

CONCESSION AGREEMENT

BETWEEN

**HER MAJESTY THE QUEEN
IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA,
AS REPRESENTED BY THE MINISTER OF TRANSPORTATION AND INFRASTRUCTURE**

- and -

BC TRANSPORTATION FINANCING AUTHORITY

- and -

FTG FRASER TRANSPORTATION GROUP PARTNERSHIP

July _____, 2010

SOUTH FRASER PERIMETER ROAD PROJECT**TABLE OF CONTENTS**

PART 1 INTERPRETATION	2
1.1 Definitions and Interpretation	2
1.2 Governing Law	2
1.3 Submission to Jurisdiction	2
1.4 No Fettering of Province’s Rights and Authority	2
1.5 Schedules	2
1.6 Language.....	3
PART 2 GENERAL PROJECT TERMS	3
2.1 The Project.....	3
2.2 Term.....	3
2.3 Assumption of Risk and Responsibility	3
2.4 Financial Administration Act.....	3
2.5 Grant of Land License	4
2.6 Non-Province Controlled Lands	4
2.7 Limited Use.....	5
2.8 Business Opportunities	6
2.9 Location of Infrastructure	6
2.10 Title to Improvements.....	7
2.11 No Registration	7
2.12 Transfer of Title to Tangible Personal Property	7
2.13 Review, Approval, Inspection and Audit by the Province.....	8
2.14 Site Inspection and Investigations	10
2.15 Disclosed Data	13
2.16 Naming of the Project	15
2.17 Execution and Delivery of Project Documents.....	15
2.18 Financial Model	15
2.19 No Agency	17
2.20 Instruments Required under TIA	17
2.21 Delegated Obligations, Rights, Powers and Functions	17
2.22 Limited Notice to Proceed Agreement.....	17
PART 3 PROVINCE’S GENERAL OBLIGATIONS	18
3.1 Provision of Project Site	18
3.2 Mitigation By Province.....	19
3.3 Representations and Warranties of the Province and BCTFA.....	19
3.4 Without Prejudice	20
3.5 Survival of Representations and Warranties	20
PART 4 CONCESSIONAIRE’S GENERAL OBLIGATIONS	20
4.1 Concessionaire to Carry Out Project Work.....	20
4.2 Payments to Contractors	21
4.3 No Adverse Reflection.....	21
4.4 No Other Business or Conflicts of Interest	22
4.5 Prohibited Acts	22
4.6 Public Use	23
4.7 Access to Project Site and Project Infrastructure by Others	24
4.8 Improvements and Changes in Use.....	26
4.9 Concessionaire Plans	26

SOUTH FRASER PERIMETER ROAD PROJECT

- ii -

4.10	Mitigation By Concessionaire.....	26
4.11	Site Safety and Security	27
4.12	Concessionaire as Prime Contractor	27
4.13	Health and Safety Program	28
4.14	Concessionaire’s Occupational Health and Safety Obligations.....	28
4.15	Refusal to Recognize Concessionaire as Prime Contractor	31
4.16	Appointment of other Prime Contractors by Province.....	32
4.17	Notice of Failure to Comply with Health and Safety Requirements	32
4.18	Permits	33
4.19	Agreements with Governmental Authorities	35
4.20	Archaeological and Heritage Objects	36
4.21	Concessionaire’s Representations and Warranties.....	36
4.22	Without Prejudice	40
4.23	Survival of Representations and Warranties.....	40
PART 5 FINANCING OF THE PROJECT		40
5.1	Restrictions on Changes to Partnership Agreements and Junior Lending Agreements	40
5.2	Restrictions on Changes to Senior Lending Agreements and Refinancing	41
5.3	Refinancing Information.....	42
5.4	Conditions to Implementation of a Refinancing	42
5.5	Permitted Borrowing.....	43
5.6	Exempt Transaction	43
5.7	Province’s Share of Refinancing Gain.....	44
5.8	Calculation of Refinancing Gain	44
5.9	Implementation of Refinancing	45
5.10	Province Rights to Audit.....	45
5.11	Copies of Documents.....	45
5.12	Payment of Province’s Costs	46
5.13	Refinancing Costs	47
5.14	Changes Not to Increase Province’s Liability.....	47
5.15	Restricted Persons Prohibited	48
5.16	Qualified Refinancing.....	48
PART 6 INSURANCE, DAMAGE AND DESTRUCTION		54
6.1	Insurance Coverages	54
6.2	Province’s Right to Insure	55
6.3	Particular Requirements of Policies	55
6.4	Deductibles	56
6.5	Concessionaire Insurance Primary.....	56
6.6	Release of the Province for Insured Loss.....	56
6.7	Compliance with Policies	56
6.8	Evidence of Insurance.....	57
6.9	Renewal	59
6.10	Copies of Communications.....	59
6.11	Review of Insurance by Province	60
6.12	Workers’ Compensation Coverage.....	60
6.13	Claims	60
6.14	Insurance Not to Prejudice.....	61
6.15	Restoration and Reinstatement of Damage or Destruction	61

SOUTH FRASER PERIMETER ROAD PROJECT

- iii -

6.16	Reinstatement Plan.....	61
6.17	Conduct of Reinstatement Work.....	62
6.18	Application of Proceeds of Insurance	63
6.19	Repayment of Insurance Proceeds	67
6.20	Uninsurability	67
6.21	Consequences of Risks Becoming Uninsurable.....	67
6.22	Third Party Liability Insurance as an Uninsurable Risk	69
6.23	Subrogation.....	69
6.24	Continuing Attempts to Insure Uninsurable Risks	69
6.25	Uninsurable Risks Becoming Insurable.....	70
6.26	Proceeds of Property Insurance if Agreement Terminated	70
6.27	Benchmarking of O&M Liability Insurance.....	70
6.28	Benchmarking of O&M Property Insurance.....	75
6.29	Rationalizing Insurance Adjustment Dates.....	81
6.30	Alternate Risk Financing Measures	81
PART 7 PROVINCE CHANGES AND CONCESSIONAIRE PROPOSALS		81
7.1	Province Changes	81
7.2	Concessionaire Proposals.....	81
7.3	Minor Works.....	82
7.4	Value Engineering Proposals.....	83
7.5	Responsibility for Province Changes and Concessionaire Proposals	83
7.6	Payments in Respect of Province Changes and Concessionaire Proposals	83
PART 8 SUPERVENING EVENTS.....		83
8.1	Supervening Events	83
8.2	Procedures Upon Occurrence of a Supervening Event.....	85
8.3	Concessionaire's Entitlements Upon Occurrence of a Compensation Event	87
8.4	Concessionaire's Entitlements Upon Occurrence of a Relief Event.....	88
8.5	Parties' Entitlements Upon Occurrence of a Force Majeure Event	93
8.6	Termination for Force Majeure Event	94
8.7	Termination for Damage or Destruction.....	95
8.8	Responsibility for Participants and Trespassers.....	97
8.9	Allocation of Risks of Participants and Trespassers.....	98
8.10	Sharing of Increased Capital Expenditures in Specified Circumstances	99
8.11	Effect of Insurance.....	101
8.12	Delay in Notification	102
PART 9 INDEMNITIES AND LIMITATIONS ON LIABILITY		103
9.1	Indemnification by Concessionaire.....	103
9.2	Exceptions to Indemnification by Concessionaire.....	104
9.3	Effect of Indemnities.....	105
9.4	Conduct of Claims Indemnified by Concessionaire	106
9.5	Indemnification by the Province.....	109
9.6	Limited Indemnity for Contamination	109
9.7	Exceptions to Indemnification by the Province	110
9.8	Limitation of Province Liability	110
9.9	Conduct of Claims Indemnified by the Province.....	111
9.10	Costs and Expenses.....	113

SOUTH FRASER PERIMETER ROAD PROJECT

- iv -

9.11	No Liability for Indirect Losses	113
9.12	No Double Compensation.....	113
9.13	No Compensation Where Insured	113
9.14	Acknowledgement Regarding Equivalent Project Relief	114
9.15	Survival.....	115
9.16	Federal Cost Contribution Agreement Indemnity.....	115
PART 10 PAYMENTS		115
10.1	Lump Sum Payment and Financing	115
10.2	Adjustment of Availability Payments	116
10.3	Province Rights to Audit.....	118
10.4	Province's Right of Set-Off	118
10.5	Payments in Canadian Dollars	118
10.6	Due Date for Payments	118
10.7	Taxes on Payments	119
10.8	Payment of Disputed Amounts	121
10.9	Inaccuracies in Payments	121
10.10	Interest on Overdue Amounts	122
10.11	Interest without Prejudice	122
10.12	Payment of Interest by Province	122
PART 11 PROVINCE'S ACCESS, MONITORING AND STEP-IN RIGHTS		122
11.1	Province Access	122
11.2	Uncovering of Work	123
11.3	Increased Monitoring	124
11.4	Province's Emergency Rights	124
11.5	Province's Other Step-In Rights	126
11.6	Availability of Certain Assets on Step-In	127
PART 12 CONCESSIONAIRE DEFAULT AND PROVINCE REMEDIES		128
12.1	Concessionaire Default	128
12.2	Notice of Default by Concessionaire	132
12.3	Remedies of the Province for Concessionaire Default	132
12.4	Termination for Failure to Remedy According to Program.....	135
12.5	Province Costs	135
12.6	Province Remedies Cumulative	135
12.7	Continued Effect	136
12.8	Compensation on Termination.....	136
PART 13 PROVINCE DEFAULT AND CONCESSIONAIRE REMEDIES		136
13.1	Province Default	136
13.2	Notice of Default by Province	137
13.3	Remedies of Concessionaire for Province Default	138
13.4	Concessionaire Costs	139
13.5	Concessionaire Remedies Cumulative.....	139
13.6	Continued Effect	139
13.7	Compensation on Termination.....	139
PART 14 TERMINATION		139
14.1	Termination for Failure to Obtain Lieutenant Governor in Council Approval.....	139

SOUTH FRASER PERIMETER ROAD PROJECT

- v -

14.2	Termination for Convenience	140
14.3	Province's Rights of Termination	140
14.4	Concessionaire's Rights of Termination	140
14.5	No Other Rights of Termination	140
14.6	Continued Performance	140
14.7	Notice of Intention to Terminate and Dispute	141
14.8	Changes after Notice of Termination	142
14.9	Effect of Termination Generally	143
14.10	Province Discretion to Complete	144
14.11	Transfer of Assets	144
14.12	Handover	146
14.13	Concessionaire Involvement in Competition Process	148
PART 15 CONFIDENTIALITY AND INTELLECTUAL PROPERTY		148
15.1	Confidentiality	148
15.2	Freedom of Information and Privacy Protection	150
15.3	Project Intellectual Property	151
15.4	Licenses to Intellectual Property	151
15.5	Traffic Data	153
15.6	Employee Information	153
15.7	Survival	155
PART 16 ASSIGNMENT, CHANGE IN CONTROL AND SUBCONTRACTING		155
16.1	Province Consent Required to Assignment by Concessionaire	155
16.2	Where Province Consent to Assignment Not Required	155
16.3	Other Requirements for Assignment by Concessionaire	156
16.4	Assignment by the Province	157
16.5	Release of the Province on Assignment	158
16.6	Change in Control of Concessionaire Before One Year After Substantial Completion	158
16.7	Change In Control of Concessionaire After One Year After Substantial Completion	159
16.8	Consent to Change in Control Not Required in Certain Cases	159
16.9	Use of Contractors by Concessionaire	160
16.10	Restrictions on Changes to Principal Contracts	160
16.11	Non-Arm's Length Contracts	161
16.12	Restricted Persons Prohibited	161
16.13	Replacement Principal Contracts	161
16.14	New Principal Contracts	162
16.15	Copies of Documents	162
16.16	Payment of Province's Costs	162
16.17	Exempt Principal Contractor Matter	163
16.18	Principal Contract Changes Not to Increase Province's Liability	163
PART 17 DEFECTS		164
17.1	Reporting of Latent Defects	164
17.2	Joint Inspection of Third Party Segments	164
17.3	Rectification of Latent Defects and Third Party Segment Defects	164
17.4	Risks of Defects	165
17.5	Traffic Management and Public Safety with Defects	166

SOUTH FRASER PERIMETER ROAD PROJECT

PART 18 GENERAL	166
18.1 Disputes	166
18.2 Public Communications	167
18.3 Entire Agreement	167
18.4 Amendment.....	167
18.5 Notices	167
18.6 Waiver.....	169
18.7 Further Assurances.....	169
18.8 Relationship of the Parties	169
18.9 Binding Effect.....	169
18.10 Counterparts.....	169

SCHEDULES

Schedule 1	Definitions and Interpretation
Schedule 2	Representatives, Review Procedure and Consent Procedure
Schedule 3	Project Schedule
Schedule 4	Design and Construction
Schedule 5	OMR and End of Term
Schedule 6	Environmental Obligations
Schedule 7	Quality Management
Schedule 8	Lands
Schedule 9	Communication and Consultation
Schedule 10	Performance Mechanism
Schedule 11	Changes
Schedule 12	Financial Model
Schedule 13	Compensation on Termination
Schedule 14	Lenders' Remedies Agreement
Schedule 15	Insurance Requirements
Schedule 16	Dispute Resolution Procedure
Schedule 17	Records and Reports
Schedule 18	Insurance Trust Agreement
Schedule 19	Collateral Agreements
Schedule 20	[Intentionally Deleted]
Schedule 21	Delegated Obligations, Rights, Powers and Functions
Schedule 22	First Nations
Schedule 23	Privacy Protection
Schedule 24	Closing Deliveries
Schedule 25	Financing and Partnership Agreements
Schedule 26	Qualified Refinancing Change in Committed Funding Limit

SOUTH FRASER PERIMETER ROAD PROJECT

CONCESSION AGREEMENT

THIS CONCESSION AGREEMENT dated as of July ____, 2010 is entered into:

AMONG:

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA, as represented by the **MINISTER OF TRANSPORTATION AND INFRASTRUCTURE**

(the “**Province**”)

AND:

BC TRANSPORTATION FINANCING AUTHORITY

(“**BCTFA**”)

AND:

FTG FRASER TRANSPORTATION GROUP PARTNERSHIP, a general partnership established under the laws of the Province of British Columbia, comprised of **FTG HOLDINGS LIMITED PARTNERSHIP**, a limited partnership formed under the laws of the Province of British Columbia and **SOUTH FRASER CONSTRUCTION LIMITED PARTNERSHIP**, a limited partnership formed under the laws of the Province of British Columbia

(the “**Concessionaire**”)

WHEREAS:

- A. The Concessionaire has been retained by the Province to carry out the Project and the Project Work;
- B. The rights and obligations among the parties with respect to the Project shall be governed by the terms and conditions set forth in this Agreement; and
- C. This Agreement, the Lenders’ Remedies Agreement and the Collateral Agreements are entered into as, and constitute as at the Effective Date, a concession agreement pursuant to the TIA.

NOW THEREFORE in consideration of the covenants and agreements of the parties contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby expressly acknowledged by each of the parties hereto, the parties hereto covenant and agree as follows:

SOUTH FRASER PERIMETER ROAD PROJECT

- 2 -

**PART 1
INTERPRETATION**

1.1 Definitions and Interpretation

This Agreement shall be interpreted and construed in accordance with the provisions set out in Schedule 1 [Definitions and Interpretation].

1.2 Governing Law

This Agreement is governed exclusively by, and is to be enforced, construed and interpreted exclusively in accordance with, the laws of British Columbia and the laws of Canada applicable in British Columbia, and the laws of British Columbia and the laws of Canada applicable in British Columbia are the proper law of this Agreement.

1.3 Submission to Jurisdiction

Where in accordance with this Agreement, including pursuant to the Dispute Resolution Procedure, a particular matter is referred to Court, or a party may initiate a proceeding in Court, the Court has exclusive jurisdiction to entertain and determine such matter or proceeding, and each of the parties irrevocably submits to the exclusive jurisdiction of the Court.

1.4 No Fettering of Province's Rights and Authority

- (a) Nothing in this Agreement or the other Province Project Documents fetters or otherwise interferes with or limits, or shall be construed to fetter or otherwise interfere with or limit, the rights, powers and authority of the Province or BCTFA or any minister (including the Minister), ministry (including the Ministry), agency, board, commission, corporation or other entity of the Province:
 - (i) to enact, amend, repeal or replace any enactment or regulation made under any enactment;
 - (ii) to exercise or refrain from exercising any discretion conferred under Laws; or
 - (iii) to administer, apply and enforce Laws.
- (b) Except as expressly provided for in this Agreement, the Concessionaire is not entitled to claim or receive any compensation or other relief whatsoever as a result of anything described in any of Sections 1.4(a)(i) to (iii) inclusive.

1.5 Schedules

The Schedules to this Agreement are incorporated into and form part of this Agreement. Obligations of the parties set out in the Schedules are included in the obligations of the parties under this Agreement.

SOUTH FRASER PERIMETER ROAD PROJECT

- 3 -

1.6 Language

The language of this Agreement is English. All communications, documents and information provided pursuant to or in connection with this Agreement must be entirely in English.

**PART 2
GENERAL PROJECT TERMS**

2.1 The Project

Subject to and in accordance with the provisions of this Agreement, the Concessionaire shall:

- (a) carry out all Project Work during the Term;
- (b) perform and observe all of its other obligations under this Agreement; and
- (c) obtain sufficient financing to enable the Concessionaire to perform and observe its obligations under this Agreement;

(collectively, the “**Project**”) at its own cost and risk and without recourse to the Province, BCTFA, public funds, or guarantees by the Province or any other Governmental Authority, except as expressly provided otherwise in this Agreement or in any of the other Province Project Documents or to the extent that the Concessionaire otherwise has rights arising out of or in respect of this Agreement or any of the other Province Project Documents.

2.2 Term

This Agreement shall take effect on the Effective Date and, except as expressly provided otherwise in this Agreement, shall expire and terminate at the end of the Term.

2.3 Assumption of Risk and Responsibility

Except to the extent that the Province or BCTFA is responsible therefor pursuant to the express provisions of this Agreement or any other Province Project Document, all risks, costs and expenses in relation to the performance by the Concessionaire of its obligations under this Agreement and the other Province Project Documents are allocated to, and accepted by, the Concessionaire as its entire and exclusive responsibility. As among the parties, the Concessionaire shall be solely responsible for the selection, pricing and performance of all Principal Contractors, Subcontractors and other persons for whom the Concessionaire is in law responsible, and for the acts, defaults, omissions, breaches and negligence of all Principal Contractors, Subcontractors and other persons for whom the Concessionaire is in law responsible, as fully as if such acts, defaults, omissions, breaches and negligence were those of the Concessionaire.

2.4 Financial Administration Act

The Concessionaire acknowledges that it is aware of the provisions of the *Financial Administration Act* (British Columbia).

SOUTH FRASER PERIMETER ROAD PROJECT

- 4 -

2.5 Grant of Land License

In consideration of the sum of \$1.00 now paid by the Concessionaire to the Province and BCTFA (the receipt of which is hereby acknowledged by the Province and BCTFA), and in order to enable the Concessionaire to perform its obligations under this Agreement, the Province and BCTFA hereby grant to the Concessionaire, and the Concessionaire hereby accepts from the Province and BCTFA, a non-exclusive license in common with others authorized by the Province and BCTFA, and the general public, commencing and ending with respect to any particular lands as provided in Section 1.3 [Commencement of Land License] and Section 1.4 [Termination of Land License] of Schedule 8, for the Concessionaire, the Principal Contractors, the Subcontractors, and any other person engaged or involved in the performance of the Project Work, and their respective representatives, agents, employees and contractors, to enter upon and use so much of the Licensed Lands and the Infrastructure located on the Licensed Lands as may be reasonably required from time to time to permit the Concessionaire to carry out the Project Work, all subject to and in accordance with the terms and conditions of this Agreement including the provisions of Schedule 8 [Lands].

2.6 Non-Province Controlled Lands

In the event that the Concessionaire is delayed or prevented from carrying out any Non-Province Controlled Lands Work by reason of any one or more Non-Province Controlled Lands Delay Events, then and during any such period when such delay or prevention is occurring:

- (a) in the case of any Non-Province Controlled Lands Delay Event, the Concessionaire shall notify the Province of the situation as soon as the Concessionaire becomes aware of it and will provide all such information to the Province as will enable the Province to understand the circumstances that have given rise to the situation and such other information relating thereto as the Province may reasonably require;
- (b) in the case of a Non-Province Controlled Lands Access Delay Event, the Concessionaire, provided it has made and so long as it continues to make all reasonable efforts to obtain and to satisfy any conditions or requirements for obtaining access to the Non-Province Controlled Lands so as to permit the carrying out of the Non-Province Controlled Lands Work on the Non-Province Controlled Lands affected by the Non-Province Controlled Lands Access Delay Event:
 - (i) shall not be required to carry out such Non-Province Controlled Lands Work on such Non-Province Controlled Lands; and
 - (ii) may by notice to the Province's Representative request the assistance of the Province (at the expense of the Concessionaire) in obtaining access to such Non-Province Controlled Lands, in which event the Province, to the extent it has the legal ability to do so under existing Laws, shall use all reasonable efforts to provide such assistance;

and the Province shall not be required or obligated to make available to the Concessionaire access to such Non-Province Controlled Lands, the Province's obligation with respect thereto being limited to its obligation, if any, under Section 2.6(b)(ii);

- (c) in the case of any Non-Province Controlled Lands Contamination Delay Event, the Concessionaire, provided it continues to discuss with the municipality, highway

SOUTH FRASER PERIMETER ROAD PROJECT

- 5 -

authority, Federal Government or Port Authority under the *Canada Marine Act* having ownership or control of the relevant Non-Province Controlled Lands the means of resolving the Contamination issue (which for clarity shall not require the Concessionaire to incur the cost of further investigating or remediating any Contamination on the Non-Province Controlled Lands that is not caused by the Concessionaire or any person for whom the Concessionaire is in law responsible) so as to permit the carrying out of the Non-Province Controlled Lands Work on the Non-Province Controlled Lands affected by the Non-Province Controlled Lands Contamination Delay Event, shall not be required to carry out such Non-Province Controlled Lands Work on such Non-Province Controlled Lands, and the Province shall have no obligations to the Concessionaire with respect to such Contamination or the investigation or remediation thereof;

- (d) in the case of any Non-Province Controlled Lands Delay Event, subject to Section 2.6(e), the Concessionaire shall carry out and complete the Non-Province Controlled Lands Work on the Non-Province Controlled Lands affected by the Non-Province Controlled Lands Delay Event at the earliest opportunity after the Non-Province Controlled Lands Delay Event has ceased to delay or prevent such work, notwithstanding that any other Project Work has been Substantially Completed or Totally Completed; and
- (e) notwithstanding Sections 2.6(b) and 2.6(c) (as applicable), provided the Concessionaire has with respect to a Non-Province Controlled Lands Delay Event that is delaying or preventing any Non-Province Controlled Lands Work on any Non-Province Controlled Lands complied with the proviso in Section 2.6(b) or Section 2.6(c), as applicable, if the Non-Province Controlled Lands Delay Event is not resolved sufficiently to permit the carrying out of the Non-Province Controlled Lands Work on such Non-Province Controlled Lands prior to the Western Segment Substantial Completion Date, the Concessionaire's obligation to carry out such Non-Province Controlled Lands Work on such Non-Province Controlled Lands shall cease, and the Concessionaire shall no longer be obligated to comply with the proviso in Section 2.6(b) or Section 2.6(c), as applicable, with respect to such Non-Province Controlled Lands Delay Event, but if prior to the Western Segment Substantial Completion Date such Non-Province Controlled Lands Delay Event is resolved sufficiently to permit the carrying out of the Non-Province Controlled Lands Work on such Non-Province Controlled Lands, the Concessionaire shall be required to carry out and complete such Non-Province Controlled Lands Work on such Non-Province Controlled Lands at the earliest opportunity after such resolution has occurred, notwithstanding that the Western Segment Substantial Completion Date or the Total Completion Date may have occurred.

