 10 Working Days following receipt of such Statement, the

Responding Party will send to the Initiating Party and the Arbitrator a response (the “Response”) to the Statement stating in reasonable detail which of the facts and contentions of law in the Statement the Responding Party admits or denies, on what grounds, and any other facts and contentions of law on which it relies. Within 10 Working Days following receipt of such Response, the Initiating Party may send to the Responding Party and the Arbitrator a reply to the Response (the “Initiating Party’s Reply”). Within 10 Working Days following receipt of the Initiating Party’s Reply, the Responding Party may send to the Initiating Party and the Arbitrator a reply to the Initiating Party’s Reply (the “Responding Party’s Reply”). Every Statement, Response and Reply given in accordance with the foregoing will be accompanied by copies (or, if they are especially voluminous, lists) of all essential documents and other materials on which the Party concerned relies.

- 5.5 After submission of the Statement, Response and Replies, if any, given in accordance with paragraph 5.4, the Arbitrator will forthwith meet with and give directions to the Parties for the further conduct of the arbitration. There will be no oral discovery unless otherwise ordered by the Arbitrator.
- 5.6 Meetings and hearings of the Arbitrator will take place in Vancouver, British Columbia or in such other place as the Parties may agree. Subject to the foregoing, the Arbitrator may at any time fix the date, time and place of meetings and hearings in the arbitration, and will give the Parties adequate notice thereof. All meetings and hearings will be in private unless the Parties otherwise agree, and each Party may be represented at any meetings or hearings by legal counsel. Each Party may examine and re-examine its witnesses and cross-examine those of the other Party at the arbitration.
- 5.7 Subject to the provisions of the *Commercial Arbitration Act*, the Arbitrator will send a decision in writing to the Parties within 30 days following the conclusion of all hearings referred to in paragraph 5.6 unless such period of time is extended for a fixed period by the Arbitrator on written notice to each Party because of illness or other cause beyond the Arbitrator’s control and, unless the Parties otherwise agree, will state the reasons for the decision. If the Arbitrator is a panel, the decision of the majority of the panel will be deemed to be the decision of the Arbitrator.
- 5.8 Subject to the provisions of the *Commercial Arbitration Act*, and with the exception of monetary awards in excess of \$5,000,000 or errors in law, the decision of the Arbitrator will be final and binding on the Parties and will not be subject to any appeal or review procedure, provided that the Arbitrator has followed the rules and procedures herein in good faith and has proceeded in accordance with the principles of natural justice. If the decision results in an award in excess of \$5,000,000, the decision of the Arbitrator may be appealed on

a question of fact or on a question of mixed fact and law where permitted pursuant to the provisions of the *Commercial Arbitration Act*. If the decision is alleged to have been based upon an error in law, a Party may appeal the decision in that regard pursuant to the provisions of the *Commercial Arbitration Act*.

- 5.9 The object of an arbitration hereunder is to ensure the just, expeditious, economical and final determination of the Dispute. Without limiting the jurisdiction or powers of the Arbitrator under the *Commercial Arbitration Act*, a submission to arbitration hereunder will confer on the Arbitrator the jurisdiction and power to:
- 5.9.1 determine any question of law arising in the arbitration;
 - 5.9.2 determine any question of good faith or dishonesty arising in the Dispute;
 - 5.9.3 order any Party to furnish further details of its case, in fact or in law to the other Party;
 - 5.9.4 proceed with the arbitration notwithstanding any failure or refusal of a Party to comply with these provisions or with the Arbitrator's orders or directions or to attend any meeting or hearing, but only after giving such Party notice that the Arbitrator intends to do so;
 - 5.9.5 receive and take into account such written or oral evidence tendered by the Parties as the Arbitrator determines is relevant, whether or not strictly admissible in law;
 - 5.9.6 make one or more interim awards;
 - 5.9.7 hold meetings and hearings and make a decision (including without limitation a final decision) in British Columbia or elsewhere with the concurrence of the Parties;
 - 5.9.8 order the Parties to produce to the Arbitrator, and to each other for inspection, and to supply copies of, any books and records, documents, materials and other information in their possession or control which the Arbitrator determines to be relevant;
 - 5.9.9 order the preservation or storage of any property or thing relevant to the subject matter of the arbitration under the control of either of the Parties;
 - 5.9.10 make any order as to the payment of costs of the arbitration, including without limitation legal fees on a solicitor and own client basis, and
 - 5.9.11 include, as part of any award, the payment of interest at the rate set out in

this Agreement from an appropriate date as determined by the Arbitrator.

The jurisdiction and powers referred to in this paragraph 5.9 will be exercised at the discretion of the Arbitrator subject only to applicable Laws and Regulations and the provisions of this Agreement.

6. Provisional Remedies

No Party is precluded from initiating a proceeding in a court of competent jurisdiction for the purpose of obtaining any emergency or provisional remedy to protect its rights that may be necessary and that is not otherwise available under this Agreement including temporary and preliminary injunctive relief and restraining orders and the appointment of a receiver or receiver and manager.

7. Continuing Performance

7.1 At all times, notwithstanding the existence of any Dispute, the Parties will continue to perform their respective obligations in accordance with the provisions of this Agreement without prejudice to the right to contest, dispute and challenge the relevant matter in accordance with the provisions of the Agreement. For example, in the event of a Dispute with respect to the reasonableness of any approval by the Province, the Concessionaire must comply with such decision but, where permitted under the terms of this Agreement, may submit the question of reasonableness for determination pursuant to the provisions of this Schedule.

7.2 Subject to the express provisions of the Agreement, where there is any Dispute as to the amount of moneys owing by one Party to any other Party hereunder, the portion of the amount owing that is not contested, disputed or challenged, if any, must be paid when due hereunder, but without prejudice to the rights of the Parties to contest, dispute or challenge the disposition of the remaining portion of the moneys claimed hereunder.

8. Rights Pending Final Resolution of Disputes

If the Party receiving a notice of termination of the Agreement disputes the right of the Party giving such notice to terminate the Agreement by making application to the Disputes Resolution Procedure in this Schedule, it must state in the notice of Dispute if it elects to accept such termination without prejudice to its right to assert a claim for damages for the alleged wrongful termination of the Agreement or to any other rights to which it is entitled under the Agreement. Such election is irrevocable and the Party making the election may only seek its damages, if any. If the disputing Party does not so elect, subject to the rights of the Senior Funders under the Direct Agreement, the termination of this Agreement will occur on the expiry of a period of 30 days following a

final decision of the Arbitrator to the effect that the right to terminate was validly exercised.

9. Costs of Arbitration

Pending determination by the Arbitrator, each Party must share equally, and be responsible for its respective shares of, all costs relating to the arbitration as and when due.

CONSTRUCTION DISPUTES

10. Appointment of Referee

Within 30 days of execution of a Design-Build Contract by the Concessionaire, the Parties will appoint a referee (the “Referee”) who has appropriate qualifications by profession or occupation to decide Construction Disputes, and, if agreement on the appointment of the Referee cannot be reached, the Parties shall require the British Columbia International Commercial Arbitration Centre to appoint the Referee under its procedures for the appointment of an arbitrator.

11. Referee Services Agreement

The Parties shall enter into the Referee Services Agreement, substantially in the form attached to this Schedule as Annex 1. The Referee’s terms of reference shall be in accordance with the attached Referee Services Agreement.

12. Costs of Referee

The Concessionaire and the Province shall share equally the cost of, and shall pay the Referee for:

- 12.1 duties performed and responsibilities fulfilled under the Referee Services Agreement; and
- 12.2 all actual and reasonable disbursements which have been paid by the Referee in order to perform the services and fulfillment its responsibilities.

The Referee may, at any time, be discharged and replaced by another Referee by mutual consent of the Province and the Concessionaire.

13. Role of Province’s Representative

If a Construction Dispute arises, the Concessionaire shall abide by the decision, instruction or direction of the Province’s Representative with respect to the Construction Dispute, ensure that the design, construction, completion, commissioning and testing of the Works and the completion of the Decommissioning are diligently proceeded with and

closely track all costs and impacts associated therewith (while reserving its rights to claim or dispute the instruction, direction or decision of the Province's Representative). To the extent that the Parties agree or it is determined under the Disputes Resolution Procedure that the decision, instruction or direction of the Province's Representative under this paragraph 13 was not as reasonable as the course of action proposed by the Concessionaire, then such decision, instruction or direction of the Province's Representative shall constitute a Compensation Event and the provisions of Part 4 of Schedule 13 [Compensation Events] will apply.

14. Amicable Negotiations

The Parties agree that, both during and after the design, construction, completion, commissioning and testing of the Works and the completion of the Decommissioning, each of them shall:

- 14.1 make bona fide efforts to resolve any Construction Dispute arising between them by amicable negotiations; and
- 14.2 provide frank, candid and timely disclosure of all relevant facts, information and documents to facilitate the resolution of any claim or Construction Dispute.

15. Full Particulars

In order to facilitate the negotiations in paragraph 14.1, the Concessionaire shall provide full written particulars of the nature, entitlement and magnitude of any claim and any request for an extension of time being sought and any other documents requested by the Province or BCTFA or both of them and the Province shall provide full written particulars of its position with respect to such issues and any other documents requested by Concessionaire, provided that the Province will have no obligation to provide such report or document with respect to which it is subject to an express obligation of confidentiality or privacy (whether under any Laws or Regulations or contract or otherwise) or which it is otherwise precluded from disclosing under any Privacy Legislation or other Laws and Regulations.