2.7 Limited Use

- (a) During the Term, the Concessionaire shall not make any use of, or allow or authorize the Principal Contractors, the Subcontractors, or any other person engaged or involved in the performance of the Project Work, or their respective representatives, agents, employees or contractors, to make any use of, the Project Site or the Project Infrastructure or any part thereof, except for the purposes of carrying out the Project Work in accordance with this Agreement and the other Project Documents.
- (b) In addition to the restrictions in Section 2.7(a), the Concessionaire shall make only such use of, and shall cause the Principal Contractors, the Subcontractors and all other persons engaged or involved in the performance of the Project Work, and their respective

SOUTH FRASER PERIMETER ROAD PROJECT

- 6 -

representatives, agents, employees and contractors to make only such use of, the Other Highway Facilities, the Port Facilities and the Municipal Facilities as may be necessary for the purposes of carrying out the Project Work that specifically relates thereto, and no other Project Work, and in so doing the Concessionaire shall make all reasonable efforts, and shall cause the Principal Contractors, the Subcontractors and all other persons engaged or involved in the performance of the Project Work, and their respective agents, employees and contractors to make all reasonable efforts, to avoid or, if unavoidable, to minimize, disruption to the operations and use of, and physical damage to, the Other Highway Facilities, the Port Facilities and the Municipal Facilities.

- (c) Without limiting the generality of the foregoing, except as permitted by or pursuant to Section 2.8 [Business Opportunities], the Concessionaire shall not use or occupy or allow or authorize any person to use or occupy, for any commercial purpose, all or any part of the Project Site or the Project Infrastructure.

2.8 Business Opportunities

Except as otherwise agreed by the Province in its discretion, the Province reserves the right to all commercial and other opportunities for, or related to, the Concession Highway (in this Section, “**Business Opportunities**”) except for the commercial opportunity for the Concessionaire as represented by this Agreement. To encourage the development of Business Opportunities, the Concessionaire may from time to time propose Business Opportunities for the Province’s consideration as a Value Engineering Proposal under Section 7.4 [Value Engineering Proposals]. All such proposals shall describe the Business Opportunity in full with the expected financial and other advantages to the Province, to BCTFA and to the Concessionaire, respectively. Acceptance of any such proposal shall be subject to such terms and conditions as the Province may require, and the Province shall not under any circumstances be required to accept any such proposals. If the Province accepts any such proposal, the carrying out of the Business Opportunities and other subject matters thereof shall become part of the Project Work for the purposes of this Agreement.

2.9 Location of Infrastructure

The Concessionaire covenants and agrees that:

- (a) no part of those Primary Infrastructure Components in respect of which the Concessionaire is required by Schedule 5 [OMR and End of Term] to carry out the Operation, the Maintenance and the Rehabilitation shall be constructed or located on any lands that are not Concession Lands or on any Concession Lands that constitute, or are held by the Province or BCTFA by means only of, Temporary Land Rights; and
- (b) except for those parts or components of the Primary Infrastructure Components that, according to Schedule 4 [Design and Construction], are required to be constructed on any Non-Province Controlled Lands (which parts or components shall only be constructed on such Non-Province Controlled Lands in accordance with Schedule 4 [Design and Construction]), no part of the Primary Infrastructure Components not described in Section 2.9(a) shall be constructed or located on any lands that are not Other Highway Lands or on any Other Highway Lands that constitute, or are held by the Province or BCTFA by means only of, Temporary Land Rights.

SOUTH FRASER PERIMETER ROAD PROJECT

- 7 -

2.10 Title to Improvements

Except to the extent that title to any Plant has not passed to the Province in accordance with Section 2.12(a)[Transfer of Title to Tangible Personal Property], and except for Project Intellectual Property that is licensed to the Province in accordance with Section 15.4 [Licenses to Intellectual Property]:

- (a) the Concessionaire shall not acquire or have any property interest in or title to any Project Infrastructure, or any other improvements on or to the Project Site from time to time;
- (b) subject to Sections 2.10(c) and (d), title to and ownership of the Project Infrastructure and all other improvements on or to the Project Site from time to time, other than Utilities of Utility Suppliers, Infrastructure and other property of Railways, and Third Party Facilities, shall vest in the Province or BCTFA, as applicable;
- (c) title to and ownership of Municipal Infrastructure shall vest in the applicable municipality or highway authority other than the Province; and
- (d) title to and ownership of Port Infrastructure shall vest in the authority owning the Port Lands on which it is located.

2.11 No Registration

The Concessionaire shall not register or attempt to register in any land title office this Agreement or the Land License or any other rights under this Agreement or any instrument, claim or notice in respect thereof.

2.12 Transfer of Title to Tangible Personal Property

- (a) Title to all Plant shall pass to and vest absolutely in the Province or BCTFA, as applicable, at the earlier of:
 - (i) title to the Plant being acquired by the Concessionaire; and
 - (ii) the Plant being affixed to or incorporated into the Concession Lands, the Concession Infrastructure, the Other Highway Lands or the Other Highway Infrastructure.

The Concessionaire covenants that the Principal Contracts shall contain a provision that title to all Plant shall pass to the Concessionaire (and to the Province or BCTFA, as applicable, under this Section 2.12(a)) at the earliest of title to the Plant being acquired by the Principal Contractor and the Plant being affixed to or incorporated into the Concession Lands, the Concession Infrastructure, the Other Highway Lands or the Other Highway Infrastructure.

- (b) Title to any property (whether real or personal) not referred to in Section 2.12(a) that is transferred to or acquired by the Province or BCTFA from the Concessionaire pursuant to the terms of this Agreement shall pass to the Province or BCTFA, as applicable, at the time of the transfer or acquisition as contemplated by this Agreement.

SOUTH FRASER PERIMETER ROAD PROJECT

- 8 -

- (c) Without limiting the provisions of Section 18.7 [Further Assurances], the Concessionaire shall, at the written request of the Province's Representative from time to time, execute and deliver to the Province and BCTFA, and cause the Principal Contractors and Subcontractors with which the Concessionaire has contracted directly to execute and deliver to the Province and BCTFA, all such bills of sale and other documents as the Province's Representative shall reasonably request for transferring rights in or title to property (whether real or personal) or confirming the transfer of rights in or title to any such property, as contemplated by this Section 2.12 [Transfer of Title to Tangible Personal Property].
- (d) The Concessionaire covenants that the Principal Contracts and all Subcontracts to which the Concessionaire is a party shall contain a provision imposing on the Principal Contractor or the Subcontractor with which the Concessionaire has contracted directly, as the case may be, the same obligation to execute and deliver bills of sale and other documents as is imposed on the Concessionaire under Section 2.12(c).
- (e) Notwithstanding the passage to the Province or BCTFA of rights in or title to Plant as provided above in this Section 2.12 [Transfer of Title to Tangible Personal Property], the Concessionaire, the Principal Contractors and the Subcontractors shall be entitled to make use of such Plant for the purposes of carrying out the Project Work subject to and in accordance with this Agreement.

2.13 Review, Approval, Inspection and Audit by the Province

- (a) If any review, approval, inspection, examination, audit, testing, determination, acceptance, certificate, certification, permission, consent, comment or objection is provided, performed or made by or on behalf of the Province or BCTFA or the Province's Representative under, pursuant to, or in respect of, this Agreement or any of the other Project Documents, whether pursuant to the Review Procedure or the Consent Procedure or otherwise, or if no comment or objection is made by the Province, BCTFA or the Province's Representative pursuant to the Review Procedure or the Consent Procedure or otherwise:
 - (i) such review, approval, inspection, examination, audit, testing, determination, acceptance, certificate, certification, permission, consent, comment or objection, or lack of comment or objection, shall be for assessment by the Province or BCTFA or the Province's Representative of general compliance by the Concessionaire with its obligations under this Agreement or the other Project Documents only;
 - (ii) notwithstanding any other provisions of this Agreement or any of the other Project Documents, no such review, approval, inspection, examination, audit, testing, determination, acceptance, certificate, certification, permission, consent, comment or objection, or lack of comment or objection, now or in the future, and whether or not involving any negligent act or negligent omission or error on the part of the Province or BCTFA or the Province's Representative or any person for whom the Province is in law responsible:

SOUTH FRASER PERIMETER ROAD PROJECT

- 9 -

- (A) shall relieve or exempt or be deemed to relieve or exempt the Concessionaire or any other person for whom the Concessionaire is in law responsible from any of its obligations and liabilities under this Agreement or any other Province Project Document or at law or in equity, except in the circumstances and to the extent expressly provided in Section 2.13(b);
 - (B) shall constitute a waiver or release or be deemed to be a waiver or release by the Province or BCTFA of any duty or liability owed by the Concessionaire or any other person to the Province or BCTFA, or of any indemnity given by the Concessionaire to the Province under this Agreement or any other Province Project Document, except in the circumstances and to the extent expressly provided in Section 2.13(b);
 - (C) shall create or impose or be deemed to create or impose any requirement, liability, covenant, agreement or obligation on the Province or BCTFA, except to the extent expressly set out in this Agreement as a consequence of the review, approval, inspection, examination, audit, testing, determination, acceptance, certificate, certification, permission, consent, comment or objection, or lack of comment or objection; or
 - (D) shall entitle or be deemed to entitle the Concessionaire to make any Claim against the Province or BCTFA for, or to recover from the Province or BCTFA, any Losses, except to the extent the Concessionaire is entitled to recover Direct Losses as a result of the occurrence of a Compensation Event; and
- (iii) any decision so made by the Province's Representative under the Review Procedure or the Consent Procedure shall, once all applicable disputes arising in respect thereof have been resolved in accordance with Schedule 2 [Representatives, Review Procedure and Consent Procedure], be final, subject only to being opened up, reviewed or revised by the Province in its discretion if errors or further relevant facts are revealed after the decision has been made.

At the request of the Province's Representative from time to time, the Concessionaire shall obtain from the Key Individuals and any other person identified by the Province, acting reasonably, prior to any such party carrying out any part of the Project Work, waivers of liability substantially on the terms of this Section 2.13(a) in favour of the Province, BCTFA and the Province's Representative and in form and substance satisfactory to the Province.

- (b) If any consent, approval, acceptance, certification or other permission of, or review, inspection, examination, audit or testing by, the Province or BCTFA or the Province's Representative is expressly required from the Province or BCTFA or the Province's Representative under this Agreement or any of the other Province Project Documents in order for any specific act or conduct of the Concessionaire to be in compliance with (or not in breach of) any provision of this Agreement or any of the other Province Project Documents, and if such consent, approval, acceptance, certification or other permission is given by, or review, inspection, examination, audit or testing is carried out by, the

SOUTH FRASER PERIMETER ROAD PROJECT

- 10 -

Province or BCTFA or the Province's Representative (as the case may be) in any particular circumstance, the Concessionaire shall be relieved of the obligation under this Agreement or the other Province Project Documents to obtain the specific consent, approval, acceptance, certification or other permission given, or to have the review, inspection, examination, audit or testing carried out, but only for the purposes and in the particular circumstances in which it was given or carried out and to which it applied.

2.14 Site Inspection and Investigations

The Concessionaire represents and warrants to the Province and BCTFA and agrees with the Province and BCTFA as follows:

- (a) that the Concessionaire shall be deemed to have been afforded the opportunity prior to executing this Agreement to inspect and examine the Specified Concession Lands, the Specified Other Highway Lands, and any Non-Province Controlled Lands that may become Port Lands or Municipal Lands, and their surroundings, and all existing structures, improvements and works in, on, over or under the Specified Concession Lands, the Specified Other Highway Lands, and any Non-Province Controlled Lands that may become Port Lands or Municipal Lands, including the Original Concession Infrastructure, the Original Other Highway Infrastructure, the Original Port Infrastructure and the Original Municipal Infrastructure, and that the Concessionaire shall be deemed to have inspected and examined the same and to have satisfied itself with respect thereto;
- (b) that the Concessionaire shall be deemed to have satisfied itself prior to executing this Agreement as to the structural, geotechnical, climatic, hydrological, ecological, environmental and general condition of the Specified Concession Lands, the Specified Other Highway Lands, and any Non-Province Controlled Lands that may become Port Lands or Municipal Lands, and the Infrastructure and other improvements thereon including the Original Concession Infrastructure, the Original Other Highway Infrastructure, the Original Port Infrastructure and the Original Municipal Infrastructure, the form and nature thereof, and the nature of the ground and subsoil thereof, the risk of injury or damage to property adjacent to or in the vicinity of the Specified Concession Lands, the Specified Other Highway Lands, and any Non-Province Controlled Lands that may become Port Lands or Municipal Lands, and to occupiers of such property, the nature of the materials (whether natural or otherwise) to be excavated, and the nature of the design, work, plant and materials necessary for the execution of the Project Work;
- (c) that the Concessionaire shall be deemed to have satisfied itself prior to executing this Agreement as to:
 - (i) the means of communication with the various parts of, and access to and through, the Specified Concession Lands, the Specified Other Highway Lands, and any Non-Province Controlled Lands that may become Port Lands or Municipal Lands, the accommodation it may require and the adequacy and sufficiency of the rights of access provided by the Land License, Section 2.6 [Non-Province Controlled Lands], Section 3.1 [Provision of Project Site] and Schedule 8 [Lands] for the purposes of performing the Project Work;
 - (ii) the possibility of interference by third parties with access to or use of the Specified Concession Lands, the Specified Other Highway Lands, and any Non-

SOUTH FRASER PERIMETER ROAD PROJECT

- 11 -

Province Controlled Lands that may become Port Lands or Municipal Lands, and the Infrastructure and improvements thereon including the Original Concession Infrastructure, the Original Other Highway Infrastructure, the Original Port Infrastructure and the Original Municipal Infrastructure, with particular regard to the Requirements of Interested Parties;

- (iii) the precautions and times and methods of working necessary to reasonably minimize any nuisance or interference, whether public or private, being caused to any third parties in the performance of the Project Work; and
 - (iv) any other contingencies, restrictions, conditions or constraints which would or might interfere with, limit or affect the ability of the Concessionaire to carry out the Project Work which could be ascertained through the exercise of reasonable due diligence;
- (d) that the Concessionaire shall be deemed to have reviewed and satisfied itself, prior to executing this Agreement, with respect to:
- (i) the terms of the Environmental Assessment Certificate and the Concessionaire's Environmental Obligations;
 - (ii) the First Nations Requirements;
 - (iii) the Project Requirements; and
 - (iv) the nature and extent of the Third Party Segment Work and all other work carried out by other contractors on behalf of the Province or BCTFA in connection with the Project or the Project Infrastructure or otherwise on or in the vicinity of the Project Site, and the impact of the conduct of such Third Party Segment Work and other work on the carrying out of the Project Work;
- (e) that the Concessionaire shall be deemed to have examined, checked and satisfied itself, prior to executing this Agreement, as to, the adequacy, correctness and suitability of all Design Data made available to the Concessionaire by or on behalf of the Province or BCTFA prior to the date of execution of this Agreement, including all Design Data which the Concessionaire has relied upon, adopted or made use of or intends to rely upon, adopt or make use of in carrying out the Project Work;
- (f) that the Concessionaire shall be deemed to have obtained for itself prior to executing this Agreement all necessary information as to:
- (i) the risks, contingencies and all other circumstances which may influence or affect the Project Requirements or the First Nations Requirements or its obligation to carry out the Project Work in accordance with the provisions of this Agreement; and
 - (ii) all other factors which would affect its decision to enter into this Agreement or the terms on which it would do so;

SOUTH FRASER PERIMETER ROAD PROJECT

- 12 -

- (g) that the Concessionaire shall be deemed to have conducted prior to executing this Agreement its own analysis and review of all materials, documents and data referred to in Section 2.15 [Disclosed Data] that bear on any of the matters referred to in Sections 2.14(a) through (f) inclusive; and
- (h) that the Concessionaire shall be deemed to have reviewed and satisfied itself prior to executing this Agreement that the Project Requirements are in compliance with the requirements of Sections 4.1(a), (b), (c), (e) and (f); and
- (i) that:
 - (i) the Concessionaire accepts and will accept the Specified Concession Lands, the Specified Other Highway Lands, the Non-Province Controlled Lands, the Port Lands, the Municipal Lands, the Original Concession Infrastructure, the Original Other Highway Infrastructure, the Original Port Infrastructure and the Original Municipal Infrastructure, on an “as is, where is” basis;
 - (ii) neither the Province nor BCTFA has made or hereby makes any representation or warranty with respect thereto; and
 - (iii) the Province and BCTFA shall have no responsibility or liability for the structural, geotechnical, climatic, hydrological, ecological, environmental and general condition of the Specified Concession Lands, the Specified Other Highway Lands, the Non-Province Controlled Lands, the Port Lands, the Municipal Lands, the Original Concession Infrastructure, the Original Other Highway Infrastructure, the Original Port Infrastructure and the Original Municipal Infrastructure, and the Concessionaire assumes and will assume any and all risk with respect to the structural, geotechnical, climatic, hydrological, ecological, environmental and general condition thereof and any and all risk that all or any part or parts thereof may not be suitable for any Infrastructure, Relevant Component or Project Work.

The representations, warranties and agreements of the Concessionaire in this Section shall not constitute an actionable representation, warranty or agreement by the Concessionaire in favour of the Province or BCTFA or give rise to a right of termination on the part of the Province or BCTFA, but the Province and BCTFA may rely on such representation, warranty, and agreement for the purpose of defending any action brought against the Province and BCTFA, or either of them, or any Claim by the Concessionaire for damages, Losses, extensions of time, additional compensation or any other relief, provided that no such representation, warranty or agreement shall prejudice an otherwise valid Claim by the Concessionaire:

- (j) pursuant to any other express provision of this Agreement or of any other Province Project Document; or
- (k) in respect of any breach of any express obligation of the Province or BCTFA under this Agreement or under any other Province Project Document.

The provisions of any of subsections (a) to (i) inclusive of this Section 2.14 [Site Inspection and Investigations] do not limit the provisions of any other subsection of this Section.

SOUTH FRASER PERIMETER ROAD PROJECT

- 13 -

2.15 Disclosed Data

- (a) Except as otherwise expressly provided in Section 2.15(e), and except in the case of Compensation Events described in subsections (f), (p) and (q) of the definition of Compensation Event in Section 1.1 [Definitions] of Schedule 1 (subject to the provisions of Part 8 [Supervening Events]), neither the Province nor BCTFA shall have any liability to the Concessionaire (whether in contract, tort, by statute or otherwise howsoever and whether or not arising out of any negligent act or negligent omission on the part of the Province or BCTFA or any person for whom the Province is in law responsible) in respect of any inaccuracy, error, omission, unfitness for purpose, defect or inadequacy of any kind whatsoever in the Disclosed Data.
- (b) Neither the Province nor BCTFA gives, has given or shall be deemed to have given, any representation, warranty or undertaking that the Disclosed Data represents or includes all of the information in its possession or control (either during the procurement process for the Project or at or after the date of execution of this Agreement) relevant or material to the Project, the Project Infrastructure, the Project Site or the obligations undertaken by the Concessionaire under this Agreement. Without limiting the generality of the foregoing, neither the Province nor BCTFA shall have any liability to the Concessionaire (whether in contract, tort, by statute or otherwise howsoever and whether or not arising out of any negligent act or negligent omission on the part of the Province or BCTFA or any person for whom the Province is in law responsible) in respect of any failure to disclose or make available (whether before or after the execution of this Agreement) to the Concessionaire any information, documents or data, any failure to keep the Disclosed Data up to date, or any failure to inform the Concessionaire (whether before or after execution of this Agreement) of any inaccuracy, error, omission, unfitness for purpose, defect or inadequacy of any kind whatsoever in the Disclosed Data.
- (c) The Concessionaire acknowledges, represents, warrants and confirms that, without prejudice to its rights under Section 2.15(e) and its rights under this Agreement with respect to Compensation Events described in subsections (f), (p) and (q) of the definition of Compensation Event in Section 1.1 [Definitions] of Schedule 1:
 - (i) the Concessionaire shall be deemed to have conducted prior to executing this Agreement its own analysis and review of the Disclosed Data and to have satisfied itself as to the accuracy, completeness and fitness for purpose of all such Disclosed Data upon which it places reliance; and
 - (ii) the Concessionaire shall not be entitled to make, and shall not make, any Claim against the Province or BCTFA, whether in damages or for Losses or extensions of time or additional payments or other relief, and whether under this Agreement or otherwise, and shall not be released from any risks or obligations imposed on or undertaken by it under this Agreement or any other Province Project Document, on any grounds relating to the Disclosed Data, including:
 - (A) on the grounds of any misunderstanding or misapprehension in respect of the Disclosed Data or any of the matters referred to in Section 2.14 [Site Inspection and Investigations] or Section 2.15(c)(i); or

SOUTH FRASER PERIMETER ROAD PROJECT

- 14 -

- (B) on the grounds that incorrect or insufficient information relating to the Disclosed Data or to the Specified Concession Lands, the Specified Other Highway Lands, any Non-Province Controlled Lands that may or do become Port Lands or Municipal Lands, the Original Concession Infrastructure, the Original Other Highway Infrastructure, the Original Port Infrastructure or the Original Municipal Infrastructure was given to it by any person, whether or not in the employ of the Province or BCTFA, except for an otherwise valid Claim by the Concessionaire:
 - (1) pursuant to any other express provision of this Agreement or of any other Province Project Document; or
 - (2) in respect of any breach of any express obligation of the Province or BCTFA under this Agreement or under any other Province Project Document.

- (d) The provisions of any subsection of Section 2.15(c) do not limit the provisions of any other subsection of Section 2.15(c).