16. Notice of Dispute

Within 5 Working Days of a Construction Dispute arising, the Concessionaire's Representative or the Province's Representative, as the case may be and provided the Province and BCTFA have received all information pursuant to paragraph 15, shall give the other Parties written notice of the Construction Dispute and the Parties shall use all reasonable efforts as identified by paragraph 14 to resolve the Construction Dispute.

17. Referral

If the Parties fail to resolve the Construction Dispute within 10 Working Days after receipt of the notice pursuant to paragraph 16, the Parties shall refer the Construction Dispute to the Province's Representative and the President of the general partner of the Concessionaire who will meet within 5 Working Days of such notice (or earlier if agreed) and attempt in good faith to resolve the Construction Dispute.

If the Province's Representative and the director of the Concessionaire fail to resolve the Construction Dispute within 10 Working Days after the Construction Dispute of their meeting, the Construction Dispute shall be referred to the Referee for investigation of the facts leading to a non-binding decision in accordance with paragraph 18.

18. Referee Procedure

18.1 Within 5 Working Days after the referral of the Construction Dispute to the Referee, the Parties shall each submit to the Referee and the other Party a complete list of the issues in dispute, full particulars of the nature, entitlement and magnitude of the remedies sought, and a list of documents and any other information they believe relevant to the Construction Dispute.

18.2 The Referee may in the course of the investigation:

18.2.1 require either Party to supply or prepare for examination by the Referee and the other Party, any document or other information the Referee considers necessary;

18.2.2 inspect the Works and Decommissioning, giving reasonable notice to each Party of the time when, and the place where, the Referee intends to conduct any inspection;

18.2.3 convene meetings of the Parties to discuss the issues in dispute in the presence of the Referee; and

18.2.4 take evidence from such witnesses and experts, as the Referee may deem appropriate, in the presence of the Parties.

18.3 Neither the Province nor the Concessionaire shall unduly delay or impede the Referee in completing the investigation.

18.4 The Referee's written decision, with reasons, shall be delivered to the Province and the Concessionaire within 10 Working Days of the Referee's receipt of the Parties' information pursuant to paragraph 18.2.

19. Arbitration

If either Party disputes the Referee's decision, that Party may commence arbitration proceedings in the manner set out in paragraph 5.

20. Other Parties to Construction Dispute

The Concessionaire shall ensure that the Contractor and Designer are required to attend, at the request of the Province, BCTFA or the Concessionaire, any dispute resolution proceeding for a Construction Dispute including investigation by the Referee and arbitration.

**ANNEX 1
REFEREE SERVICES AGREEMENT**

**HER MAJESTY THE QUEEN IN RIGHT OF
THE PROVINCE OF BRITISH COLUMBIA, as represented by the
Minister of Transportation**

and

BC TRANSPORTATION FINANCING AUTHORITY

and

OKANAGAN LAKE CONCESSION LIMITED PARTNERSHIP

and

[REFEREE]

The following is the form of Referee Services Agreement agreed upon between the Province, BCTFA and the Concessionaire to be executed by the Province, BCTFA, the Concessionaire and the Referee following the Closing Date. The Province and the Concessionaire acknowledge that the Referee Services Agreement remains subject to modification following review by the Referee with any such modifications to be agreed by each of the Province, BCTFA and the Concessionaire acting reasonably.

THIS AGREEMENT dated for reference ● is made

AMONG:

**HER MAJESTY THE QUEEN IN RIGHT OF THE
PROVINCE OF BRITISH COLUMBIA**, as represented by the
Minister of Transportation

(the “Province”)

AND:

BC TRANSPORTATION FINANCING AUTHORITY, a
corporation continued under the *Transportation Act*, S.B.C. 2004, c. 44

(“BCTFA”)

AND:

OKANAGAN LAKE concession LIMITED PARTNERSHIP (reg. no. 05-0399237), a limited partnership registered under the laws of British Columbia (the “Concessionaire”)

AND

●;

(the “Referee”)

WHEREAS the Province, BCTFA and the Concessionaire have entered into an agreement dated ● (herein referred to as “the Concession Agreement”), and the Concession Agreement calls for the appointment of a Referee to fairly and expeditiously dispose of any Construction Disputes which may arise between the Province, BCTFA and the Concessionaire.

NOW THEREFORE in consideration of the mutual promises and agreements of the parties herein expressed and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby covenant and agree as follows:

1. APPOINTMENT

1.1 The Province, BCTFA and the Concessionaire hereby appoint the aforementioned person to act as Referee in accordance with the Concession Agreement,

1.2 The Referee hereby accepts the appointment and acknowledges receipt of a complete copy of the Concession Agreement.

1.3 The appointment of the Referee and any rights, responsibilities and obligations arising out of this Agreement are personal to the Referee and may not be assigned.