- (e) Notwithstanding the foregoing provisions of this Section 2.15 [Disclosed Data] or any other provision of this Agreement, if a delay is caused to the progress of the Construction Activities prior to the Total Completion Date or any additional costs are incurred by the Concessionaire in performing the Construction Activities prior to the Total Completion Date that in either case would not otherwise have been experienced or incurred by the Concessionaire in performing its obligations under this Agreement, and such delay and/or costs are a direct result of:
 - (i) a factual error (as at the currency date of the relevant bore hole or test pit log or survey data) in any of the Geotechnical and Survey Data upon which the Concessionaire has reasonably and in accordance with Good Industry Practice relied in the design and construction of the Primary Infrastructure Components, then such factual error in the Geotechnical and Survey Data shall constitute a Compensation Event and the provisions of Part 8 [Supervening Events] shall apply. For greater certainty, the Concessionaire shall not be entitled to relief under this Section if and to the extent that it was not, in all the relevant circumstances and having regard to any other information known to the Concessionaire at the relevant time, reasonable in accordance with Good Industry Practice for the Concessionaire to rely on the Geotechnical and Survey Data containing the factual error or to rely on such Geotechnical and Survey Data without further investigation or site examination; or
 - (ii) a discrepancy between the boundaries of any parcel of Specified Concession Lands or Specified Other Highway Lands (in each case excluding any Future Railway Lands) as shown on the Land Identification AutoCAD Drawings, and the boundaries of the parcel of Specified Concession Lands or Specified Other Highway Lands (in each case excluding any Future Railway Lands) as made available to the Concessionaire pursuant to Section 3.1 [Provision of Project Site], then such discrepancy shall constitute a Compensation Event pursuant to subsection (b) of the definition of “Compensation Event” in Section 1.1

SOUTH FRASER PERIMETER ROAD PROJECT

- 15 -

[Definitions] of Schedule 1. It is understood and agreed that the final boundaries of the Future Railway Lands are to be defined in the Railway Crossing Agreements or Railway Orders in respect of the Future Railway Lands to be obtained pursuant to Part 6 [Railway Agreements] of Schedule 8, and that any discrepancy between the boundaries of any Future Railway Lands as shown on the Land Identification AutoCAD Drawings and the boundaries of such Future Railway Lands as made available to the Concessionaire pursuant to this Agreement shall not constitute a Compensation Event pursuant to subsection (b) of the definition of "Compensation Event" in Section 1.1 [Definitions] of Schedule 1.

2.16 Naming of the Project

- (a) There is hereby reserved exclusively to the Province all rights to:
 - (i) name and rename from time to time the Project, the Concession Highway and the Other Highway Facilities, and parts thereof; and
 - (ii) determine the domain name or names to be used for the Website.
- (b) The Concessionaire shall comply with the names as designated by the Province from time to time in accordance with Section 2.16(a) by notice to the Concessionaire and shall not use any other names for the Project, the Concession Highway or the Other Highway Facilities, or parts thereof.
- (c) The Concessionaire shall establish the Website under the domain name or names authorized by the Province pursuant to this Section, which Website shall be accessible to the public without charge and shall comply with all applicable requirements set out in this Agreement, including all requirements set out in Schedule 9 [Communication and Consultation].
- (d) The Province shall issue a Province Change in respect of any change to the names designated by the Province in accordance with Section 2.16(a) after the Effective Date, and the provisions of Part 7 [Province Changes and Concessionaire Proposals] shall apply accordingly.

2.17 Execution and Delivery of Project Documents

On or before the Effective Date, each of the Concessionaire, the Province and BCTFA shall execute and deliver or cause to be executed and delivered the documents described in Schedule 24 [Closing Deliveries] that are to be executed and delivered by or on behalf of it on or before the Effective Date.

2.18 Financial Model

- (a) A print of the outputs of the Financial Model as at the Effective Date, certified by a senior officer or director of the general partner of each of the Initial Partners, having knowledge of the facts, as being a true and correct copy, is attached as Part 2 of Schedule 12 [Financial Model] and a CD containing the Financial Model as at the Effective Date in digital form is attached as Part 1 of Schedule 12 [Financial Model].

SOUTH FRASER PERIMETER ROAD PROJECT

- 16 -

- (b) The Concessionaire hereby grants to the Province a license to use, both during and after the Term, the Financial Model, and any revised Financial Model, for any purpose (including the carrying out of any statutory, public or other duties or functions), in connection with this Agreement, the Project, the Project Work, the Project Site, the Project Infrastructure, or any part of any of them. The license granted by this Section 2.18(b) shall not be transferable or assignable by the Province except to BCTFA for the purposes set out in this subsection and subject to the provisions of Part 15 [Confidentiality and Intellectual Property] and without any further right of BCTFA to transfer or assign such license.
- (c) The Concessionaire shall deliver to the Province's Representative an update of the Financial Model promptly and in any event no later than the earlier of:
 - (i) 10 Business Days after each amendment to the Financial Model; and
 - (ii) the time the update of the Financial Model is provided to the Senior Lenders or the Agent.
- (d) The Concessionaire covenants that:
 - (i) the Financial Model reflects now and as from time to time updated hereafter will reflect the Project (including financial outputs in respect of the Project) as defined by this Agreement and the other Project Documents;
 - (ii) each update of the Financial Model shall calculate Equity IRR in accordance with the methodology used in the Financial Model as at the Effective Date to calculate Threshold Equity IRR; and
 - (iii) none of the assumptions that are contained in the Financial Model and are applicable to a Qualified Refinancing referred to in Schedule 26 [Qualified Refinancing Change in Committed Funding Limit] that has not yet been carried out and closed shall be amended or deleted in any update of the Financial Model, until that Qualified Refinancing has closed in accordance with Section 5.16 [Qualified Refinancing], in which event the Financial Model shall be updated to reflect the terms on which that Qualified Refinancing closed.
- (e) Without limiting Section 2.13 [Review, Approval, Inspection and Audit by the Province], any receipt or review of any update of the Financial Model, by or on behalf of the Province or BCTFA or the Province's Representative, shall not constitute an acceptance of, approval of or consent to such update and shall not constitute (or be deemed to constitute) a waiver or release by the Province or BCTFA of any rights of the Province or BCTFA or any of the obligations of the Concessionaire under this Agreement.
- (f) If the consent or agreement of, or acceptance or no objection by, the Province or the Province's Representative is, by any of the other terms of this Agreement, required to any update or amendment to the Financial Model, or if any update or amendment to the Financial Model is required by any other term of this Agreement to be submitted to the Province's Representative pursuant to the Consent Procedure, then the Concessionaire shall not make or permit any such update or amendment, and the Financial Model shall

SOUTH FRASER PERIMETER ROAD PROJECT

- 17 -

be deemed not to have been validly updated or amended by any such update or amendment, until the consent or agreement of, or acceptance or no objection by, the Province's Representative is given or deemed to have been given thereto in accordance with this Agreement.

2.19 No Agency

- (a) Except as expressly provided in Schedule 21 [Delegated Obligations, Rights, Powers and Functions], no provision of this Agreement shall be construed as a delegation or sub-delegation to the Concessionaire by the Province, BCTFA, the Minister or any other person to whom a power or right has been conferred by Law to make a decision deciding or prescribing the legal rights, powers, privileges, immunities, duties or liabilities of a person, or the eligibility of a person to receive or to continue to receive a benefit or license (whether or not the person is legally entitled to it), of any statutory power, function, right or authority.
- (b) Except to the extent that any provision in this Agreement expressly constitutes the Concessionaire the "agent" of the Province or BCTFA, the Concessionaire shall not be or be deemed to be an agent of the Province or BCTFA and the Concessionaire shall not hold itself out as having authority or power to bind the Province or BCTFA in any way.
- (c) The Concessionaire acknowledges and agrees that neither the Province nor BCTFA has made any representation or warranty that the Concessionaire shall have the benefit of any Crown immunity.
- (d) Subject to Sections 2.19(a), (b) and (c) and the other provisions of this Agreement, the parties acknowledge that the Concessionaire is carrying out the Project Work at the request of the Province and BCTFA.

2.20 Instruments Required under TIA

Other than as referred to in or contemplated by this Agreement, there are no other instruments required to be provided by the Concessionaire under section 3(m) of the TIA.

2.21 Delegated Obligations, Rights, Powers and Functions

Certain obligations, rights, powers and functions described in Schedule 21 [Delegated Obligations, Rights, Powers and Functions] are imposed on or delegated to the Concessionaire by the Province in Schedule 21 [Delegated Obligations, Rights, Powers and Functions] pursuant to section 6 of the TIA, and the Concessionaire shall discharge all such obligations and exercise all such rights, powers and functions so imposed or delegated in accordance with Schedule 21 [Delegated Obligations, Rights, Powers and Functions].

2.22 Limited Notice to Proceed Agreement

The parties acknowledge and agree that:

- (a) the Limited Notice to Proceed Agreement ended effective as of the Effective Date and the terms of this Agreement shall supersede the Limited Notice to Proceed Agreement;

SOUTH FRASER PERIMETER ROAD PROJECT

- 18 -

- (b) all Approved Activities (as defined in the Limited Notice to Proceed Agreement) undertaken under the Limited Notice to Proceed Agreement in advance of the Effective Date are deemed to have been undertaken by the Concessionaire as Project Work pursuant to this Agreement and the Concessionaire accepts and assumes the risk, responsibility and liability for such Approved Activities as Project Work in accordance with the terms of this Agreement;
- (c) all Approved Activities (as defined in the Limited Notice to Proceed Agreement) undertaken or to be undertaken under the Limited Notice to Proceed Agreement shall continue to be carried out, or if not yet commenced shall be commenced, by the Concessionaire on the same basis as such Approved Activities had been carried out or were to be carried out under the Limited Notice to Proceed Agreement, in accordance with the procedures agreed to by the parties pursuant to the Limited Notice to Proceed Agreement (or as otherwise agreed by the parties), and in that regard:
 - (i) the Province confirms that all information provided by the Concessionaire to the Province prior to the Effective Date is sufficient with respect to the commencement of the Approved Activities; and
 - (ii) prior to the commencement of any construction works included in the Approved Activities, the Concessionaire and the Province will, each in good faith and acting reasonably, agree on any additional information, procedures or plans to be provided by the Concessionaire in order to commence such construction works included in the Approved Activities;
- (d) no party shall be entitled to make any Claim against another party or such other party's respective advisors, consultants, contractors or agents:
 - (i) under the Limited Notice to Proceed Agreement; or
 - (ii) in connection with, or arising out of, the Limited Notice to Proceed Agreement, (whether for loss, damage, extensions of time, payment or any other benefit) unless such Claim is permitted under this Agreement; and
- (e) any dispute in connection with or arising out of the Limited Notice to Proceed Agreement existing at the Effective Date shall, unless otherwise agreed in writing between the parties, be resolved in accordance with the Dispute Resolution Procedure.

**PART 3
PROVINCE'S GENERAL OBLIGATIONS**

3.1 Provision of Project Site

Subject to the provisions of Schedule 8 [Lands] and the other provisions of this Agreement, the Province shall make and keep available to the Concessionaire for the purposes of this Agreement and the Project Work, the Specified Concession Lands and the Specified Other Highway Lands, in accordance with Schedule 8 [Lands]. Certain rights and obligations of the parties in respect of the Project Site are set out in Schedule 8 [Lands]. The Province will use all reasonable efforts to provide that each parcel of Specified Concession Lands and Specified Other Highway Lands will, when made available to the

SOUTH FRASER PERIMETER ROAD PROJECT

- 19 -

Concessionaire in accordance with Schedule 8 [Lands], be a “highway” as defined by the *Transportation Act* (British Columbia).

3.2 Mitigation By Province

- (a) In all cases where the Province or BCTFA is entitled under this Agreement to receive from the Concessionaire any compensation, costs, damages or other Direct Losses incurred by the Province or BCTFA (including by way of indemnity), any extension of time or any relief from performance, or any combination thereof, but not in any other case, each of the Province and BCTFA shall have a duty to use all reasonable efforts to mitigate and reduce the amount required to be paid by the Concessionaire to the Province or BCTFA, as the case may be, provided that such duty shall not require the Province or BCTFA to:
 - (i) take any action which is contrary to the public interest, as determined by the Province or BCTFA in its discretion;
 - (ii) undertake any mitigation measure that might be available arising out of its status as the Crown, Crown agent or Crown corporation or as a legislative or public body that would not normally be available to a private commercial party; or
 - (iii) alter the amount of any Province Payments or Performance Incentive Payments determined in accordance with Schedule 10 [Performance Mechanism].
- (b) Neither the Province nor BCTFA shall be entitled to receive those parts of any compensation, costs, damages or other Direct Losses incurred by the Province or BCTFA, as the case may be, or those parts of any compensation or extensions of time or other relief from performance, that the Province or BCTFA, as the case may be, could have mitigated against, reduced or otherwise avoided by the exercise of all reasonable efforts, to the extent of the duty of the Province or BCTFA, as the case may be, to do so in accordance with the provisions of Section 3.2(a).
- (c) The Concessionaire shall not be liable for any compensation, costs, damages or other Direct Losses to the extent suffered or incurred as a result of any Province Indemnified Persons (other than BCTFA, to which Section 3.2(a) applies) failing to mitigate to the same standard as is required of the Province under this Section 3.2 [Mitigation By Province].

3.3 Representations and Warranties of the Province and BCTFA

- (a) The Province represents and warrants to the Concessionaire, and acknowledges that the Concessionaire is relying upon such representations and warranties in entering into this Agreement, that at the date of this Agreement, based on the facts subsisting at the date of this Agreement:
 - (i) the Province has the necessary power and capacity to execute and deliver this Agreement;

SOUTH FRASER PERIMETER ROAD PROJECT

- 20 -

- (ii) the necessary authority has been conferred on the Minister of Transportation and Infrastructure to, on behalf of the Province, execute and deliver this Agreement; and
 - (iii) this Agreement has been duly authorized, executed and delivered on behalf of the Province.
- (b) BCTFA represents and warrants to the Concessionaire, and acknowledges that the Concessionaire is relying upon such representations and warranties in entering into this Agreement, that at the date of this Agreement, based on the facts subsisting at the date of this Agreement:
- (i) BCTFA has the necessary power and capacity to execute and deliver this Agreement;
 - (ii) the necessary authority has been conferred on BCTFA to execute and deliver this Agreement;
 - (iii) the necessary corporate action has been taken by BCTFA to authorize the execution and delivery by BCTFA of this Agreement; and
 - (iv) this Agreement has been duly authorized, executed and delivered on behalf of BCTFA.

3.4 Without Prejudice

Any covenant, representation, warranty or undertaking made or given by the Province or BCTFA under any provision of this Agreement is without prejudice to or limitation of any covenant, representation, warranty or undertaking made or given by the Province or BCTFA under any other provision of this Agreement.

3.5 Survival of Representations and Warranties

All representations and warranties made or given by the Province or BCTFA under any provision of this Agreement or in any certificate or other document delivered by or on behalf of the Province or BCTFA at the time of execution of this Agreement are given at the date of execution of this Agreement and shall, unless expressly provided otherwise, survive the execution and delivery of this Agreement and the other Project Documents and are not mitigated or affected by any investigation by or on behalf of the Concessionaire.

**PART 4
CONCESSIONAIRE'S GENERAL OBLIGATIONS**

4.1 Concessionaire to Carry Out Project Work

The Concessionaire shall carry out and perform the Project Work, and cause the Project Work to be carried out and performed:

- (a) in an efficient, effective, safe and good and workmanlike manner, and in accordance with Good Industry Practice;

SOUTH FRASER PERIMETER ROAD PROJECT

- 21 -

- (b) in a manner that is not injurious to health and does not cause damage to property or the environment, provided that damage to property or the environment to the extent such damage is a reasonable consequence of performing the Project Work in accordance with this Agreement and in compliance with all other obligations of the Concessionaire hereunder will not constitute a breach of the obligation in this Section 4.1(b);
- (c) in compliance with all Requirements of Interested Parties; and
- (d) in accordance with all Project Requirements,

in each case subject to and in accordance with the provisions of this Agreement, and otherwise:

- (e) in a manner so as not to prevent the Province from exercising rights and powers and discharging duties and functions as a highway authority, and so as not to prevent the Province, BCTFA or any other Governmental Authority from exercising any other rights and powers or discharging any other lawful duties and functions; and
- (f) in compliance with all applicable Laws and Permits, all lawful and other proper instructions of the Police and all lawful and other proper requirements of Relevant Authorities and other Governmental Authorities.

4.2 Payments to Contractors

- (a) Without limiting any of its other rights or obligations under this Agreement, the other Province Project Documents or any Laws, the Concessionaire shall pay or provide for the payment when due, and shall ensure that all of the Principal Contractors and Subcontractors pay or provide for the payment when due, of all accounts in connection with the performance of the Project Work (including all accounts for the supply of labour, materials and services in connection with any works carried out in the course of the Project Work).
- (b) The Concessionaire shall provide to the Province's Representative monthly certificates as certified by the Concessionaire's Representative that all wages, salaries and other amounts due to its employees, Principal Contractors and Subcontractors have been paid in full up to the last payment, subject to holdbacks (including for amounts disputed in good faith) required or permitted by the Principal Contracts and, if applicable, the *Builders Lien Act* (British Columbia). If the Concessionaire is unable to obtain from the Principal Contractors or any Subcontractors a representation, warranty or covenant sufficient to enable the Concessionaire to provide such monthly certificate to the Province's Representative, the Concessionaire shall provide the Province's Representative with full particulars of any matter which precludes the Concessionaire from issuing such certificate to the Province's Representative.

4.3 No Adverse Reflection

Without limiting the Concessionaire's obligations under Section 4.1 [Concessionaire to Carry Out Project Work], in the performance of the Project Work the Concessionaire shall not knowingly do or omit to do, or suffer or permit to be done or omitted, anything that might reasonably be expected to detract, or that the Province gives notice to the Concessionaire would detract, from the image and reputation of the Province as a highway authority or otherwise or the reputation of the Province or BCTFA, provided that

SOUTH FRASER PERIMETER ROAD PROJECT

- 22 -

any action taken or not taken in the course of performing the Project Work that is expressly required to be taken or not taken pursuant to this Agreement, a direction or instruction issued by the Province's Representative or a specific provision of the Project Requirements, will not constitute a breach of the Concessionaire's obligations under this Section, and provided that this Section shall not prejudice an otherwise valid Claim by the Concessionaire:

- (a) pursuant to any other express provision of this Agreement or of any other Province Project Document; or
- (b) in respect of any breach of any express obligation of the Province or BCTFA under this Agreement or any other Province Project Document.

4.4 No Other Business or Conflicts of Interest

- (a) The Concessionaire shall not engage in any business or activity other than the business and activities related to, and conducted for the purposes of, carrying out the Project and the Project Work, in accordance with this Agreement and the other Project Documents to which the Concessionaire is a party.
- (b) The Concessionaire shall ensure that no conflict of interest arises between any other matter in which it or any of the Partners or any of the Parent Partners may be interested whether directly or indirectly, and the Concessionaire's performance of the Project, Project Work and the obligations of the Concessionaire under this Agreement.
- (c) The Concessionaire:
 - (i) shall not knowingly admit to any share or part of this Agreement or any benefit to arise herefrom any member of the Senate, the House of Commons of Canada or the Legislature of British Columbia;
 - (ii) shall use all reasonable efforts to ensure that no person for whom the Concessionaire is in law responsible is a current or former public servant or public office holder or reporting public office holder to whom the *Conflict of Interest Act* (Canada), the Federal Government's Values and Ethics Code for the Public Service and/or the Federal Government's Conflict of Interest and Post-employment Code for Public Office Holders (the "**Relevant Acts and Codes**") apply shall derive any direct benefit from this Agreement unless such individual is in compliance with the applicable provisions of the Relevant Acts and Codes; and
 - (iii) shall inform the Province, in writing, should any real and/or apparent conflict of interest exist or arise that could have a direct impact on the Federal Government's contribution to the Project pursuant to the Federal Cost Contribution Agreement.

4.5 Prohibited Acts

- (a) The Concessionaire covenants that neither the Concessionaire nor any of its agents, Principal Contractors or Subcontractors nor the employees of any of the aforementioned persons, nor any person for whom the Concessionaire is in law responsible, shall offer or

SOUTH FRASER PERIMETER ROAD PROJECT

- 23 -

give or agree to give any person in the service of the Province or BCTFA any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any act in relation to the obtaining or execution of this Agreement or for showing or forbearing to show favour or disfavour in relation to this Agreement.

- (b) The Concessionaire covenants that neither the Concessionaire nor any Principal Contractor shall enter into this Agreement or any other agreement with the Province or BCTFA in connection with which a commission, fee, payment or benefit has been paid or agreed to be paid by the Concessionaire or a Principal Contractor or on behalf of the Concessionaire or a Principal Contractor or to the knowledge of the Concessionaire or a Principal Contractor, other than to any person for whom the Concessionaire is in law responsible, to the Senior Lenders or to any person in the service of the Senior Lenders, unless before such agreement is made particulars of any such commission, fee, payment or benefit and of the terms and conditions of any agreement for the payment thereof have been disclosed in writing to and consented to by the Province's Representative.
- (c) Without limiting Section 4.5(b), the Concessionaire covenants that no person for whom the Concessionaire is in law responsible shall enter into any agreement with the Province or BCTFA in relation to the Project in connection with which a commission, fee, payment or benefit has been paid or agreed to be paid by such person or on its behalf or to its knowledge, other than to any person for whom the Concessionaire is in law responsible, to the Senior Lenders or to any person in the service of the Senior Lenders, unless before such agreement is made particulars of any such commission, fee, payment or benefit and of the terms and conditions of any agreement for the payment thereof have been disclosed in writing to and consented to by the Province's Representative.

4.6 Public Use

- (a) The parties acknowledge Section 11(1) of the TIA.
- (b) The Concessionaire shall keep open for public use:
 - (i) at all times from and after the date they are made available to the Concessionaire for the purposes of the Project Work pursuant to Section 1.3 [Commencement of Land Licence] of Schedule 8 to the Eastern Segment Substantial Completion Date or the Western Segment Substantial Completion Date, respectively, all parts of the Concession Highway and the Other Highway Facilities within the Eastern Segment and the Western Segment, respectively, that are open for public use as at the date they are made available to the Concessionaire for the purposes of the Project Work pursuant to Section 1.3 [Commencement of Land License] of Schedule 8;
 - (ii) at all times from and after the Eastern Segment Substantial Completion Date:
 - (A) to and including the Termination Date, the Concession Highway located within the Eastern Segment; and
 - (B) to the Total Completion Date, the Other Highway Facilities located within the Eastern Segment; and

SOUTH FRASER PERIMETER ROAD PROJECT

- 24 -

- (iii) at all times from and after the Western Segment Substantial Completion Date:
 - (A) to and including the Termination Date, the Concession Highway located within the Western Segment; and
 - (B) to the Total Completion Date, the Other Highway Facilities located within the Western Segment;

except in each case for temporary and permanent lane closures or diversions of traffic flow:

- (iv) by the Concessionaire in accordance with the provisions of the Traffic Management Plan and Schedule 4 [Design and Construction];
- (v) by the Minister under the *Transportation Act* (British Columbia) or any other Laws;
- (vi) by the Police or fire, ambulance or other emergency services authorities; or
- (vii) by any other Governmental Authority pursuant to any Law,

and, except as otherwise expressly provided in this Agreement, the Concessionaire shall not have any Claim whatsoever against the Province, BCTFA, the Police, any fire, ambulance or other emergency services authority or any other Governmental Authority for or in respect of any lane closure or diversion, including any lane closure or diversion referred to in this Section or as a result of the exercise of any other rights or powers or the discharge of any other duties or functions by any such authority affecting all or any part of the Project Site or the Project Infrastructure at any time.

- (c) The Concessionaire may not charge tolls (which term as used in this Section has the meaning given in the TIA) or any other user charges for the use of the Concession Highway. As at the Effective Date no arbitrators have been appointed under the TIA and therefore there is no requirement for the Concessionaire to contribute to the matters set out in Section 3(i) of the TIA.
- (d) Subject to temporary and permanent closures or diversions of traffic flow with respect to the Concession Highway and the Other Highway Facilities permitted by Sections 4.6(b)(iv) to (vii), the Concessionaire shall cause all Project Work to be carried on so as not to interfere unnecessarily with, and so as to minimize any necessary interference with, the convenience of the public in respect of, and the access of the public to and use of, any public or private roads or highways other than the Concession Highway and the Other Highway Facilities, whether under the control or in the possession of the Province, BCTFA or any other person.

4.7 Access to Project Site and Project Infrastructure by Others

The Concessionaire shall, subject to and in accordance with the procedures established by the Concessionaire pursuant to Section 4.13 [Health and Safety Program] and Section 4.14 [Concessionaire's Occupational Health and Safety Obligations] for the time being in force in relation to the areas to which such access is granted, ensure that:

SOUTH FRASER PERIMETER ROAD PROJECT

- 25 -

- (a) the Province's Representative, the Province, BCTFA, and any contractors, consultants or other persons authorized by the Province's Representative, the Province or BCTFA, including Third Party Contractors, have access to the Project Site and the Project Infrastructure in accordance with Section 11.1 [Province Access];
- (b) the Independent Certifier has access to the Project Site and the Project Infrastructure in accordance with Section 3.8 [Access to Project Site] of Part 1 of Schedule 4;
- (c) the Federal Government and any member of the Management Committee (as defined in the Federal Cost Contribution Agreement), and their designates, and the Independent Engineer, have access to the Project Site and the Project Infrastructure in accordance with the Federal Cost Contribution Agreement, subject to reasonable notice being given to the Concessionaire;
- (d) inspectors and other persons authorized to act on behalf of the Province, BCTFA or the Municipalities have access to the Project Site for inspection and acceptance purposes prior to the Total Completion Date (or, in the case of Project Work carried out after the Total Completion Date as contemplated by Section 2.6(e), such later date as is reasonable for the relevant Municipality's inspection and acceptance purposes), subject to reasonable notice being given to the Concessionaire;
- (e) the Railways and persons authorized to act on behalf of the Railways have access to the Project Site as required pursuant to and in accordance with the Railway Agreements;
- (f) the owners or operators of any Third Party Facilities and their agents or contractors have unrestricted access to the Project Site and the Project Infrastructure at all reasonable times during the Term, subject to reasonable notice being given by such persons to the Concessionaire, to install, operate, manage, maintain, repair, rehabilitate or reconstruct such Third Party Facilities, provided that, wherever consistent with the applicable requirements of Laws and the requirements of this Agreement, the Concessionaire may limit such access so as to not unnecessarily impede or restrict traffic flows or any Project Work being carried out by the Concessionaire;
- (g) all Relevant Authorities and Utility Suppliers have access to the Project Site and the Project Infrastructure throughout the Term in order to carry out any work (including surveys and inspections) in accordance with or to exercise any right or power or perform any duty or obligation under any Laws or the Utility Agreements, subject to reasonable notice being given by such Relevant Authority or Utility Supplier to the Concessionaire, and provided that, whenever consistent with the applicable requirements of such Relevant Authority, Utility Supplier or Laws and the requirements of this Agreement (as the case may be), the Concessionaire may limit such access so as to not unnecessarily impede or restrict traffic flows or any Project Work being carried out by the Concessionaire; and
- (h) without prejudice to any access rights of any such person as a member of the general travelling public, the Province, BCTFA, Third Party Contractors, owners or operators of Third Party Facilities, Relevant Authorities and Utility Suppliers are permitted to enter upon the Project Site and the Project Infrastructure for the purposes of access to and from any other lands and/or facilities adjacent to or in proximity to the Project Site and the Project Infrastructure (including any other highway) owned or operated by such person or in which such person has any interest, provided that, whenever consistent with the

SOUTH FRASER PERIMETER ROAD PROJECT

- 26 -

requirements of this Agreement, the Concessionaire may limit such access so as to not unnecessarily impede or restrict traffic flows or any Project Work being carried out by the Concessionaire.

4.8 Improvements and Changes in Use

The Concessionaire shall not carry on any activity on, or make any changes or improvements to, all or any part of the Project Site or the Project Infrastructure or make any change in use of all or any part of the Project Site or the Project Infrastructure, except for the purposes of the Project Work as expressly required or permitted by, and subject to and in accordance with, the provisions of, this Agreement.

4.9 Concessionaire Plans

Without limiting the obligations of the Concessionaire to comply with any other Project Requirements, including the preparation and delivery to the Province's Representative of any plans referred to in the Project Requirements, or the other obligations of the Concessionaire under this Agreement, the Concessionaire shall comply with any and all plans set out or referred to in this Agreement or in any Schedule to this Agreement provided that, where the Concessionaire is required in accordance with this Agreement to submit any such plan to the Province's Representative pursuant to the Review Procedure or the Consent Procedure, such compliance shall be with such plan to which there has been "no objection" under the Review Procedure or with such plan as has been "accepted" under the Consent Procedure, as the case may be.

4.10 Mitigation By Concessionaire

- (a) Without limiting and in addition to all other obligations to mitigate required by this Agreement or at law, in all cases where the Concessionaire is entitled under this Agreement to receive from the Province any compensation (including for any Supervening Event) or any other costs, damages or other Direct Losses incurred by the Concessionaire (including by way of indemnity), any extension of time or any relief from performance, or any combination thereof, the Concessionaire shall have a duty to use all reasonable efforts to mitigate and reduce (which reasonable efforts, for purposes of example only, may include by way of competitive procurement for expenditures (where appropriate in accordance with Good Industry Practice or otherwise required by Laws), rescheduling of works and deliveries, and reallocation or redeployment of labour forces and equipment, and pursuing recourse against insurers and third parties) the amount required to be paid by the Province to the Concessionaire, the length of the extension of time and/or the relief to be provided.
- (b) The Concessionaire shall not be entitled to receive those parts of any compensation, costs, damages or other Direct Losses incurred by the Concessionaire, or those parts of any compensation or extensions of time or other relief from performance, that the Concessionaire could have mitigated against, reduced or otherwise avoided by the exercise of all reasonable efforts as required in accordance with the provisions of Section 4.10(a).
- (c) Upon request from the Province, the Concessionaire shall promptly submit a detailed description, supported by all such documentation as the Province may reasonably require, of the measures and steps taken by the Concessionaire to meet its obligations under Section 4.10(a).

SOUTH FRASER PERIMETER ROAD PROJECT

- 27 -

- (d) The Concessionaire shall require all Principal Contractors and, where practicable, Subcontractors with which the Concessionaire contracts directly, to assume and carry out the same duty to mitigate as is required of the Concessionaire under Section 4.10(a), *mutatis mutandis*.
- (e) The Province shall not be liable for any compensation, costs, damages or other Direct Losses to the extent suffered or incurred as a result of any Principal Contractor or Subcontractor or other Concessionaire Indemnified Persons failing to mitigate to the same standard as is required of the Concessionaire under this Section 4.10 [Mitigation By Concessionaire].

4.11 Site Safety and Security

- (a) Without limiting Section 8.8 [Responsibility for Participants and Trespassers], the Concessionaire shall, in respect of the Project Site at all times throughout the Term, take such measures as are reasonably required, including fencing where appropriate, to prevent the trespass and access onto the Project Site of any persons not entitled to be on the Project Site or of any creatures including wildlife and livestock.
- (b) The Concessionaire shall at all times throughout the Term have full regard for the safety of all persons (including users of the Concession Highway) on the Project Site (whether lawfully or not) and shall maintain the Project Site in a manner and in an orderly state that ensures the safety of such persons and that is appropriate to the avoidance of danger to such persons.
- (c) The Concessionaire shall remove forthwith from the Project Site any person who engages in misconduct or is incompetent or negligent in the performance of any duties, or whose presence on the Project Site is otherwise undesirable.

4.12 Concessionaire as Prime Contractor

- (a) By entering into this Agreement, the Concessionaire agrees that it is the Prime Contractor for the Project Site and that it shall take all steps or measures necessary, through such arrangements as are appropriate, to fulfil all of its obligations, functions and duties as Prime Contractor in compliance with all Health and Safety Laws.
- (b) The Concessionaire shall, not later than 30 days after the Effective Date, and in any event before the commencement of any of the Project Work at the Project Site:
 - (i) designate a qualified coordinator (the “**Qualified Coordinator**”) who shall be an individual qualified (being knowledgeable of the Project Work, the hazards involved and the means to control the hazards, by reason of education, training, experience or a combination thereof) to discharge the responsibilities thereof as described in the *Workers Compensation Act* (British Columbia) and the OHS Regulation, and the Concessionaire shall ensure that at all times during the Term a Qualified Coordinator is designated in respect of the Project Site; and
 - (ii) deliver to the Province’s Representative:

SOUTH FRASER PERIMETER ROAD PROJECT

- 28 -

- (A) written notice of the designation of the Qualified Coordinator under Section 4.12(b)(i);
- (B) a copy of the “notice of project” for the Project required and described in the *Workers Compensation Act* (British Columbia) and the OHS Regulation (the “**Notice of Project**”); and
- (C) written notice confirming that the Health and Safety Program has been implemented pursuant to Section 4.13 [Health and Safety Program] and is readily available in accordance with the *Workers Compensation Act* (British Columbia) and the OHS Regulation.

4.13 Health and Safety Program

Notwithstanding any limitation in the OHS Regulation regarding the number of workers in any work force, the Concessionaire shall prepare, submit to the Province’s Representative in accordance with the Review Procedure and at all times throughout the Term implement, maintain and update in respect of the Project Site a written health and safety program (the “**Health and Safety Program**”) that:

- (a) complies with Good Industry Practice and all Laws (including all applicable specifications and standards in Health and Safety Laws and the requirements of section 3.3 of Part 3 of the OHS Regulation);
- (b) provides for the establishment and maintenance of a system or systems and a process or processes to ensure compliance with all Health and Safety Laws and to satisfy the Concessionaire’s obligations in respect of Health and Safety Laws under this Agreement; and
- (c) is specific to controlling the hazards of the Project Site, as such hazards are identified in the hazard identification provided in the Disclosed Data, and as such hazard identification is thereafter updated by the Concessionaire throughout the Term.

4.14 Concessionaire’s Occupational Health and Safety Obligations

- (a) The Concessionaire shall at all times throughout the Term:
 - (i) observe and comply with, and ensure that the performance of the Project Work (including by conducting worker safety orientations, health and safety meetings, safety inspections and accident and incident investigations) at all times complies with, all Health and Safety Laws;
 - (ii) ensure that all assessments, levies, penalties, fees and fines which may be made under any Health and Safety Laws are punctually paid as they become due;
 - (iii) establish and maintain a joint health and safety committee with terms of reference that ensure that it can fulfil its functions under Health and Safety Laws, and ensure that such committee fulfils such functions;
 - (iv) deliver and post at the Project Site any and all required Notices of Project;

SOUTH FRASER PERIMETER ROAD PROJECT

- 29 -

- (v) when conditions or activities at any location or locations on the Project Site affect the workers of more than one employer or where there are overlapping or adjoining work activities by two or more employers, ensure that the Qualified Coordinator coordinates the occupational health and safety activities throughout the Project Site and alerts all workers to all reasonably foreseeable hazards to which they are likely to be exposed;
- (vi) immediately notify all employers, workers, suppliers, Principal Contractors and Subcontractors and any other persons throughout the Project Site of any hazard created by the Project Work and/or by overlapping or adjoining work activities of two or more employers and ensure that the hazards are addressed throughout the duration of such activities;
- (vii) ensure that no person, including the Concessionaire, the Principal Contractors, the Subcontractors and any other person engaged or involved in the performance of the Project Work, and their respective representatives, agents, employees and contractors, is permitted to enter upon or otherwise allowed access (other than as a user of the Concession Highway) to any part or parts of the Project Site in respect of which there is for the time being any part of the Project Work being carried out unless such person complies with the requirements of the Health and Safety Program and all applicable Health and Safety Laws;
- (viii) in the event of an accident or incident that requires notification to the Workers' Compensation Board, deliver a copy of such notice to the Province's Representative at the same time as it delivers such notice to the Workers' Compensation Board, and provide ongoing information to the Province's Representative on the progress of any investigation resulting from such notice, accident or incident;
- (ix) record and retain all occupational health and safety Records in respect of the Project required by and in accordance with all Health and Safety Laws, including:
 - (A) notices which the Concessionaire is required to provide to the Workers' Compensation Board;
 - (B) monthly summaries of remedial actions taken to reduce occupational health and safety hazards within the Project Site;
 - (C) directives and inspection reports issued by or through the Workers' Compensation Board in connection with the Project Site or the Project Work;
 - (D) reports and investigations on incidents and accidents which are required to be investigated by the Workers' Compensation Board or any other Governmental Authority requires to be investigated under Health and Safety Laws;
 - (E) records, including minutes, of safety meetings and tailgate meetings;

SOUTH FRASER PERIMETER ROAD PROJECT

- 30 -

- (F) copies of any hazard identifications performed on the Project Site; and
 - (G) evidence that instruction and health and safety orientation and training for workers within the Project Site is being conducted in accordance with Health and Safety Laws.
- (b) In addition to the obligations set out in Section 4.14(a), at all times during the carrying out of the Construction or any other Construction Activities during the Term, the Concessionaire shall:
- (i) observe and comply with, and ensure that the performance of such Construction Activities at all times complies with, all Health and Safety Laws applicable to such Construction Activities;
 - (ii) post at the Project Site or, for Construction Activities occurring after the Total Completion Date, the relevant Active Construction Zone:
 - (A) the name of the Qualified Coordinator; and
 - (B) a site drawing showing the boundaries of the Project Site or Active Construction Zone, as the case may be, with project layout, first aid locations, emergency transportation provisions and the evacuation marshalling points relating to the Project Site or relevant Active Construction Zone; and
 - (iii) ensure that a copy of the Health and Safety Program, the written construction procedures designed to protect the health and safety of workers at the Project Site and the OHS Regulation are readily available at convenient locations within the Project Site or relevant Active Construction Zone, as the case may be.
- (c) At the request of the Province's Representative from time to time, the Concessionaire shall:
- (i) deliver to the Province's Representative evidence of the Concessionaire's implementation and maintenance of the Health and Safety Program in accordance with Section 4.13 [Health and Safety Program]; and
 - (ii) provide the Province's Representative with evidence satisfactory to the Province of compliance by the Concessionaire with its obligations in respect of all Health and Safety Laws pursuant to this Agreement, including where applicable the compliance of the Concessionaire and its agents, Principal Contractors and Subcontractors and its or their directors, officers, employees and workers with all applicable Health and Safety Laws, including being registered, in good standing, and current in respect of all assessments, levies, penalties, fees and fines thereunder; and
 - (iii) make available to the Province's Representative access to and copies of any documentation maintained by the Concessionaire pursuant to Section 4.14(a)(ix).

SOUTH FRASER PERIMETER ROAD PROJECT

- 31 -

4.15 Refusal to Recognize Concessionaire as Prime Contractor

If the Workers' Compensation Board refuses to recognize or accept the Concessionaire at any time as the Prime Contractor, including by making a determination to that effect, then:

- (a) the Concessionaire shall not be relieved of any obligations, duties and liabilities as Prime Contractor but shall be responsible to the Province and BCTFA and to those for whom the Concessionaire would have been responsible if the Concessionaire had been accepted or recognized by the Workers' Compensation Board as the Prime Contractor for fulfilling all obligations, duties and liabilities imposed on the Province or BCTFA or any contractor or subcontractor of any tier of the Province or BCTFA pursuant to Health and Safety Laws in the same manner and to the same extent and for the same purposes as if the Concessionaire undertook the obligations of a Prime Contractor for the Project Site at all times throughout the Term, including the liability for any assessments, levies, penalties, fees or fines assessed, levied or charged from time to time against the Concessionaire or against the Province or BCTFA under Health and Safety Laws; and
- (b) if the Workers' Compensation Board recognizes or accepts, including by making a determination to that effect, any Principal Contractor or Subcontractor as the Prime Contractor, then the Concessionaire shall not be considered to be in breach of this Agreement solely by reason of the refusal to accept the Concessionaire as the Prime Contractor or the determination by the Workers' Compensation Board to that effect, provided that and only to the extent that:
 - (i) the Concessionaire has not failed to observe, abide by or comply with any term of this Agreement;
 - (ii) such refusal to recognize or accept, or other determination, of the Workers' Compensation Board was for a reason other than a failure by any person, including for greater certainty by the Concessionaire, to discharge the duties as a Prime Contractor under the *Workers Compensation Act* (British Columbia) or the OHS Regulation;
 - (iii) the Concessionaire has not entered into a contract with any person, including any Principal Contractor or Subcontractor, under which that person has agreed to be the Prime Contractor in connection with the Project or any part of the Project Site and, for greater certainty, nothing in this subsection prevents the Concessionaire from entering into such arrangements as are appropriate to fulfil its obligations as the Prime Contractor;
 - (iv) the Concessionaire indemnifies and holds harmless the Province and the Province Indemnified Persons, and each of them, in connection with any and all Direct Losses or Claims (except only to the extent such Direct Losses or Claims are caused directly by a Province Non-Excusable Event) arising in connection with any matter contemplated under this Section (including for greater certainty any assessments, levies, penalties, fees or fines assessed or charged against the Province and the Province Indemnified Persons, or any of them, based on the number of employees employed in relation to the Project or otherwise); and

SOUTH FRASER PERIMETER ROAD PROJECT

- 32 -

- (v) the Concessionaire shall make, do, execute and cause to be made, done and executed all further and other acts, deeds, instruments, agreements and assurances as the Province or BCTFA may require for the performance of the Concessionaire's obligations as Prime Contractor in accordance with Section 4.12(a) throughout the Term.

4.16 Appointment of other Prime Contractors by Province

- (a) The Province may, from time to time during the Term, on prior written notice from the Province's Representative to the Concessionaire, appoint a person other than the Concessionaire as the Prime Contractor (in this Section, the "**Other Prime Contractor**") in connection with specified works and activities that may be undertaken and performed at any specified location or locations in the Project Site (in this Section, the "**Separate Site**"), for a specified period of time, all as set out in such notice.
- (b) Upon receipt of written notice from the Province's Representative pursuant to Section 4.16(a), the Concessionaire agrees that it will cease to be the Prime Contractor in respect of such Separate Site only for the specified period of time, and the Concessionaire shall at all times in good faith and at the cost of the Concessionaire comply with, and ensure compliance by its Principal Contractors and Subcontractors with, all applicable requirements pursuant to the Health and Safety Laws, including:
 - (i) while on the Separate Site, complying with all procedures established by the Province (which procedures may be those of the Other Prime Contractor) to coordinate the health and safety activities on the Separate Site; and
 - (ii) while on the balance of the Project Site, coordinating the health and safety activities of the Other Prime Contractor while on the balance of the Project Site,

in each case to ensure at all times that the workers on the Separate Site do not create a hazard for the workers on the balance of the Project Site, and vice versa.
- (c) Upon receipt from the Province's Representative of written notice of the conclusion of the works and activities referred to in a notice delivered under Section 4.16(a), the Concessionaire shall reassume and thereafter fulfil the responsibilities of the Prime Contractor as otherwise set out in this Agreement at the Separate Site.
- (d) The Concessionaire hereby acknowledges and confirms receipt of notice that the PMH1/SFPR Common Site shall constitute a Separate Site as contemplated by this Section for the period from the Effective Date until the receipt by the Concessionaire from the Province's Representative pursuant to Section 4.16(c) of written notice of the total completion of the applicable work under the PMH1 DB Agreement, and that the PMH1 DB Contractor shall be an Other Prime Contractor as contemplated by this Section for the PMH1/SFPR Common Site for such period.

4.17 Notice of Failure to Comply with Health and Safety Requirements

- (a) In this Section, the terms "**employer**" and "**workers**" do not include the Concessionaire, or any Principal Contractor or Subcontractor, or the employees of any of them.

SOUTH FRASER PERIMETER ROAD PROJECT

- 33 -

- (b) If the Concessionaire determines in its reasonable discretion that any employer or its workers:
- (i) has created an unsafe or harmful condition;
 - (ii) has done or omitted to do something that constitutes an unsafe or harmful act; or
 - (iii) has failed to comply with Health and Safety Laws or the Health and Safety Program,

and that, following written notice from the Concessionaire to such employer of such condition, act or failure, such employer has failed or refused to take action to correct the matter, the Concessionaire may issue a notice (in this Section, a “**Notice of Failure to Comply**”) to the applicable employer (with a copy to the Province) stipulating in reasonable detail the basis for the issuance of the Notice of Failure to Comply.

- (c) Upon issuance of a Notice of Failure to Comply by the Concessionaire under Section 4.17(b), the Concessionaire may suspend all or any part of the Project Work at the location specified in the Notice of Failure to Comply if the Concessionaire believes such action is necessary to ensure that any risk to workers is eliminated or minimized, and shall provide to the Province, promptly and in reasonable detail, confirmation of all such action so taken by the Concessionaire in respect of such Notice of Failure to Comply.
- (d) Upon receipt of a copy of a Notice of Failure to Comply from the Concessionaire under Section 4.17(b), the Province may take whatever action in accordance with Section 11.5 [Province’s Other Step-In Rights] the Province deems necessary to ensure that any risk to works is eliminated or minimized.
- (e) On rectification of the matter set out in a Notice of Failure to Comply, the Concessionaire shall withdraw such Notice of Failure to Comply by endorsing on a copy thereof confirmation of the rectification, and the Concessionaire shall deliver a copy of the endorsed Notice of Failure to Comply to the applicable employer and to the Province. If the Concessionaire suspended all or any part of the Project Work under Section 4.17(c), the Concessionaire shall resume such Project Work.
- (f) The Province shall be deemed to have relied on the terms of and the reasons set out in the Notice of Failure to Comply, notwithstanding any subsequent investigation or inquiry of the matter by the Province, which the Province may but shall not be obligated to undertake, and the Concessionaire shall indemnify and hold harmless the Province and the Province Indemnified Persons, and each of them, in respect of any and all Direct Losses and Claims (except only to the extent such Direct Losses or Claims are caused directly by a Province Non-Excusable Event) that the Province and the Province Indemnified Persons, or any of them, may suffer or incur in connection with or arising out of the issuance of any Notice of Failure to Comply issued by the Concessionaire and any acts or omissions of the Province in reliance thereon.