2. BIAS

2.1 The Referee has disclosed to each of the other parties, and will promptly disclose in the future, any facts or circumstances which may give rise to a reasonable apprehension of bias by the Province, BCTFA or the Concessionaire.

3. DUTIES

3.1 The Referee will promptly and faithfully perform all duties and discharge all responsibilities and obligations assigned to the Referee as specified in this Agreement and in the Concession Agreement.

3.2 The Referee will, upon the written request of any party, attend or facilitate meetings between the Province, BCTFA and the Concessionaire.

4. COOPERATION

4.1 The Province, BCTFA and the Concessionaire will cooperate with each other and with the Referee to allow the Referee to perform the Referee's duties and discharge all responsibilities as expeditiously as possible.

5. COMMUNICATIONS

5.1 Except for matters of a purely administrative nature, the Referee will not communicate orally with the Province, BCTFA or the Concessionaire, or their representatives, respecting any matters arising out this Agreement unless all parties, or all of their representatives, are present.

5.2 The Referee will send copies of any written communications sent to any party or received by the Referee from any party, to the other parties as well.

6. NOTICES

6.1 Any notices or other documentation required to be given under this Agreement will be given in writing, and where addressed to:

- (a) the Province, BCTFA and the Concessionaire, will be given by delivery to their respective addresses for service shown in the Concession Agreement; and
- (b) the Referee, will be given by delivery to the address for service shown in this Agreement,

or such other addresses as notified by the parties.

7. EVIDENCE

7.1 The Referee is not bound by the strict rules of evidence.

8. CONFIDENTIALITY

8.1 The Referee will hold in strict confidence and will not reveal, copy or disclose to any person, other than an expert retained under this Agreement, any documents or information provided to the Referee or to which the Referee gains access in the course of performing the duties or discharging the responsibilities under this Agreement without the prior written permission of each of the Province, BCTFA and the Concessionaire.

9. EXPERTS

9.1 The Referee may retain any legal or technical experts the Referee considers necessary.

9.2 The Referee will impose on all experts the restrictions and obligations which are imposed on the Referee by Article 5 and Article 8 of this Agreement.

9.3 The Referee will promptly notify the Province, BCTFA and the Concessionaire of the names and the terms of appointment of any experts retained.

9.4 The Referee will direct all experts to give their advice or report, either orally or in writing, simultaneously to the Referee, the Province, BCTFA and the Concessionaire.

10. FEES AND DISBURSEMENTS

10.1 The Province will pay the Referee monthly in arrears upon receipt of an invoice from the Referee, a minimum monthly fee of \$ _____.

10.2 In addition to the minimum monthly fee stated above, the Province will pay upon receipt of an invoice from the Referee, monthly in arrears for:

- (a) services rendered by the Referee in excess of seven hours in any month, at a rate of \$ _____ per hour; and
- (b) all actual and reasonable disbursements incurred by the Referee in the performance of his or her duties under this Agreement, including but not limited to travel, board, lodging, administrative services, sundry disbursements, and any fees and costs reasonably incurred in connection with obtaining any expert advice.

10.3 In the event of termination of this Agreement, the Province will promptly reimburse the Referee for all fees and disbursements incurred prior to the effective date of termination and all costs reasonably associated with an orderly termination of service.

10.4 The Concessionaire agrees to forthwith reimburse the Province for an amount equal to 50% of all payments made in good faith by the Province to the Referee pursuant to this Article 10.

10.5 Total payments to the Referee shall not exceed \$_____.

11. LIABILITY

11.1 The Referee will not be liable to any party for any act or omission in connection with any of the duties, responsibilities or obligations performed in good faith by the Referee.

12. TERMINATION

12.1 The Province, BCTFA and the Concessionaire may by mutual agreement and by written notice to the Referee, terminate this Agreement at any time; and such notice of termination shall be effective immediately upon delivery unless otherwise stated.

12.2 The Referee may, by giving 30 days written notice to the Province, BCTFA and the Concessionaire, terminate this Agreement.

13 COMPLETION OF AGREEMENT

13.1 The Concessionaire, the Province and BCTFA will jointly advise the Referee by written notice of the effective date when the Referee's services under this Agreement are no longer required and on that effective date the obligations of the Referee will be terminated.

THE PARTIES have executed this Agreement as of the date written above.

THE REFEREE:

Signed by the Referee

THE CONCESSIONAIRE:

Signed by the Concessionaire's Authorized Signatory

THE PROVINCE:

Signed by an Authorized Signatory for the Province

BCTFA:

Signed by an Authorized Signatory for BCTFA