4.18 Permits

- (a) The Concessionaire shall, or shall cause the Principal Contractors or Subcontractors, as the case may be, at its or their sole cost, to:

SOUTH FRASER PERIMETER ROAD PROJECT

- 34 -

- (i) obtain all Permits (excluding Province Permits);
 - (ii) renew, amend or extend, as applicable, all Permits (including Province Permits); and
 - (iii) comply with and maintain in good standing each Permit (including each Province Permit) in accordance with its terms, including complying with all requirements and obligations in respect of all Province Permits.
- (b) Where Permits that are the Concessionaire's obligation to obtain, renew, amend or extend under Section 4.18(a) have requirements that may impose any conditions, liabilities, obligations or costs on the Province or BCTFA or on any person other than the Concessionaire, the Principal Contractors, the Subcontractors and other persons for whom the Concessionaire is in law responsible, the Concessionaire shall, prior to obtaining, renewing, amending or extending such Permits, seek the consent of the Province's Representative pursuant to the Consent Procedure (which consent the Province shall not unreasonably withhold), provided, however, that, except as provided in Section 2.2(d)(i) of Schedule 2 [Representatives, Review Procedure and Consent Procedure], neither the Province nor BCTFA shall be responsible for obtaining or for any delay in obtaining or failure to obtain any such Permit, renewal, amendment or extension.
- (c) Where the Concessionaire, or any Principal Contractor or Subcontractor, as the case may be, is unable to apply for or to renew, amend or extend any Permit that is the Concessionaire's obligation to obtain, renew, amend or extend under this Section without obtaining information or administrative assistance from the Province or BCTFA, or without submitting the application for such Permit or renewal or extension in the name of the Province or BCTFA, each of the Province and BCTFA shall at the Concessionaire's cost provide or cause to be provided such information and administrative assistance as the Concessionaire may reasonably request and it may reasonably be able to provide and, if requested, shall execute or cause to be executed such applications as are required to be in its name, to assist the Concessionaire, such Principal Contractor or such Subcontractor, as the case may be, in obtaining, renewing, amending or extending such Permit.
- (d) The Concessionaire at its expense shall provide or cause to be provided such information, documentation and administrative assistance as may be requested by the Province's Representative and as the Concessionaire may reasonably be able to provide and, if requested, shall execute such applications as are required to be in its name, to enable the Province or BCTFA to apply for, obtain and (without limiting the Concessionaire's obligations under Section 4.18(a)) renew, amend or extend, and comply with and demonstrate compliance with requirements and obligations under, Province Permits.
- (e) The Concessionaire shall indemnify and hold harmless the Province and the Province Indemnified Persons, and each of them, in respect of any and all Direct Losses and Claims that the Province and the Province Indemnified Persons, or any of them, may suffer or incur in connection with or arising out of:
- (i) the satisfaction and performance during the Term of all conditions, liabilities and obligations imposed on the Province or BCTFA by Permits obtained, renewed or

SOUTH FRASER PERIMETER ROAD PROJECT

- 35 -

extended by the Concessionaire in accordance with Section 4.18(b) and the payment of all costs in respect thereof;

- (ii) any inability of the Province or BCTFA to obtain or, as applicable, renew or extend any Province Permit or any increased cost to the Province or BCTFA of obtaining or, as applicable, renewing or extending any Province Permit, as a result of any act or omission of the Concessionaire, any Principal Contractor or Subcontractor, or any other person for whom the Concessionaire is in law responsible; or
 - (iii) any cost to the Province or BCTFA of complying with any condition included in any Province Permit to the extent that such condition was included in the Province Permit as a result of any act or omission of the Concessionaire, any Principal Contractor or Subcontractor, or any other person for whom the Concessionaire is in law responsible.
- (f) As and when requested by the Concessionaire, acting reasonably, the Province will use all reasonable efforts to assist the Concessionaire to obtain the Permits referred to in subsection (l) of the definition of Relief Event in Section 1.1 [Definitions] of Schedule 1.

4.19 Agreements with Governmental Authorities

- (a) The Concessionaire, subject to Section 4.19(b) but without limiting any other provision of this Agreement, shall enter into or cause to be entered into any agreement with any Governmental Authority or other person required in connection with the Project or to enable the Concessionaire to perform the Project Work in accordance with the terms of this Agreement, provided that, if the Province or BCTFA will be bound or affected in any way by any such agreement, the Concessionaire shall seek the consent of the Province's Representative pursuant to the Consent Procedure (such consent not be unreasonably withheld) before entering into the agreement.
- (b) If the Province's Representative consents to the Province and/or BCTFA being a party or parties to any agreement referred to in Section 4.19(a), the Concessionaire shall assist the Province and/or BCTFA (as the case may be) in entering into such agreement; provided, however, that the Concessionaire shall not be relieved of any of its obligations under Section 4.19(a) or any other provision of this Agreement as a result of any such consent of the Province's Representative or assistance provided by the Concessionaire; and provided further that, if the Province or BCTFA incurs or shall incur any liability or obligation under any such agreement, the form and substance of the agreement shall be subject to the prior approval of the Province and/or BCTFA (as the case may be) (which approval may be granted or withheld by the Province or BCTFA in its discretion) and, as between the Province and/or BCTFA (as the case may be) and the Concessionaire, unless otherwise agreed in writing by the parties, the Concessionaire shall discharge such liabilities and perform such obligations and shall indemnify and hold harmless the Province and the Province Indemnified Persons, and each of them, in respect of any failure of the Concessionaire to discharge such liabilities or perform such obligations.

SOUTH FRASER PERIMETER ROAD PROJECT

- 36 -

4.20 Archaeological and Heritage Objects

- (a) The Concessionaire shall carry out all archaeological surveys, inspections, impact assessments and other archaeological works specified as part of, and shall consult with archaeologists specified by the Province as required by, the Project Requirements.
- (b) As between the parties, all fossils, remains, coins, articles of value or antiquity and other objects having archaeological, artistic, historic or monetary interest or value, including all heritage objects (as defined in the *Heritage Conservation Act* (British Columbia)), that may be found on, at or in the Project Site or otherwise during the carrying out of the Project Work are and shall be, as between the Concessionaire and any Principal Contractor or Subcontractor on the one hand, and the Province on the other, the sole and absolute property of the Province.
- (c) Upon the discovery of any object referred to in Section 4.20(b) on, at or in the Project Site or otherwise during the carrying out of the Project Work, the Concessionaire shall:
 - (i) immediately inform the Province's Representative;
 - (ii) take all steps not to disturb the object and, if necessary, cease any Project Work in so far as performing such Project Work would or is reasonably likely to endanger the object or prevent or impede its excavation;
 - (iii) take all necessary steps to preserve the object in the same position and condition in which it was found; and
 - (iv) comply with all Laws and requirements of Governmental Authorities with respect to the discovery of such item, including pursuant to the *Heritage Conservation Act* (British Columbia),

and the discovery of such object and compliance by the Concessionaire with its obligations under this Section 4.20(c) shall constitute a Compensation Event and the provisions of Part 8 [Supervening Events] shall apply.

- (d) If the Province wishes the Concessionaire to perform procedures which are in addition to those required pursuant to Section 4.20(c) in respect of any object referred to in Section 4.20(b), then the Province's Representative shall request a Province Change pursuant to Section 7.1 [Province Changes] in respect of such additional procedures.

4.21 Concessionaire's Representations and Warranties

The Concessionaire represents and warrants to the Province and BCTFA, and acknowledges that the Province and BCTFA are relying upon such representations and warranties in entering into this Agreement and the other Province Project Documents, that at the date of this Agreement, based on the facts subsisting at the date of this Agreement:

- (a) the Concessionaire is a general partnership duly created and validly existing under the *Partnership Act* (British Columbia) and has full power and capacity to enter into and to carry out the transactions contemplated by, and to duly observe and perform all its

SOUTH FRASER PERIMETER ROAD PROJECT

- 37 -

obligations contained in, this Agreement and the other Project Documents to which it is a party, and all other documents, instruments and agreements required to be executed and delivered by the Concessionaire pursuant to this Agreement or such other Project Documents, and to carry out the Project Work;

- (b) each Initial Partner is a duly formed and validly existing limited partnership under the *Partnership Act* (British Columbia) and each general partner of each Initial Partner is a duly incorporated and validly existing company under the *Business Corporations Act* (British Columbia), and each such Initial Partner and general partner has full power and capacity to enter into and to carry out the transactions contemplated by, and to duly observe and perform all its obligations contained in, this Agreement and the other Project Documents to which it is a party, and all other documents, instruments and agreements required to be executed and delivered by the Concessionaire pursuant to this Agreement or such other Project Documents, and to carry out the Project Work;
- (c) the execution and delivery by the Concessionaire and each Initial Partner of this Agreement and the other Project Documents to which it is a party, and all other documents, instruments and agreements required to be executed and delivered by it pursuant to this Agreement or such other Project Documents, and the completion of the transactions contemplated by this Agreement and such other Project Documents, have been duly authorized by all necessary partnership action on the part of the Concessionaire and each Initial Partner and corporate action on the part of the general partner of each Initial Partner, and this Agreement, and each other Project Document to which the Concessionaire is a party and to be executed and delivered on or before the date of this Agreement, has been duly executed and delivered by the Concessionaire by its Initial Partners and constitutes a legal, valid and binding obligation of the Concessionaire and each Initial Partner enforceable in accordance with its terms, except to the extent that the effectiveness of any enforcement action may be limited by bankruptcy, insolvency, liquidation, reorganization or similar laws of general application affecting creditors' rights generally and except that equitable remedies are in the discretion of the court, and subject to such other qualifications as are set out in the opinions of counsel for the Concessionaire and each Initial Partner delivered to the Province and BCTFA in accordance with Section 2.17 [Execution and Delivery of Project Documents];
- (d) the entry into and performance of this Agreement by the Concessionaire and each Initial Partner do not and shall not:
 - (i) conflict with its constating documents; or
 - (ii) conflict with any document which is binding upon it or any of its assets to the extent that such conflict would have or be reasonably likely to have a material adverse effect on the performance by the Concessionaire of its obligations under this Agreement;
- (e) all agreements and consents of third parties required for the execution by the Concessionaire and each Initial Partner of, and performance of its obligations under, this Agreement and the other Project Documents to which it is a party, have been received, other than the Permits contemplated in this Agreement to be obtained in connection with the Project Work, agreements with Governmental Authorities to be entered into as

SOUTH FRASER PERIMETER ROAD PROJECT

- 38 -

contemplated by Section 2.6 [Non-Province Controlled Lands] or Section 4.19 [Agreements with Governmental Authorities], Railway Agreements to be entered into as contemplated by Part 6 [Railway Agreements] of Schedule 8, and agreements with Utility Suppliers to be entered into as contemplated by Section 5.10 [New and Amended Utility Agreements] of Part 1 of Schedule 4;

- (f) since the Financial Submittal Date:
 - (i) there has been no material reduction in the collective qualifications and expertise of the Concessionaire and the Principal Contractors to perform the Project Work; and
 - (ii) there has been no material adverse change in the financial condition of the Concessionaire or any of the Initial Partners or any of the Initial Parent Partners or any of their respective Holding Companies;
- (g) all statements, representations and information provided in the Proposal are correct and accurate in all material respects;
- (h) neither the Concessionaire nor any of the Initial Partners has any knowledge of any fact that materially adversely affects or, so far as it can reasonably foresee, could reasonably be expected to materially adversely affect, either the financial condition of the Concessionaire or its ability to fulfil its obligations under this Agreement or any of the other Project Documents to which it is a party;
- (i) neither the Concessionaire nor any of the Initial Partners is a party to or, to its knowledge, threatened with any litigation or Claims that, if successful, would materially adversely affect the financial condition of the Concessionaire or its ability to fulfil its obligations under this Agreement or any of the other Project Documents to which it is a party;
- (j) the Initial Partners are all the partners of the Concessionaire and the Initial Parent Partners are all the Parent Partners;
- (k) the information set out in Section 3.4 [Concessionaire Ownership Information] of Schedule 2 is true and accurate in all material respects and, except as set out in that Section, the Initial Senior Lending Agreements, the Initial Junior Lending Agreements or the Initial Partnership Agreements, there is not outstanding any offer, agreement or other arrangement whereby:
 - (i) any person is at the date of this Agreement or at any time thereafter entitled to or obligated to subscribe for or take by means of transfer or conversion of any form of investment or security, any Units or any securities or voting rights in the Concessionaire or any of the Initial Partners or any of the Initial Parent Partners or any of Ledcor Investments Inc., Ledcor Industries Inc. or Iridium Concesiones De Infraestructuras, S.A. (including any such entitlement or obligation that may arise in exercise of an option enforceable by or against the Concessionaire or any of the Initial Partners or any of the Initial Parent Partners or any of Ledcor Investments Inc., Ledcor Industries Inc. or Iridium Concesiones De Infraestructuras, S.A. or any other person); or

SOUTH FRASER PERIMETER ROAD PROJECT

- 39 -

- (ii) any alteration to the Initial Partnership Agreements or the power of the Partners or the management committee under the Initial Partnership Agreements may take effect; or
- (iii) any alteration to the constitution or power of any of the Initial Partners or of the board of directors of the general partner of any of the Initial Partners may take effect;
- (l) the copies of the Initial Partnership Agreements and other constating documents of the Concessionaire certified by appropriate officers of the Initial Partners and delivered to the Province pursuant to Section 2.17 [Execution and Delivery of Project Documents], and of the constating documents of the Initial Partners certified by appropriate officers of the general partner of each of the Initial Partners and delivered to the Province pursuant to Section 2.17 [Execution and Delivery of Project Documents], are true and accurate;
- (m) the copies of the Initial Lending Agreements and Principal Contracts certified by appropriate officers of the Initial Partners and delivered to the Province pursuant to Section 2.17 [Execution and Delivery of Project Documents] are true and accurate;
- (n) the Initial Partnership Agreements are the only Partnership Agreements in effect;
- (o) the Initial Lending Agreements are the only Lending Agreements in effect;
- (p) the financial arrangements and other terms set out in the Initial Partnership Agreements and the Initial Lending Agreements constitute the manner in which the Concessionaire will finance the Project, subject to any Refinancings that comply with the requirements of this Agreement;
- (q) the Concessionaire has delivered to the Province true copies of all agreements to which the Concessionaire is a party that are material to the Project or to the affairs of the Concessionaire in relation to the Project;
- (r) the Concessionaire has delivered to the Province true copies of all agreements to which the Concessionaire is a party that are material to the Project or to the affairs of the Concessionaire in relation to the Project;
- (s) all of the Principal Contractors and the Key Individuals are available to carry out their obligations under this Agreement in respect of the Project Work in accordance with this Agreement;
- (t) each of the Project Documents has been executed and delivered by all parties thereto other than the Province and BCTFA, the copies of the Project Documents that the Concessionaire has delivered to the Province and BCTFA are true and complete copies of such documents, and there are not in existence any other agreements or documents replacing or relating to any of the Project Documents which would materially affect the interpretation or application of any of the Project Documents;
- (u) neither the Concessionaire, nor any of the Principal Contractors or Subcontractors, nor the employees of any of them, nor any other person for whom the Concessionaire is in

SOUTH FRASER PERIMETER ROAD PROJECT

- 40 -

law responsible, has, prior to the date of this Agreement, done or caused to be done any of the matters or things referred to in Section 4.4(c) or Section 4.5 [Prohibited Acts]; and

- (v) neither the Concessionaire nor any of the Initial Partners is currently subject to any charge, conviction, ticket, notice of defect or non-compliance, work order, pollution abatement order, pollution prevention order, remediation order or any other order or proceeding under any Environmental Laws that might reasonably be expected to have a material adverse effect on the performance by the Concessionaire of its obligations under this Agreement.

4.22 Without Prejudice

Any covenant, representation, warranty or undertaking made or given by the Concessionaire under any provision of this Agreement is without prejudice to or limitation of any covenant, representation, warranty or undertaking made or given by the Concessionaire under any other provision of this Agreement.

4.23 Survival of Representations and Warranties

All representations and warranties made or given by the Concessionaire under any provision of this Agreement or in any certificate or other document delivered by or on behalf of the Concessionaire at the time of execution of this Agreement are given at the date of execution of this Agreement and shall, unless expressly provided otherwise, survive the execution and delivery of this Agreement and the other Project Documents and are not mitigated or affected by any investigation by or on behalf of the Province.

**PART 5
FINANCING OF THE PROJECT**

5.1 Restrictions on Changes to Partnership Agreements and Junior Lending Agreements

Subject to Section 5.6 [Exempt Transaction], the Concessionaire shall not (and shall ensure that no Contracting Affiliate of the Concessionaire will):

- (a) terminate or permit the termination of any Partnership Agreement or Junior Lending Agreement to which it is a party;
- (b) assign or permit the assignment of any Partnership Agreement or Junior Lending Agreement to which it is a party or any Junior Debt, except for any assignment by way of security in favour of the Senior Lenders in accordance with the Senior Lending Agreements and the other provisions of this Agreement;
- (c) make or agree to or permit the making of any material amendment to or material variation of any Partnership Agreement or Junior Lending Agreement to which it is a party;
- (d) waive or fail to enforce any material rights the Concessionaire (or its Contracting Affiliate, if applicable) may have under, or allow others to depart in any material respect from their material obligations under, any Partnership Agreement or Junior Lending Agreement to which the Concessionaire (or its Contracting Affiliate, if applicable) is a party;

SOUTH FRASER PERIMETER ROAD PROJECT

- 41 -

- (e) enter into any agreement or document, other than the Senior Lending Agreements, that would materially affect the interpretation or application of any Partnership Agreement or Junior Lending Agreement;
- (f) enter into any contract or agreement in replacement of a Partnership Agreement or Junior Lending Agreement; or
- (g) enter into any Partnership Agreement other than the Initial Partnership Agreements or any Junior Lending Agreement other than the Initial Junior Lending Agreements;

unless full particulars of the relevant documents and proposed course of action have been submitted to the Province's Representative and there has been no objection by the Province's Representative in accordance with the Review Procedure.

5.2 Restrictions on Changes to Senior Lending Agreements and Refinancing

Subject to Sections 5.5 [Permitted Borrowing] and 5.6 [Exempt Transaction], the Concessionaire shall not (and shall ensure that no Contracting Affiliate of the Concessionaire will):

- (a) terminate or permit the termination of any Senior Lending Agreement to which it is a party except Hedging Agreements in accordance with their terms;
- (b) assign or permit the assignment of any Senior Lending Agreement to which it is a party;
- (c) make or agree to or permit the making of any material amendment to or material variation of any Senior Lending Agreement to which it is a party;
- (d) waive or fail to enforce any material rights the Concessionaire (or its Contracting Affiliate, if applicable) may have under, or allow others to depart in any material respect from their material obligations under, any Senior Lending Agreement to which the Concessionaire (or its Contracting Affiliate, if applicable) is a party;
- (e) enter into any agreement or document that would materially affect the interpretation or application of any Senior Lending Agreement;
- (f) enter into any contract or agreement in replacement of a Senior Lending Agreement;
- (g) carry out any Refinancing (including a Qualified Refinancing) or any material change to a proposed Refinancing (including a Qualified Refinancing); or
- (h) take any action or enter into any transaction or arrangement in respect of any Senior Lending Agreement or Senior Credit Facility that constitutes a Refinancing (including a Qualified Refinancing);

unless:

- (i) in all cases except a Refinancing (which exception includes a Refinancing that the Concessionaire proposes to carry out as a Qualified Refinancing), full particulars of the relevant documents and proposed course of action have been submitted to the Province's

SOUTH FRASER PERIMETER ROAD PROJECT

- 42 -

Representative and there has been no objection by the Province's Representative in accordance with the Review Procedure;

- (j) in the case of a Refinancing (other than a Refinancing that the Concessionaire proposes to carry out as a Qualified Refinancing) or material change to a proposed Refinancing (other than a Refinancing that the Concessionaire proposes to carry out as a Qualified Refinancing), the requirements of Section 5.4 [Conditions to Implementation of a Refinancing] have been complied with; and
- (k) in the case of a Refinancing that the Concessionaire proposes to carry out as a Qualified Refinancing, the Concessionaire complies with the requirements of Section 5.16 [Qualified Refinancing].

5.3 Refinancing Information

In the case of a proposed Refinancing (other than a Refinancing that the Concessionaire proposes to carry out as a Qualified Refinancing) or a material change to a proposed Refinancing (other than a Refinancing that the Concessionaire proposes to carry out as a Qualified Refinancing), subject to Sections 5.5 [Permitted Borrowing] and 5.6 [Exempt Transaction], the Concessionaire shall promptly provide to the Province's Representative in accordance with the Consent Procedure full particulars of the proposed Refinancing or material change to a proposed Refinancing, including but not limited to:

- (a) a copy of the then current Financial Model, and any proposed update to the Financial Model relating to such Refinancing in compliance with Section 2.18 [Financial Model], and the basis for the assumptions used in the proposed update to the Financial Model;
- (b) a statement, with reasons and supporting assumptions, calculations and documentation, as to whether, in the Concessionaire's opinion, the proposed Refinancing would or would not result in a Refinancing Gain;
- (c) a statement setting out the Province's estimated share of any Refinancing Gain that would result from the proposed Refinancing, in accordance with Section 5.7 [Province's Share of Refinancing Gain] expressed both in terms of a payment under Section 5.7(b)(i) and in terms of payments under Section 5.7(b)(ii), and including particulars of the estimated timing for receipt of the Province's share of the Refinancing Gain under Section 5.7(b)(i); and
- (d) all such other documents and information as the Province's Representative may reasonably request to verify for itself any of the matters referred to in this Section.

5.4 Conditions to Implementation of a Refinancing

In addition to the requirements of Section 5.3 [Refinancing Information], but subject to Sections 5.5 [Permitted Borrowing] and 5.6 [Exempt Transaction], and except for a Qualified Refinancing carried out in accordance with Section 5.16 [Qualified Refinancing], the Concessionaire shall not enter into any transaction that is a Refinancing or a material change to a proposed Refinancing unless:

SOUTH FRASER PERIMETER ROAD PROJECT

- 43 -

- (a) full particulars of such proposed Refinancing or material change have been submitted to the Province's Representative including all information required under Section 5.3 [Refinancing Information];
- (b) the Province's Representative, in accordance with the Consent Procedure, consents to such Refinancing or material change, and to the proposed update to the Financial Model relating to such Refinancing; and
- (c) arrangements satisfactory to the Province's Representative have been made to ensure that the Province receives:
 - (i) its 50% share of any Refinancing Gain resulting from such proposed Refinancing, in accordance with Section 5.7 [Province's Share of Refinancing Gain] and any election or deemed election of the Province under Section 5.7(b) or Section 5.7(c), as applicable; and
 - (ii) its fees, costs and expenses under Sections 5.12 [Payment of Province's Costs] and 5.13 [Refinancing Costs] in respect of the Refinancing or material change.

5.5 Permitted Borrowing

In the case of any action under or transaction with respect to any Senior Lending Agreement that consists solely of a Permitted Borrowing:

- (a) the Province's Representative shall not have a right of objection or consent, and Sections 5.2 [Restrictions on Changes to Senior Lending Agreements and Refinancing], 5.3 [Refinancing Information] and 5.4 [Conditions to Implementation of a Refinancing] shall not apply; and
- (b) in the case of any Additional Permitted Borrowing or any advance under any Committed Standby Facility referred to in subsection (c) of the definition of Permitted Borrowing in Section 1.1 [Definitions] of Schedule 1, the Concessionaire shall, forthwith after the occurrence of such Permitted Borrowing and in any event no later than 10 Business Days thereafter, submit to the Province full particulars of the relevant documents and course of action comprising the Permitted Borrowing including:
 - (i) any action contemplated by any of Sections 5.2(a) to (h) inclusive; and
 - (ii) particulars of why the action or transaction constitutes a Permitted Borrowing including information with respect to the matters referred to in Sections 5.14 [Changes Not to Increase Province's Liability] and 5.15 [Restricted Persons Prohibited].

5.6 Exempt Transaction

In the case of any action under or transaction with respect to any Senior Lending Agreement, Junior Lending Agreement or Partnership Agreement that consists solely of an Exempt Transaction:

SOUTH FRASER PERIMETER ROAD PROJECT

- 44 -

- (a) the Province's Representative shall not have a right of objection or consent, and Sections 5.1 [Restrictions on Changes to Partnership Agreements and Junior Lending Agreements], 5.2 [Restrictions on Changes to Senior Lending Agreements and Refinancing], 5.3 [Refinancing Information] and 5.4 [Conditions to Implementation of a Refinancing] shall not apply; and
- (b) the Concessionaire shall, forthwith after becoming aware of the occurrence of such Exempt Transaction and in any event no later than 10 Business Days after becoming aware of the Exempt Transaction, submit to the Province full particulars of the relevant documents (to the extent available to the Concessionaire) and course of action comprising the Exempt Transaction including:
 - (i) particulars of any action contemplated by any of Sections 5.1(a) to (g) inclusive and Sections 5.2(a) to (h) inclusive; and
 - (ii) particulars of why the action or transaction constitutes an Exempt Transaction including information with respect to the matters referred to in Sections 5.14 [Changes Not to Increase Province's Liability] and 5.15 [Restricted Persons Prohibited].

5.7 Province's Share of Refinancing Gain

- (a) The Province shall be entitled to receive, and the Concessionaire shall pay or cause to be paid to the Province according to the Province's election under Section 5.7(b) or according to Section 5.7(c), as applicable, a 50% share of any Refinancing Gain that results from any Refinancing except an Exempt Refinancing.
- (b) The Province, in its discretion, may elect in respect of any Refinancing to receive its share of any Refinancing Gain in one of the following ways:
 - (i) as payments in the same amounts and at the same time or times as the benefit of the Refinancing Gain is received by the Concessionaire or any of its Partners; or
 - (ii) periodically over the remainder of the Term in the form of decreases in the Availability Payments; or
 - (iii) as a combination of the methods contemplated in Sections 5.7(b)(i) and (ii).
- (c) If in respect of any Refinancing the Province does not make an election as contemplated in Section 5.7(b) within a reasonable period of time after the Concessionaire has provided the information required by Section 5.3 or Sections 5.16(a)(i) and (ii), as applicable, the Province shall be deemed to have elected to receive its share of any Refinancing Gain as provided in Section 5.7(b)(i).

5.8 Calculation of Refinancing Gain

After receipt by the Province of the documents and information to be provided by the Concessionaire pursuant to Section 5.3 [Refinancing Information] or Section 5.16(a), the Province and the Concessionaire shall consult with each other in good faith with respect to:

SOUTH FRASER PERIMETER ROAD PROJECT

- 45 -

- (a) any matters referred to in any of Sections 5.3 [Refinancing Information], 5.4 [Conditions to Implementation of a Refinancing], 5.7 [Province's Share of Refinancing Gain] and 5.16 [Qualified Refinancing], as applicable;
- (b) the calculation of the amount of any Refinancing Gain within the context of the options of the Province as to how the Province receives its share of the Refinancing Gain as contemplated by Sections 5.7(b)(i) to (iii) inclusive; and
- (c) the arrangements for receipt by the Province of its share of any Refinancing Gain.

5.9 Implementation of Refinancing

If any proposed Refinancing (other than a Refinancing that the Concessionaire proposes to carry out as a Qualified Refinancing) is presented to the Province's Representative pursuant to Sections 5.2 [Restrictions on Changes to Senior Lending Agreements and Refinancing] and 5.3 [Refinancing Information] and the requirements of this Part 5 [Financing of the Project] applicable thereto are satisfied, the Concessionaire shall only implement the Refinancing as consented to and agreed upon by the Province in accordance with Section 5.4 [Conditions to Implementation of a Refinancing]. If any material change is proposed with respect to such proposed Refinancing, the Concessionaire shall not carry out or implement the material change without first providing to the Province's Representative full details of the material change pursuant to Sections 5.2 [Restrictions on Changes to Senior Lending Agreements and Refinancing] and 5.3 [Refinancing Information] and in that event the process in this Part 5 [Financing of the Project] shall be repeated, *mutatis mutandis*, in respect of the proposed Refinancing including the material change.

5.10 Province Rights to Audit

The Concessionaire shall, before, during and at any time after any Refinancing (including any Qualified Refinancing), ensure that the Province has unrestricted rights of audit over the Financial Model, any update to the Financial Model, and any other financial model, and to all documentation (including any aspect of the calculation of any Refinancing Gain), used in connection with, or relevant to, such Refinancing, for purposes that include, without limitation, satisfying itself:

- (a) as to the calculation and payment of any Refinancing Gain;
- (b) that the proposed Refinancing (including any Qualified Refinancing) is carried out in the manner presented to the Province pursuant to Sections 5.2 [Restrictions on Changes to Senior Lending Agreements and Refinancing], 5.3 [Refinancing Information], 5.4 [Conditions to Implementation of a Refinancing] and 5.16 [Qualified Refinancing], as applicable; and
- (c) as to whether or not the Refinancing is or was a Qualified Refinancing, an Exempt Transaction or a Permitted Borrowing.

5.11 Copies of Documents

If at any time any action or matter referred to in any of Sections 5.1(a) to (g) inclusive or in any of Sections 5.2(a) to (h) inclusive occurs, the Concessionaire shall deliver to the Province's

SOUTH FRASER PERIMETER ROAD PROJECT

- 46 -

Representative a conformed copy of each document or, if not in writing, a true and complete record thereof in writing, within 10 Business Days after the date of its execution or creation or the occurrence of such action, certified as a true copy or accurate and complete record (as the case may be) by a senior officer or director of the general partner of each of the Partners.

5.12 Payment of Province's Costs

- (a) If particulars of any proposed documents or course of action are submitted to the Province's Representative pursuant to any provision of this Part, or if the Concessionaire requests any consent pursuant to any provision of this Part, or if any action, transaction, event or circumstance occurs or is proposed that requires the consent of the Province's Representative under any provision of this Part or to which the Province's Representative has a right of review or objection under this Part, the Concessionaire shall pay to the Province in accordance with the remaining provisions of this Section 5.12 [Payment of Province's Costs], all reasonable and proper costs and expenses incurred by the Province in connection with reviewing any such submission, request, action, transaction, event or circumstance or making a determination as to the making of an objection or the giving or withholding of consent or any other matter required in connection therewith or related thereto, whether or not any objection is made or any consent is given or any other action is taken by the Province and whether or not the proposed course of action takes place, such costs and expenses to include professional and legal costs and expenses, advisor fees and other out of pocket expenses, fees, costs and expenses charged by Partnerships BC to the Province, and the Province's reasonable internal administrative and personnel costs.
- (b) At the time of the Concessionaire's submission to the Province's Representative pursuant to any of Sections 5.1 [Restrictions on Changes to Partnership Agreements and Junior Lending Agreements], 5.2 [Restrictions on Changes to Senior Lending Agreements and Refinancing], 5.3 [Refinancing Information] and 5.16 [Qualified Refinancing], or pursuant to any other Section in this Part pursuant to which the Province or the Province's Representative has a right of review, objection, consent, verification or other action, and as a condition precedent to the commencement of any time period specified for the Province or the Province's Representative to object, consent or otherwise respond to such submission and to any obligation of the Province to review or consider any matter in respect of which any such submission is made, the Concessionaire shall pay to the Province the sum of \$35,000 (index linked) to be held by the Province on account of the Concessionaire's obligations to pay under this Section 5.12 [Payment of Province's Costs] in respect of such submission.
- (c) The Province may from time to time invoice the Concessionaire for amounts to be paid by the Concessionaire under this Section 5.12 [Payment of Province's Costs]. For each particular matter submitted to the Province's Representative, such invoices shall be paid first out of any funds provided by the Concessionaire under Section 5.12(b) with respect to the matter, to the extent such funds have not been applied to previous invoices. When the aggregate of amounts invoiced in respect a matter exceeds the amount of any funds provided by the Concessionaire under Section 5.12(b) with respect to the matter, the Concessionaire shall pay to the Province within 10 Business Days after invoicing the amount of the excess and the amount of any subsequent invoices in respect of the matter.

SOUTH FRASER PERIMETER ROAD PROJECT

- 47 -

- (d) After any relevant decision or action of the Province is rendered or taken or deemed to have been rendered or taken or any action contemplated by the submission or request has been taken, or, in the case of a proposed Refinancing (including a Qualified Refinancing), after the proposed Refinancing (including a Qualified Refinancing) has either occurred or been abandoned by the Concessionaire, the Province shall invoice the Concessionaire for all amounts to be paid by the Concessionaire under this Section 5.12 [Payment of Province's Costs] not previously invoiced by the Province, and the Province shall refund any overpayment by the Concessionaire on account of amounts to be paid by the Concessionaire under this Section 5.12 [Payment of Province's Costs], and the Concessionaire shall pay any amount owing by it under this Section 5.12 [Payment of Province's Costs], in either case within 10 Business Days after receipt of such invoice.
- (e) The foregoing provisions of this Section 5.12 [Payment of Province's Costs] shall not apply in the case of any action or transaction that consists solely of an Exempt Transaction.

5.13 Refinancing Costs

In the case of a Refinancing (including a Qualified Refinancing but excluding an Exempt Refinancing) that is carried out in accordance with this Part, any calculation of any Refinancing Gain shall be made taking into account the fees, costs and expenses payable under Section 5.12 [Payment of Province's Costs] in respect of such Refinancing, and the reasonable and proper professional costs and expenses reasonably incurred by the Concessionaire in respect of such Refinancing that are payable by it to arm's length third parties.

5.14 Changes Not to Increase Province's Liability

Notwithstanding any other provision of this Agreement and without prejudice to the rights of the Province under the other provisions of this Part, no action referred to in any of Sections 5.1(a) to (g) inclusive or any of Sections 5.2(a) to (h) inclusive, whether or not consented to or permitted under any of Sections 5.1 [Restrictions on Changes to Partnership Agreements and Junior Lending Agreements], 5.2 [Restrictions on Changes to Senior Lending Agreements and Refinancing], 5.4 [Conditions to Implementation of a Refinancing], 5.5 [Permitted Borrowing], 5.6 [Exempt Transaction] and 5.16 [Qualified Refinancing], and no amendment, waiver or exercise of a right under any Lending Agreement or Partnership Agreement, shall have the effect of increasing any liability of the Province or BCTFA arising from early termination of this Agreement, unless:

- (a) the Concessionaire has obtained, in addition to any other consent and any other requirements under this Part, the prior written consent of the Province's Representative under the Consent Procedure expressly consenting, for the purposes of this Section 5.14 [Changes Not to Increase Province's Liability], to the increase in the liability of the Province that would arise from any early termination of this Agreement, which consent the Province may withhold or grant in its discretion; or
- (b) it is a Qualified Refinancing carried out in accordance with Section 5.16 [Qualified Refinancing], but in such case only to the extent that an increase in liability of the Province arising from early termination of this Agreement is permitted under Section 5.16(f)(iv); or

SOUTH FRASER PERIMETER ROAD PROJECT

- 48 -

- (c) it is a Permitted Borrowing under the Senior Lending Agreements of an amount that does not increase the principal amount of Senior Debt outstanding under the Senior Lending Agreements to an amount greater than the aggregate of:
 - (i) the Original Senior Commitment;
 - (ii) the Additional Permitted Borrowing Limit; and
 - (iii) any increases in the principal amount of all funding for the Project committed under the Senior Lending Agreements that:
 - (A) are permitted under Section 5.16(f)(iii) as a direct result of Qualified Refinancings carried out in accordance with Section 5.16 [Qualified Refinancing]; or
 - (B) have previously been consented to by the Province's Representative pursuant to Section 5.14(a);

and, in all cases where Section 5.5(b) applies, the Concessionaire has complied with Section 5.5(b).

5.15 Restricted Persons Prohibited

Notwithstanding any other provision of this Agreement, the Concessionaire shall not carry out or permit any action referred to in any of Sections 5.1(a) to (g) inclusive or any of Sections 5.2(a) to (h) inclusive, and no such action shall be carried out or permitted, if it would, or might reasonably be expected to, involve either:

- (a) a person who is a Restricted Person; or
- (b) a person any of whose Affiliates is, to the knowledge of the Concessionaire (after due and reasonable enquiry), a Restricted Person for any reason other than by reason of subsection (d) of the definition of Restricted Person in Section 1.1 [Definitions] of Schedule 1.

5.16 Qualified Refinancing

- (a) If the Concessionaire proposes to carry out a Refinancing intended to qualify as a Qualified Refinancing for the purposes of this Agreement, the Concessionaire shall notify the Province's Representative of that fact when the Concessionaire believes it is reasonably feasible to complete the Refinancing on the basis that it is a Qualified Refinancing within the next 12 months, and in any event the Concessionaire shall, at least 90 days before the anticipated date for completion of the proposed Refinancing, provide to the Province's Representative:
 - (i) a statement that the Concessionaire proposes to carry out the proposed Refinancing as a Qualified Refinancing for the purposes of this Agreement and identifying which Qualified Refinancing identified in Schedule 26 [Qualified Refinancing Change in Committed Funding Limit] the proposed Qualified Refinancing will constitute; and

SOUTH FRASER PERIMETER ROAD PROJECT

- 49 -

- (ii) particulars of the proposed Qualified Refinancing to the extent then known to the Concessionaire, including, but not limited to:
 - (A) a copy of the then current Financial Model, any proposed update to the Financial Model relating to such proposed Qualified Refinancing in compliance with Section 2.18(d), and the assumptions, and the basis for such assumptions, used in the proposed update to the Financial Model;
 - (B) particulars of how the proposed Qualified Refinancing will qualify as a Qualified Refinancing including particulars of:
 - (1) any increase in the principal amount of all funding for the Project committed under the Senior Lending Agreements that will result from the proposed Qualified Refinancing;
 - (2) the nature (and estimated amount if reasonably capable of being calculated or estimated) of any other potential increase in the liability of the Province on early termination of this Agreement that would or could arise from the proposed Qualified Refinancing;
 - (3) the terms of the proposed Qualified Refinancing;
 - (4) the lenders and other parties proposed to be involved in the proposed Qualified Refinancing; and
 - (5) particulars of the financing instruments to be used to carry out the proposed Qualified Refinancing and their key attributes (especially as to those attributes that would or could affect the liability of the Province on any early termination of this Agreement);
 - (C) a statement, with reasons and supporting assumptions, calculations and documentation, as to whether or not, in the Concessionaire's opinion, the proposed Qualified Refinancing would or could result in a Refinancing Gain;
 - (D) if the proposed Qualified Refinancing would or could result in a Refinancing Gain, a statement setting out the Province's estimated share of the Refinancing Gain in accordance with Section 5.7 [Province's Share of Refinancing Gain] expressed both in terms of payments under Section 5.7(b)(i) and in terms of decreases in the Availability Payments under Section 5.7(b)(ii), and including particulars of the estimated timing for receipt of the Province's share of the Refinancing Gain under Section 5.7(b)(i); and
 - (E) a schedule for implementation of the proposed Qualified Refinancing including the principal milestones and proposed dates for the achievement of such milestones (including the estimated date for closing of the proposed Qualified Refinancing);

SOUTH FRASER PERIMETER ROAD PROJECT

- 50 -

and thereafter the Concessionaire shall promptly provide to the Province's Representative those particulars of the proposed Qualified Refinancing subsequently becoming known to the Concessionaire and not initially provided with the notice of the proposed Qualified Refinancing, and updates of any such particulars and information and changes thereto, as and when they become known or available to the Concessionaire, together with all such other documents and information as the Province's Representative may from time to time reasonably request to verify for itself any of the matters referred to in this Section 5.16 [Qualified Refinancing] (in this Section 5.16 [Qualified Refinancing], "**Pre-Notice Disclosed Information**" means in respect of a proposed Qualified Refinancing the statement, documents and information relating to the proposed Qualified Refinancing provided by the Concessionaire to the Province pursuant to Sections 5.16(a)(i) and (ii) and any additional documents and information relating to such proposed Qualified Refinancing provided by the Concessionaire to the Province's Representative pursuant to this Section 5.16(a) or otherwise before the earlier of the date the Province's Representative gives notice under Section 5.16(b) in respect of such proposed Qualified Refinancing and the date of expiration of the applicable time period for the Province's Representative to give such notice in respect of such proposed Qualified Refinancing under Section 5.16(b), and the earlier of such dates is in this Section 5.16 [Qualified Refinancing] called the "**Province Notice Date**").

- (b) Within 30 days after the date of receipt by the Province's Representative of the statement, documents and information referred to in Sections 5.16(a)(i) and (ii) (other than any further documents and/or information requested by the Province) in respect of a proposed Qualified Refinancing, or within 45 days after such date if the Province requests further documents and/or information pursuant to Section 5.16(a) in respect of such proposed Qualified Refinancing, the Province's Representative may, but shall not be obligated to, notify the Concessionaire that, in the opinion of the Province's Representative acting reasonably, based on the Pre-Notice Disclosed Information in respect of such proposed Qualified Refinancing:
- (i) the Province's Representative considers that the proposed Qualified Refinancing is a Qualified Refinancing identified in Schedule 26 [Qualified Refinancing Change in Committed Funding Limit] and otherwise meets the definition of and the requirements for a Qualified Refinancing set out in Section 1.1 [Definitions] of Schedule 1; or
 - (ii) the Province's Representative considers that the proposed Qualified Refinancing is not a Qualified Refinancing identified in Schedule 26 [Qualified Refinancing Change in Committed Funding Limit] and/or does not meet the definition of or the requirements for a Qualified Refinancing set out in Section 1.1 [Definitions] of Schedule 1, or that the Pre-Notice Disclosed Information in respect of such proposed Qualified Refinancing was insufficient and/or that there was insufficient time for review of the Pre-Notice Disclosed Information to enable the Province's Representative to determine whether or not the proposed Qualified Refinancing is a Qualified Refinancing identified in Schedule 26 [Qualified Refinancing Change in Committed Funding Limit] and/or whether or not it meets the definition of and requirements for a Qualified Refinancing set out in Section 1.1 [Definitions] of Schedule 1, including in each case particulars of why the Province has come to such conclusion.

SOUTH FRASER PERIMETER ROAD PROJECT

- 51 -

- (c) Whether or not the Province's Representative gives any notice under Section 5.16(b)(i) or Section 5.16(b)(ii) or at all in respect of a proposed Qualified Refinancing, the Concessionaire may, but only after the Province Notice Date, proceed with the proposed Qualified Refinancing, without prejudice to the rights and obligations of the parties under Section 5.14 [Changes Not to Increase Province's Liability], the other provisions of this Section 5.16 [Qualified Refinancing] and the other provisions of this Agreement.
- (d) If the Province's Representative does not give notice that it is of the opinion referred to in Section 5.16(b)(i) within the applicable time period provided therefor, and if there is no agreement between the parties as to whether or not a proposed Qualified Refinancing is in fact a Qualified Refinancing identified in Schedule 26 [Qualified Refinancing Change in Committed Funding Limit] that meets the definition of and the requirements for a Qualified Refinancing set out in Section 1.1 [Definitions] of Schedule 1, either the Province or the Concessionaire may submit the matter to the Dispute Resolution Procedure for a determination.
- (e) Subject to the terms of Section 5.14 [Changes Not to Increase Province's Liability], this Section 5.16 [Qualified Refinancing] and the other provisions of this Agreement (including the definition of Qualified Refinancing set out in Section 1.1 [Definitions] of Schedule 1):
 - (i) two or more Refinancings proposed to be carried out as Qualified Refinancings identified in Schedule 26 [Qualified Refinancing Change in Committed Funding Limit] may be proposed and may be carried out together or in combination;
 - (ii) a Refinancing proposed to be carried out as a Qualified Refinancing identified in Schedule 26 [Qualified Refinancing Change in Committed Funding Limit] may only be carried out as a Qualified Refinancing once, either alone or together or in combination with another Qualified Refinancing identified in Schedule 26 [Qualified Refinancing Change in Committed Funding Limit];
 - (iii) subject to Section 5.16(e)(ii), a proposed Qualified Refinancing identified in Schedule 26 [Qualified Refinancing Change in Committed Funding Limit] may be carried out in one or more stages, provided that
 - (A) the requirements of the definition of Qualified Refinancing in Part 1 [Definitions] of Schedule 1 are met and continue to be met with respect to the total of all such stages (including as to timing and as to financing instruments and including that the maximum permitted increase in the principal amount of all funding for the Project committed under the Senior Lending Agreements in respect of such Refinancing shall not increase as a result of the implementation of all such stages by more than the amount shown as the "Maximum Permitted Increase in Committed Funding" for that Qualified Refinancing in Schedule 26 [Qualified Refinancing Change in Committed Funding Limit]); and
 - (B) each stage is carried out by the same or similar type of financing instrument;

SOUTH FRASER PERIMETER ROAD PROJECT

- 52 -

- (iv) if a Refinancing proposed to be carried out as a Qualified Refinancing identified in Schedule 26 [Qualified Refinancing Change in Committed Funding Limit] closes, either alone or together or in combination with another Qualified Refinancing identified in Schedule 26 [Qualified Refinancing Change in Committed Funding Limit], or if a stage thereof as provided in Section 5.16(e)(iii) closes, then in any such case it may not be proposed or carried out as a Qualified Refinancing a second time, either alone or together or in combination with another Qualified Refinancing identified in Schedule 26 [Qualified Refinancing Change in Committed Funding Limit] or in stages; and
- (v) a Refinancing proposed to be carried out as a Qualified Refinancing identified in Schedule 26 [Qualified Refinancing Change in Committed Funding Limit], or a stage thereof referred to in Section 5.16(e)(iii), that is proposed, but does not close, may be proposed again.
- (f) If, in respect of a proposed Qualified Refinancing:
 - (i) the Province's Representative gives notice that it is of the opinion referred to in Section 5.16(b)(i); or
 - (ii) the Province's Representative gives a notice to the effect referred to in Section 5.16(b)(ii), or does not give any notice under Section 5.16(b) within the applicable time period for the giving of such notice, and the proposed Qualified Refinancing is in fact a Qualified Refinancing identified in Schedule 26 [Qualified Refinancing Change in Committed Funding Limit] and otherwise meets the definition of and the requirements for a Qualified Refinancing set out in Section 1.1 [Definitions] of Schedule 1;

then with effect on and after the date of closing of the proposed Qualified Refinancing:

- (iii) any increase in the principal amount of all funding for the Project committed under the Senior Lending Agreements that results directly from the proposed Qualified Refinancing, to the extent such increase is both:
 - (A) within the "Maximum Permitted Increase in Committed Funding" for such Qualified Refinancing set out in Schedule 26 [Qualified Refinancing Change in Committed Funding Limit]; and
 - (B) within the limits for such increase expressly disclosed by the Concessionaire in the Pre-Notice Disclosed Information (or, subject to the limit set out in Section 5.16(f)(iii)(A), such greater amount as may be expressly consented to by the Province's Representative in its discretion);

shall be permitted for the purposes of Section 5.14(c)(iii)(A); and

- (iv) any other increase in the liability of the Province on early termination of this Agreement that results directly from the Qualified Refinancing, provided that the nature (and estimated amount if reasonably capable of being calculated or estimated) thereof was expressly disclosed by the Concessionaire to the Province

SOUTH FRASER PERIMETER ROAD PROJECT

- 53 -

in the Pre-Notice Disclosed Information (or has otherwise been expressly consented to by the Province's Representative in its discretion), shall be permitted for the purposes of Section 5.14(b).

- (g) Section 5.7 [Province's Share of Refinancing Gain] shall apply to any Refinancing that is proposed under this Section 5.16 [Qualified Refinancing] and is carried out and completed, to the extent the Qualified Refinancing results in a Refinancing Gain.
 - (h) In addition to the Concessionaire's obligations under Section 5.16(a), throughout the period from the date the Concessionaire gives to the Province's Representative the statement referred to in Section 5.16(a)(i) in respect of a proposed Qualified Refinancing until the closing or abandonment of the proposed Qualified Refinancing, the Concessionaire shall provide to the Province's Representative, no less frequently than is reasonable (having regard to the progress of the proposed Qualified Refinancing and the purpose for such documents and information as set out below in this Section 5.16(h)), all such updates and additional documents and information as may be required or as the Province's Representative may reasonably request to keep the Province's Representative reasonably informed as to the progress and terms of the proposed Qualified Refinancing and to enable the Province's Representative to satisfy itself:
 - (i) that the proposed Qualified Refinancing will in fact qualify as a Qualified Refinancing; and
 - (ii) as to the other matters referred to in Section 5.16(a).
 - (i) The Concessionaire shall not enter into or carry out any Refinancing that it proposes to carry out under this Section 5.16 [Qualified Refinancing] as a Qualified Refinancing unless:
 - (i) the proposed Qualified Refinancing is a Qualified Refinancing identified in Schedule 26 [Qualified Refinancing Change in Committed Funding Limit] and otherwise meets the definition of and the requirements for a Qualified Refinancing set out in the definition of Qualified Refinancing in Section 1.1 [Definitions] of Schedule 1;
 - (ii) the closing of the proposed Qualified Refinancing occurs within 12 months after the date the Concessionaire gives the Province's Representative the statement referred to in Section 5.16(a)(i) in respect of the Qualified Refinancing; and
 - (iii) the proposed Qualified Refinancing is otherwise carried out in compliance with, and the Concessionaire otherwise complies with, the provisions of this Section 5.16 [Qualified Refinancing];
- all without prejudice to the provisions of Section 5.14 [Changes Not to Increase Province's Liability] and the other provisions of this Agreement.
- (j) If any material change is proposed to a Refinancing that the Concessionaire proposes to carry out as a Qualified Refinancing, the Concessionaire shall not carry out or implement the material change without first providing to the Province's Representative full details of

SOUTH FRASER PERIMETER ROAD PROJECT

- 54 -

the material change pursuant to this Section 5.16 [Qualified Refinancing] and in that event the process in this Part 5 [Financing of the Project], including, if applicable, this Section 5.16 [Qualified Refinancing], shall be repeated, *mutatis mutandis*, in respect of the proposed Qualified Refinancing including the material change.

PART 6
INSURANCE, DAMAGE AND DESTRUCTION

6.1 Insurance Coverages

The Concessionaire shall take out, maintain in force, pay for and renew, or cause to be taken out, maintained in force, paid for and renewed, from Qualified Insurers, insurance for the Project as set out in Schedule 15 [Insurance Requirements] and in accordance with this Part, as follows:

- (a) from the Effective Date until the Western Segment Substantial Completion Date or such later date as may be specified in Part 1 [Insurance Required For Construction] of Schedule 15, the insurance described in Part 1 [Insurance Required For Construction] of Schedule 15, provided that upon the occurrence of the Eastern Segment Substantial Completion Date and upon the Concessionaire taking out the insurance required by Section 6.1(d), the Concessionaire shall not be required to maintain in force the insurance described in Sections 1.4(a) and (b) of Schedule 15 [Insurance Requirements] in respect of the Project Infrastructure comprising the Eastern Segment (including Structures forming part thereof) that is insured under Section 6.1(d);
- (b) during any period of time when any Construction Activities are being carried out after the Western Segment Substantial Completion Date, until Total Completion of such Construction Activities, the insurance described in Part 1 [Insurance Required for Construction] of Schedule 15, unless the Province's Representative determines in its discretion that the risks associated with such work would be adequately insured by the insurance described in Part 2 [Liability Insurance Required for Operation] and Part 3 [Property Insurance Required for Operation] of Schedule 15 and so advises the Concessionaire in writing;
- (c) from the Effective Date until the Termination Date, the insurance described in Part 2 [Liability Insurance Required for Operation] of Schedule 15;
- (d) from the Eastern Segment Substantial Completion Date until the Western Segment Substantial Completion Date, the insurance described in Part 3 [Property Insurance Required for Operation] of Schedule 15, insuring all Project Infrastructure comprising the Eastern Segment (including all Structures forming part thereof);
- (e) from the Western Segment Substantial Completion Date until the Total Completion Date, the insurance described in Part 3 [Property Insurance Required for Operation] of Schedule 15, insuring all Project Infrastructure (including all Structures forming part thereof); and
- (f) from the Total Completion Date until the Termination Date, the insurance described in Part 3 [Property Insurance Required for Operation] of Schedule 15, insuring all Concession Infrastructure (including all Structures forming part thereof);

SOUTH FRASER PERIMETER ROAD PROJECT

- 55 -

such insurance to be taken out at least two Business Days before, and so that it is in effect from, the commencement of the applicable period of time during which the insurance is required (and for clarity the insurance need not take effect until such commencement). The insurance referred to in each of subsections (a), (b), (c), (d), (e) and (f) above is cumulative and is required for the applicable period or periods of time specified therein notwithstanding any overlap with any other insurance or period of time referred to in those subsections. The Concessionaire shall also take out, maintain in force, pay for and renew, or cause to be taken out, maintained in force, paid for and renewed, throughout the Term, from Qualified Insurers, all other insurance as may be required to be taken out from time to time in respect of the Project Work, the Project Site and/or the Project Infrastructure in accordance with any Laws or any Project Site Agreements, Project Site Encumbrances and Railway Agreements, and all other insurance as may be required under any Licenses to Construct.

6.2 Province's Right to Insure

Subject to Section 6.21 [Consequences of Risks Becoming Uninsurable], if the Concessionaire fails or refuses to obtain or maintain in force any Required Insurance, or to provide evidence of such insurance and renewals in relation thereto as and when required and in accordance with this Part, the Province shall, without prejudice to any of its other rights under this Agreement or otherwise, have the right (but not the obligation) itself to procure such insurance, in which event the Concessionaire shall pay to the Province on demand any amounts paid by the Province for that purpose together with an administrative fee equal to 15% of such amounts. Any administrative fee charged under this Section shall not be in duplication of any administrative fee charged under Section 12.3(d) in respect of the same costs and expenses.

6.3 Particular Requirements of Policies

In addition to the requirements of Schedule 15 [Insurance Requirements] and without limiting the generality of the other provisions of this Part 6 [Insurance, Damage and Destruction], the policies for the insurance required by Section 6.1 [Insurance Coverages] must comply with the following:

- (a) all policies of insurance must comply with Section 6.18 [Application of Proceeds of Insurance] and Schedule 15 [Insurance Requirements] as to the named insureds, additional named insureds, additional insureds and loss payees under such policies, as applicable;
- (b) all policies must be issued in the English language and governed by the laws of British Columbia and the laws of Canada applicable therein, or the laws of England or New York if acceptable to the Province's Representative acting reasonably, or such other laws as may be acceptable to the Province in its discretion; and
- (c) all policies of insurance under which the Province or BCTFA is insured or is required to be insured must contain an endorsement to the effect that the policies will not be invalidated and coverage thereunder will not be denied for the Province or BCTFA or any other insureds (other than the Concessionaire, the Concessionaire Indemnified Persons and persons for whom the Concessionaire is in law responsible) by reason of any breach or violation of warranties, representations, declarations or conditions contained in the policies by the Concessionaire, any of the Concessionaire Indemnified Persons, or any person for whom the Concessionaire is in law responsible.

SOUTH FRASER PERIMETER ROAD PROJECT

- 56 -

6.4 Deductibles

If any policies for the Required Insurance or any other insurance required to be taken out by Section 6.1 [Insurance Coverages] provide that the amount payable in the event of any claim, loss or liability shall be reduced by a deductible amount or subject to a waiting period, then the Concessionaire shall be responsible for the deductible amount and/or the waiting period and, in the event of any claim, loss or liability, the Concessionaire shall be responsible for and shall pay, and shall indemnify and hold harmless the Province and the Province Indemnified Persons and each of them in respect of, the amount not paid by the insurer to any of them as a result of any such deductible amount and/or waiting period.

6.5 Concessionaire Insurance Primary

The Concessionaire must ensure that all the Required Insurance is primary and not excess to any insurance of the Province, BCTFA, or any of the other additional named insureds, and does not require the sharing of any loss by the Province or BCTFA, or by any insurance of the Province or BCTFA.

6.6 Release of the Province for Insured Loss

- (a) Subject to Section 6.6(b), the Concessionaire, for itself and its successors and assigns, hereby releases the Province, BCTFA and those persons for whom the Province is in law responsible, and their successors and assigns, from any and all financial liability for:
 - (i) damage to any property or any other loss required to be insured by the Required Insurance or actually insured by the Concessionaire or any Principal Contractor or Subcontractor (whether or not required to be insured by the Required Insurance); and
 - (ii) any delay in start up, business interruption, extra expense, loss of income and loss of profit related thereto;

caused by any of the perils against which the Concessionaire or any Principal Contractor or Subcontractor has insured or against which by the terms of this Agreement the Concessionaire is required to insure or to procure insurance, and whether or not such loss or damage may have arisen out of any act, omission or negligence of the Province, BCTFA or any person for whom the Province is in law responsible.

- (b) The release in Section 6.6(a) shall not apply to the extent that both:
 - (i) the Province would, but for Section 6.6(a), be liable under this Agreement in respect of the damage to property or other loss required to be insured by the Required Insurance; and
 - (ii) the amount of the relevant loss exceeds the amount of insurance required to be obtained under Schedule 15 [Insurance Requirements] in respect of such property or other loss.

6.7 Compliance with Policies

- (a) The Concessionaire shall comply with the terms, conditions and requirements of all policies for the Required Insurance, shall not do or omit to do, or permit to be done or

SOUTH FRASER PERIMETER ROAD PROJECT

- 57 -

omitted by any person for whom the Concessionaire is in law responsible or, insofar as it is within its power or the power of any of its Principal Contractors or Subcontractors, any other person (other than the Province, BCTFA and persons for whom the Province is in law responsible), anything on or with respect to the Project Site or the Project Infrastructure or with respect to the Project Work that could result in or could reasonably be expected to result in the cancellation of any Required Insurance or that would entitle any insurer to refuse to pay any claim under the policy for any Required Insurance or that would diminish the value of any claim under the policy of Required Insurance.

- (b) Provided the Province has been provided with copies of the policies of Required Insurance, neither the Province nor BCTFA shall do, or permit to be done by any person for whom the Province is in law responsible, anything on or with respect to the Project Site or the Project Infrastructure (excluding lawful acts of the Province or BCTFA required or permitted under this Agreement) that could result in or reasonably be expected to result in the cancellation of any Required Insurance or that would entitle any insurer to refuse to pay any claim under the policy for any Required Insurance or that would diminish the value of any claim under the policy of Required Insurance.

6.8 Evidence of Insurance

- (a) The Concessionaire shall provide to the Province's Representative at least 10 Business Days before:
 - (i) in the case of the insurance required by Sections 6.1(a) and 6.1(c), the Effective Date;
 - (ii) in the case of the insurance required by Section 6.1(d), the Eastern Segment Substantial Completion Date;
 - (iii) in the case of the insurance required by Section 6.1(e), the Western Segment Substantial Completion Date;
 - (iv) in the case of the insurance required by Section 6.1(f), the Total Completion Date; and
 - (v) in the case of the insurance required by Section 6.1(b), the commencement of any period of time referred to in Section 6.1(b);

drafts of a cover note and a certificate of insurance for each policy for the required insurance. Each cover note and certificate of insurance must be in a form and to be signed by an authorized signatory of the insurers or of the insurers' insurance broker or insurance intermediary satisfactory to the Province's Representative acting reasonably, and must be sufficient to confirm the insurance and the terms and conditions thereof, as required by this Agreement, and, for such purposes, the Concessionaire shall cause the cover note and the certificate of insurance to be revised as the Province's Representative may reasonably require.

- (b) At least two Business Days before:

SOUTH FRASER PERIMETER ROAD PROJECT

- 58 -

- (i) in the case of the insurance required by Sections 6.1(a) and 6.1(c), the Effective Date;
- (ii) in the case of the insurance required by Section 6.1(d), the Eastern Segment Substantial Completion Date;
- (iii) in the case of the insurance required by Section 6.1(e), the Western Segment Substantial Completion Date;
- (iv) in the case of the insurance required by Section 6.1(f), the Total Completion Date; and
- (v) in the case of the insurance required by Section 6.1(b), the commencement of any period of time referred to in Section 6.1(b);

the Concessionaire shall deliver to the Province's Representative, for each policy for any Required Insurance, the cover note and certificate of insurance for the policy, as provided in draft to the Province's Representative pursuant to Section 6.8(a), and as revised as reasonably required by the Province's Representative pursuant to Section 6.8(a), signed by an authorized signatory of the insurers or of the insurers' insurance broker or insurance intermediary satisfactory to the Province's Representative acting reasonably, confirming that the insurance has been obtained and will on or before the required date be in full force and effect, in each case together with:

- (vi) evidence satisfactory to the Province's Representative acting reasonably that the deposit premiums payable therefor have been paid; and
 - (vii) where the premium for any policy is not fully paid prior to the relevant date for the insurance specified in Section 6.8(b)(i), Section 6.8(b)(ii), Section 6.8(b)(iii), Section 6.8(b)(iv) or Section 6.8(b)(v), a statement to that effect certified by the Concessionaire setting out the due dates for payment of the remaining premiums and the amount payable on each due date.
- (c) Not later than five Business Days after each due date referred to in Section 6.8(b)(vii), the Concessionaire shall provide to the Province's Representative evidence satisfactory to the Province's Representative acting reasonably that the premiums due on that due date have been paid and that the insurance has not been cancelled and is not susceptible to cancellation for non-payment of such premiums.
 - (d) The Concessionaire shall provide to the Province's Representative certified copies of all policies of insurance, certified by the insurer or its agent, within 90 days after the date the insurance is required to be in effect under this Agreement.
 - (e) The Concessionaire shall provide such additional evidence of compliance with this Part as may reasonably be requested by the Province's Representative from time to time.

SOUTH FRASER PERIMETER ROAD PROJECT

- 59 -

6.9 Renewal

- (a) At least 10 Business Days before the expiration or cancellation of any policy for any Required Insurance, unless such policy is no longer required by the terms of this Part and Schedule 15 [Insurance Requirements], the Concessionaire shall provide to the Province's Representative drafts of a cover note and a certificate of insurance for the renewal or replacement of such policy. Each cover note and certificate of insurance must be in a form and to be signed by an authorized signatory of the insurers or of the insurers' insurance broker or insurance intermediary satisfactory to the Province's Representative acting reasonably, and must be sufficient to confirm the insurance and terms and conditions thereof, as required by this Agreement, and, for such purposes, the Concessionaire shall cause the cover note and the certificate of insurance to be revised as the Province's Representative may reasonably require.

- (b) At least two (2) Business Days before the expiration or cancellation of any policy to be renewed or replaced as provided in Section 6.9(a), the Concessionaire shall deliver to the Province's Representative, for each such policy, the cover note and certificate of insurance for the renewal or replacement of the policy, as provided in draft to the Province's Representative pursuant to Section 6.9(a), and as revised as reasonably required by the Province's Representative pursuant to Section 6.9(a), signed by an authorized signatory of the insurers or of the insurers' insurance broker or insurance intermediary satisfactory to the Province's Representative acting reasonably, confirming that the insurance has been obtained and will be in full force and effect at or before the time of expiry or cancellation of the policy being renewed or replaced, in each case together with:
 - (i) evidence satisfactory to the Province's Representative acting reasonably that the deposit premiums payable therefor have been paid; and
 - (ii) where the premium for the renewal or replacement of any policy is not fully paid prior to the expiration or cancellation of any policy to be renewed or replaced, a statement to that effect certified by the Concessionaire setting out the due dates for payment of the remaining premiums and the amount payable on each due date.

- (c) Not later than five Business Days after each due date referred to in Section 6.9(b)(ii), the Concessionaire shall provide to the Province's Representative evidence satisfactory to the Province's Representative acting reasonably that the premiums due on that due date have been paid and that the insurance has not been cancelled and is not susceptible to cancellation for non-payment of such premiums.

6.10 Copies of Communications

At the time the Concessionaire provides to the Province's Representative any submittal, notice or other communication with respect to insurance under this Part 6 [Insurance, Damage and Destruction] or Schedule 15 [Insurance Requirements], the Concessionaire shall at the same time provide a copy of such submittal, notice, other communication and a copy of all documents and enclosures therewith, to "The Corporate Insurance and Bonds Manager" at Ministry of Transportation and Infrastructure, P.O. Box 9850 STN Prov Govt, 4th Floor, 940 Blanshard Street, Victoria, BC, V8W 9T5 (or at such other address as the Province's Representative may from time to time by notice to the Concessionaire advise).

SOUTH FRASER PERIMETER ROAD PROJECT

- 60 -

6.11 Review of Insurance by Province

Without limiting Section 2.13 [Review, Approval, Inspection and Audit by the Province], the submission or delivery to the Province's Representative, and the receipt, review, approval or acceptance by the Province or the Province's Representative of any insurance policy or any draft or certified copy of an insurance policy or any certificate of insurance, cover note or other evidence of compliance with this Part and Schedule 15 [Insurance Requirements], shall not, irrespective of whether any objection is made thereto by the Province's Representative:

- (a) imply any acceptance by the Province or BCTFA that the extent of the insurance coverage is sufficient or that the terms and conditions thereof are satisfactory, in either case for the purposes of the Project or this Agreement; or
- (b) relieve or exempt or be deemed to relieve or exempt the Concessionaire or any other person from any of its obligations and liabilities under this Agreement or any of the other Province Project Documents or at law or in equity including its obligations to insure as provided in this Part 6 [Insurance, Damage and Destruction] and Schedule 15 [Insurance Requirements]; or
- (c) derogate from, limit or prejudice any rights of the Province under this Agreement.

6.12 Workers' Compensation Coverage

The Concessionaire shall at all times during the Term carry and pay for or cause to be carried and paid for full workers' compensation coverage of all workers, employees and others engaged in the performance of the Project Work. The Concessionaire shall, at the request of the Province's Representative from time to time, provide to the Province's Representative evidence satisfactory to the Province's Representative acting reasonably that such coverage is in effect and that all assessments payable under the *Workers' Compensation Act* (British Columbia) in respect of the Project have been paid.

6.13 Claims

- (a) The Concessionaire shall maintain a written register of all claims and incidents which might result in a claim under any of the policies of Required Insurance and shall allow the Province to inspect such register at any time on reasonable notice.
- (b) The Concessionaire shall in addition notify the Province within five Business Days after making any claim under any of the policies for the Required Insurance where the value of the claim exceeds \$25,000 (index linked) or (regardless of the value of the claim) the claim involves bodily injury or death, accompanied by full particulars of the incident giving rise to the claim.
- (c) In the event of any claim or loss to which any Required Insurance may apply, the Concessionaire shall, and shall ensure that the relevant insured (other than the Province and BCTFA) shall, promptly and diligently notify all applicable insurers, file all required proofs of claim, supply to the insurers and adjusters all required documents and information, and generally execute and deliver all documents and do all acts and things that may be reasonably required to obtain the benefit of the insurance for the insureds thereunder including the additional named insureds and additional insureds.

SOUTH FRASER PERIMETER ROAD PROJECT

- 61 -

- (d) The Province shall have the right to be a party to and to participate in any claims settlement under any policy of property insurance insuring the Project Infrastructure or any part thereof required by this Agreement to be part of the Required Insurance, and to make and submit its own claim with respect to any loss or damage separately from any claim of the Concessionaire or any other person.

6.14 Insurance Not to Prejudice

Neither full compliance by the Concessionaire nor a failure to comply by the Concessionaire with the requirements of this Part 6 [Insurance, Damage and Destruction] shall derogate from, limit or prejudice any rights of the Province under this Agreement or relieve the Concessionaire from any of its other obligations or liabilities under this Agreement.

6.15 Restoration and Reinstatement of Damage or Destruction

Unless this Agreement is terminated in accordance with its terms (including under Section 8.6 [Termination for Force Majeure Event] or Section 8.7 [Termination for Damage or Destruction]), if all or any part of the Project Infrastructure or the Project Site is damaged or destroyed, the Concessionaire shall restore, replace and reinstate such damage or destruction (the "**Reinstatement Work**") promptly and in any event as soon as practicable in the circumstances. Except as otherwise expressly provided in this Agreement, damage to or destruction of all or any part of the Project Infrastructure or the Project Site shall not terminate this Agreement or relieve the Concessionaire of any of its obligations under this Agreement or entitle the Concessionaire to any compensation from the Province or BCTFA.

6.16 Reinstatement Plan

If all or any part of the Project Infrastructure or the Project Site is damaged or destroyed, in addition to the requirements of Section 8.6 [Termination for Force Majeure Event] or Section 8.7 [Termination for Damage or Destruction], if the Reinstatement Work is reasonably estimated to cost more than \$10,000,000 (index linked) or in any other case where the Province's Representative, having regard to the nature of the damage or destruction, notifies the Concessionaire that a Reinstatement Plan is required (excluding where the damage or destruction occurs before the Total Completion Date and the Province's Representative acting reasonably considers that the continued application of the Design and Certification Procedure would be able to adequately address the Reinstatement Work without the need for a separate Reinstatement Plan), the Concessionaire shall, as soon as practicable and in any event within 20 Business Days after the occurrence of the damage or destruction or receipt of notification from the Province's Representative, as the case may be, (or if, with the exercise of all due diligence, more than 20 Business Days is reasonably required for such purposes, then within such longer period of time after the occurrence of such damage or destruction or receipt of notification from the Province's Representative, as the case may be, as may be reasonably required with the exercise of all due diligence, provided the Concessionaire exercises and continues to exercise all such due diligence) submit to the Province's Representative pursuant to the Consent Procedure a plan (a "**Reinstatement Plan**") prepared by the Concessionaire for carrying out the Reinstatement Work setting out, in reasonable detail, *inter alia*:

- (a) a description of the Reinstatement Work required to restore, replace and reinstate the damage or destruction (in accordance, where applicable, with any Province Change issued in respect thereof);

SOUTH FRASER PERIMETER ROAD PROJECT

- 62 -

- (b) an estimate of the cost to carry out the Reinstatement Work and confirmation of whether or not there are sufficient funds available to the Concessionaire from all sources, including debt, equity, letters of credit, construction or other security, insurance proceeds, deductibles for which the Concessionaire is responsible in accordance with this Agreement, recourse against third parties, amounts required to be paid by the Province to the Concessionaire pursuant to Section 8.3(b) or otherwise under this Agreement, but without imposing any obligation on the Concessionaire to obtain any new debt or equity in order to carry out the Reinstatement Work, to allow the Concessionaire to complete the Reinstatement Work while meeting its payment and other obligations under the Senior Lending Agreements, together with reasonable supporting documentation;
- (c) the Concessionaire's proposed schedule for the execution of the Reinstatement Work;
- (d) the proposed terms upon which the Reinstatement Work is to be effected and the procurement procedure which the Concessionaire proposes to implement to procure the execution of the Reinstatement Work (which procurement procedure must, in any circumstances in which the Province is required to pay in accordance with the terms of this Agreement, or may otherwise agree to pay, for all or any part of the Reinstatement Work, comply with applicable Provincial public procurement policies and requirements and, if required by the Province's Representative in order to comply with such applicable Provincial public procurement policies and requirements, must be a competitive procedure designated by the Province's Representative and conducted under the supervision of the Province's Representative);
- (e) if the damage or destruction occurs prior to the Total Completion Date, the Concessionaire's proposal for any amended Project Schedule and/or Works Schedule necessary to accommodate the proposed schedule for the execution of the Reinstatement Work (which proposal shall be dealt with in accordance with the provisions of Schedule 3 [Project Schedule], as applicable); and
- (f) the Concessionaire's proposal for any related amendment to the Traffic Management Plan required in connection with the execution of the Reinstatement Work;

and the Reinstatement Work must not be commenced until the Province's Representative consents thereto in accordance with the Consent Procedure except to the extent necessary to address any emergency or public safety needs.

6.17 Conduct of Reinstatement Work

The Concessionaire shall carry out the Reinstatement Work in accordance with the Project Requirements and all other applicable requirements under this Agreement and, where applicable, in accordance with the Reinstatement Plan accepted by the Province's Representative in accordance with the Consent Procedure. All designs, plans and specifications in respect of the Reinstatement Work shall be subject to the Design and Certification Procedure. If requested by the Province's Representative, the persons retained by the Concessionaire to design and carry out any Reinstatement Work shall, as a condition to their retainer and prior to commencing any Reinstatement Work or design work in connection therewith, enter into a Collateral Agreement with the Province, BCTFA and the Concessionaire in substantially the same form as the Collateral Agreement entered into by the Principal Contractors.

SOUTH FRASER PERIMETER ROAD PROJECT

- 63 -

6.18 Application of Proceeds of Insurance

The Concessionaire shall ensure that the insurers under any of the policies of Required Insurance pay the proceeds of insurance under such policies as follows:

- (a) in the case of any policy for the insurance referred to in any of Sections 1.1 [Third Party Liability Insurance During Construction], 1.3 [Automobile Insurance], 2.1 [Third Party Liability Insurance During Operations] and 2.3 [Automobile Insurance] of Schedule 15, the proceeds of insurance shall be paid directly to the third party or, where any insured party has discharged the relevant liability to the third party prior to the payment of any relevant insurance proceeds, to the insured party who discharged the relevant liability;
- (b) in the case of any policy for the insurance referred to in either of Sections 1.4(a) or 3.1(a) of Schedule 15 [Insurance Requirements] (excluding any delay in start up, extra expense, business interruption, loss of income or loss of profits insurance proceeds payable under any such policy), the proceeds of insurance shall be paid to the Insurance Trustee as first loss payee, except where:
 - (i) the Concessionaire has already Totally Completed the Reinstatement Work in respect of the damage or destruction that gave rise to the proceeds; or
 - (ii) the insurance proceeds payable in respect of any single claim made under the relevant insurance policy is equal to or less than \$15,000,000 (index linked);

in either of which cases the proceeds may be paid directly to the Concessionaire or the relevant insured; provided that, where the proceeds of any such insurance policy (other than any delay in start up, extra expense, business interruption or loss of profits insurance policy proceeds payable to the Concessionaire) are paid to the Concessionaire in respect of any single claim equal to or less than \$15,000,000 (index linked), the Concessionaire shall ensure that such proceeds are applied to the Reinstatement Work in respect of the damage or destruction that gave rise to the proceeds and not for any other purpose; and provided further that, where the proceeds of such policies of insurance are payable in whole or in part to the Insurance Trustee pursuant to this Section 6.18(b) (such proceeds, together with any interest, distribution or other gain from time to time received by the Insurance Trustee in respect thereof pursuant to Section 4.2 [Investment of Property Damage Insurance Records] of the Insurance Trust Agreement, are called the “**Property Damage Insurance Proceeds**”), then either Section 6.18(c) or Section 6.18(d) shall apply;

- (c) if the Concessionaire has, in accordance with the provisions of the relevant Reinstatement Plan, entered into a contract with a third party for the purpose of carrying out the Reinstatement Work in respect of the damage or destruction that gave rise to Property Damage Insurance Proceeds being paid by insurers to the Insurance Trustee:
 - (i) if, in accordance with such contract, the Concessionaire is required to make a payment to such third party for such purpose, and if the Concessionaire submits to the Province’s Representative pursuant to the Review Procedure:
 - (A) a copy of an invoice from such third party to the Concessionaire for payment of the cost of such Reinstatement Work;

SOUTH FRASER PERIMETER ROAD PROJECT

- 64 -

- (B) such supporting documentation and detail as may be reasonably required by the Province's Representative with respect to the Reinstatement Work that is the subject of the invoice and the cost thereof including documents and information to establish and verify the applicable matters referred to in Sections 2.7(d)(i) to (v) inclusive of Schedule 2 [Representatives, Review Procedure and Consent Procedure] in respect of the Reinstatement Work and the Property Damage Insurance Proceeds;
- (C) standard British Columbia Ministry of Transportation and Infrastructure evidence (or other evidence satisfactory to the Province's Representative acting reasonably) that the provisions of Section 4.2 [Payments to Contractors] and Section 6.12 [Workers' Compensation Coverage] have been complied with in respect of the Reinstatement Work and that there are no outstanding builders' liens or claims therefor in respect of such Reinstatement Work; and
- (D) written confirmation of the Concessionaire addressed to the Province that the amount of the invoice is justly due and payable in accordance with the relevant contract and that the Concessionaire requires such invoice to be discharged out of the Property Damage Insurance Proceeds;

then the Province shall, not later than the later of:

- (E) the date that is five Business Days after the date on which there has been (or deemed to have been) no objection by the Province's Representative under the Review Procedure to the submittal referred to in Sections 6.18(c)(i)(A) to (D) inclusive; and
- (F) the date that is seven Business Days prior to the due date for payment of such invoice by the Concessionaire under the terms of the relevant contract;

authorize and direct the Insurance Trustee in writing to pay to the relevant third party, out of the Property Damage Insurance Proceeds paid to the Insurance Trustee on account of the damage or destruction to which the Reinstatement Work relates, an amount equal to the lesser of the amount of such Property Damage Insurance Proceeds paid to the Insurance Trustee and the amount of such invoice; and

- (ii) upon completion of the relevant Reinstatement Work and the issuance of a Certificate of Total Completion in respect of the Reinstatement Work pursuant to the Design and Certification Procedure, if the Concessionaire submits to the Province's Representative pursuant to the Review Procedure:
 - (A) a copy of the Certificate of Total Completion in respect of such Reinstatement Work;
 - (B) an invoice for payment to the Concessionaire of the balance (if any) of any such Property Damage Insurance Proceeds; and

SOUTH FRASER PERIMETER ROAD PROJECT

- 65 -

- (C) standard British Columbia Ministry of Transportation and Infrastructure evidence (or other evidence satisfactory to the Province's Representative acting reasonably) that the provisions of Section 4.2 [Payments to Contractors] and Section 6.12 [Workers' Compensation Coverage] have been complied with in respect of the Reinstatement Work and that there are no outstanding builders' liens or claims therefor in respect of such Reinstatement Work;

the Province shall, subject to any specific requirements of the insurers, within five Business Days after the date on which there has been (or deemed to have been) no objection by the Province's Representative under the Review Procedure to the submittal referred to in Sections 6.18(c)(ii)(A) to (C) inclusive, authorize and direct the Insurance Trustee in writing to pay to the Concessionaire the balance (if any) of the Property Damage Insurance Proceeds paid to the Insurance Trustee on account of the damage or destruction to which the Reinstatement Work relates;

- (d) if the Concessionaire itself, in accordance with the provisions of the relevant Reinstatement Plan, carries out the Reinstatement Work in respect of which the Insurance Proceeds have been paid to the Insurance Trustee, then:
 - (i) if the Concessionaire submits to the Province's Representative pursuant to the Review Procedure:
 - (A) a certificate from the Concessionaire addressed to the Province confirming in writing the amount of the Property Damage Insurance Proceeds claimed by the Concessionaire, based on the value of the Reinstatement Work carried out by the Concessionaire;
 - (B) such supporting documentation and detail as may be reasonably required by the Province's Representative with respect to the Reinstatement Work that is the subject of the invoice and the cost thereof (which may include a Mark-up for overhead and profit in accordance with Section 2.4 [Valuation of Change in Costs] of Schedule 11) including documents and information to establish and verify the applicable matters referred to in Sections 2.7(d)(i) to (v) inclusive of Schedule 2 [Representatives, Review Procedure and Consent Procedure] in respect of the Reinstatement Work and the Property Damage Insurance Proceeds;
 - (C) standard British Columbia Ministry of Transportation and Infrastructure evidence (or other evidence satisfactory to the Province's Representative acting reasonably) that the provisions of Section 4.2 [Payments to Contractors] and Section 6.12 [Workers' Compensation Coverage] have been complied with in respect of the Reinstatement Work and that there are no outstanding builders' liens or claims therefor in respect of such Reinstatement Work; and
 - (D) written confirmation from the Concessionaire addressed to the Province that the amount of the certificate is justly due and payable in accordance

SOUTH FRASER PERIMETER ROAD PROJECT

- 66 -

with this Agreement and that the Concessionaire requires such certificate to be discharged out of the Property Damage Insurance Proceeds;

then the Province shall, within five Business Days after the date on which there has been (or deemed to have been) no objection by the Province's Representative under the Review Procedure to the submittal referred to in Section 6.18(d)(i)(A) to (D) inclusive, authorize and direct the Insurance Trustee in writing to pay to the Concessionaire, out of the Property Damage Insurance Proceeds paid to the Insurance Trustee on account of the damage or destruction to which the Reinstatement Work relates, an amount equal to the lesser of the amount of such Property Damage Insurance Proceeds paid to the Insurance Trustee and the amount claimed in such certificate; and

(ii) upon completion of the relevant Reinstatement Work and the issuance of a Certificate of Total Completion in respect of the Reinstatement Work pursuant to the Design and Certification Procedure, if the Concessionaire submits to the Province's Representative pursuant to the Review Procedure:

- (A) a copy of the Certificate of Total Completion in respect of such Reinstatement Work;
- (B) an invoice for payment to the Concessionaire of the balance (if any) of any such Property Damage Insurance Proceeds; and
- (C) standard British Columbia Ministry of Transportation and Infrastructure evidence (or other evidence satisfactory to the Province's Representative acting reasonably) that the provisions of Section 4.2 [Payments to Contractors] and Section 6.12 [Workers' Compensation Coverage] have been complied with in respect of the Reinstatement Work and that there are no outstanding builders' liens or claims therefor in respect of such Reinstatement Work;

the Province shall, subject to any specific requirements of the insurers, within five Business Days after the date on which there has been (or deemed to have been) no objection by the Province's Representative under the Review Procedure to the submittal referred to in Sections 6.18(d)(ii)(A) to (C) inclusive, authorize and direct the Insurance Trustee in writing to pay to the Concessionaire the balance (if any) of the Property Damage Insurance Proceeds paid to the Insurance Trustee on account of the damage or destruction to which the Reinstatement Work relates; and

(e) in the case of any insurance other than that referred to in Sections 6.18(a) and (b), so as to ensure the performance by the Concessionaire of its obligations under this Agreement. Proceeds of delay in start up insurance and business interruption insurance may be used to pay Concessionaire's debt service and other costs incurred by the Concessionaire covered by such insurance and if so paid shall be deemed to have been paid to ensure the performance by the Concessionaire of its obligations under this Agreement.

SOUTH FRASER PERIMETER ROAD PROJECT

- 67 -

6.19 Repayment of Insurance Proceeds

The Concessionaire hereby undertakes that if, following payment to the Concessionaire or to a third party at the request of or on behalf of the Concessionaire as contemplated by Sections 6.18(c) and (d), the Province receives a *prima facie* valid demand from the relevant insurer for all or any part of the Property Damage Insurance Proceeds, the Concessionaire shall pay to the insurer the amount demanded within the time period stated in the demand.

6.20 Uninsurability

The Province may notify the Concessionaire, and the Concessionaire shall forthwith notify the Province, if a Principal Insured Risk becomes or is expected to become Uninsurable. In addition, the Concessionaire may notify the Province if an Insured Business Interruption Risk under Specified Business Interruption Insurance that the Concessionaire has obtained and is in effect from Qualified Insurers becomes or is expected to become Uninsurable and such risk being Uninsurable constitutes or would constitute a breach of or a default under, or otherwise entitles or would entitle the Senior Lenders to enforce their security under, the Senior Lending Agreements. If the Province and the Concessionaire agree or it is determined in accordance with the Dispute Resolution Procedure that the relevant risk is or is about to become Uninsurable and that the risk being Uninsurable is not and will not be caused by the actions or omissions of the Concessionaire or any person for whom the Concessionaire is in law responsible, then the Province and the Concessionaire together with their respective insurance advisors shall meet to discuss the means by which such risk should be managed (including considering the feasibility of self-insurance by any or all parties or waiver of any term or condition that is causing the risk to be Uninsurable or contributing to the risk being Uninsurable).

6.21 Consequences of Risks Becoming Uninsurable

If it is agreed or determined in accordance with Section 6.20 [Uninsurability] that the relevant risk is, or is about to become, Uninsurable but the Province and the Concessionaire cannot agree on how to manage such risk, then if the risk has become or becomes Uninsurable (the “**Uninsurable Risk**”):

- (a) the Province shall forthwith elect, by notice to the Concessionaire having immediate effect, either:
 - (i) subject to Section 14.7 [Notice of Intention to Terminate and Dispute], to terminate this Agreement, in which event compensation on termination shall be payable in accordance with Part 2 [Compensation on Non-Default Termination] and Part 7 [General Provisions] of Schedule 13; or
 - (ii) to allow this Agreement to continue, in which event Section 6.21(b) shall thereafter apply in respect of the Uninsurable Risk; and
- (b) if the Province elects to allow this Agreement to continue as contemplated in Section 6.21(a)(ii), then this Agreement shall continue, but if the Uninsurable Risk is a Principal Insured Risk, the Concessionaire shall not be obligated by this Agreement to maintain insurance in respect of the Uninsurable Risk that is a Principal Insured Risk and references in this Agreement to the Required Insurance shall be construed accordingly. In the event that this Agreement continues, then commencing on the date the Province elects to allow this Agreement to continue as contemplated in Section 6.21(a)(ii) and continuing

SOUTH FRASER PERIMETER ROAD PROJECT

- 68 -

for the period during which the Uninsurable Risk is Uninsurable, the Concessionaire shall pay to the Province monthly in advance or, if and to the extent Availability Payments are payable at that time, each Availability Payment shall be reduced by, an amount equal to one-twelfth ($1/12$) of the annual premium cost paid by the Concessionaire to insure the Uninsurable Risk immediately before the Uninsurable Risk became Uninsurable, index linked from the date that the Uninsurable Risk became Uninsurable, such amount to be determined by agreement of the Province and the Concessionaire acting reasonably or, failing such agreement, by the Dispute Resolution Procedure. On the occurrence of the Uninsurable Risk (but, in the case of an Uninsurable Principal Insured Risk, only if the occurrence takes place before the time the Concessionaire is required to have insured the risk after it ceases to be Uninsurable as provided in Section 6.25 [Uninsurable Risks Becoming Insurable]) and, if the Uninsurable Risk that has occurred is an Insured Business Interruption Risk, only if the occurrence takes place before the Insured Business Interruption Risk ceases to be Uninsurable), the Province shall, at its option, elect by notice in writing to the Concessionaire having immediate effect, either:

- (i) to allow this Agreement to continue, in which event the Province shall:
 - (A) pay to the Concessionaire, in accordance with Section 6.18 [Application of Proceeds of Insurance], an amount equal to the insurance proceeds that would, in accordance with Section 6.18 [Application of Proceeds of Insurance], have been payable by insurers directly to the Concessionaire in respect of the Uninsurable Risk that occurred had the relevant insurance continued to be in effect; and
 - (B) be responsible for and disburse in accordance with Section 6.18 [Application of Proceeds of Insurance] (subject to satisfaction of all conditions to such disbursement provided for in that Section) amounts equal to the insurance proceeds that would, in accordance with Section 6.18 [Application of Proceeds of Insurance], have been payable by insurers directly to third parties, or to the Province, or to the Insurance Trustee, in respect of the Uninsurable Risk that occurred had the relevant insurance continued to be in effect, except that the Province shall not be required to deposit the amount with the Insurance Trustee; or
- (ii) subject to Section 14.7 [Notice of Intention to Terminate and Dispute], to terminate this Agreement, in which event compensation on termination shall be payable in accordance with Part 2 [Compensation on Non-Default Termination] and Part 7 [General Provisions] of Schedule 13;

provided that the Province may not in any such case elect to terminate this Agreement pursuant to Section 6.21(b)(ii) if the Concessionaire releases the Province from all obligations under Section 6.21(b)(i) and deposits with the Province (or with the Insurance Trustee in the case of the occurrence of an Uninsurable Risk that would have been insured under either of Sections 1.4(a) or 3.1(a) of Schedule 15 [Insurance Requirements] and to which Sections 6.18(b)(i) and (ii) would not apply) an amount equal, in the reasonable opinion of the Province, to the insurance proceeds that would have been payable by insurers to the Province, or to the Insurance Trustee, or to others, in accordance with Section 6.18 [Application of Proceeds of Insurance] in respect of any

SOUTH FRASER PERIMETER ROAD PROJECT

- 69 -

Uninsurable Risk that is a Principal Insured Risk that occurred had the relevant insurance continued to be in effect. Such amount shall be held and disbursed in place of such insurance proceeds in accordance with the provisions of Section 6.18 [Application of Proceeds of Insurance] (subject to satisfaction of all conditions to such disbursement provided for in that Section).

6.22 Third Party Liability Insurance as an Uninsurable Risk

If this Agreement is terminated pursuant to Section 6.21(b)(ii) and at the date of such termination third party public liability is an Uninsurable Risk, and if:

- (a) there is an outstanding third party claim against the Concessionaire at the Termination Date; or
- (b) following the Termination Date a third party claim is subsequently made against the Concessionaire in respect of an event or circumstance that occurred before the Termination Date;

which in either case would have been covered by the third party liability insurance that the Concessionaire would have been required to take out and maintain had that risk not been an Uninsurable Risk, then the Province shall pay to the Concessionaire any amount for which the Concessionaire becomes liable in respect of such claim (up to the limit of liability, but net of any deductible, that would have been in effect if third party public liability had not been an Uninsurable Risk), in addition to the compensation on termination payable pursuant to Section 6.21(b)(ii), and in these circumstances the provisions of Section 9.9 [Conduct of Claims Indemnified by the Province] shall apply in the same manner as if the third party claims were claims in respect of which the Province had agreed to indemnify the Concessionaire to which that Section applies.

6.23 Subrogation

If the Province makes any payment to or for the benefit of the Concessionaire pursuant to Section 6.21(b)(i) or Section 6.22 [Third Party Liability Insurance as an Uninsurable Risk], then the Province, to the extent of the amount paid, shall be subrogated to the Concessionaire's rights against any third party in respect of the occurrence or claim as a result of which the payment was made (excluding any third party that was an insured under the last policy obtained by the Concessionaire to cover the Uninsurable Risk before it became Uninsurable to the extent the insurers did not have a right of subrogation against the third party), and the Concessionaire shall at its expense provide such full and ongoing cooperation in respect of any such subrogation claim that the Province shall reasonably request.

6.24 Continuing Attempts to Insure Uninsurable Risks

When there is an Uninsurable Risk the Concessionaire shall in good faith approach the insurance market on a regular basis and in any event at regular intervals of no longer than four months to establish whether the Uninsurable Risks remain Uninsurable, and shall keep the Province's Representative reasonably informed of all such efforts.

SOUTH FRASER PERIMETER ROAD PROJECT

- 70 -

6.25 Uninsurable Risks Becoming Insurable

Where a risk that was previously an Uninsurable Risk ceases to be so, the Concessionaire shall, in the case of any Required Insurance, as soon as possible and in any event within 10 Business Days after the Uninsurable Risk ceases to be so, take out, maintain and pay for or cause to be taken out, maintained and paid for insurance in accordance with the requirements of this Agreement in respect of the risk, and upon the taking out of the insurance or the expiry of the 10 Business Days, whichever occurs first (or, in any case where an Insured Business Interruption Risk is the risk that has ceased to be Uninsurable, immediately upon such Insured Business Interruption Risk ceasing to be Uninsurable):

- (a) the provisions of Sections 6.20 [Uninsurability], 6.21 [Consequences of Risks Becoming Uninsurable], 6.22 [Third Party Liability Insurance as an Uninsurable Risk] and 6.24 [Continuing Attempts to Insure Uninsurable Risks] shall no longer apply to the risk so long as it is not an Uninsurable Risk; and
- (b) the payments to the Province or the reduction in the Availability Payments, in either case reflecting the savings in the Concessionaire's insurance cost referred to in Section 6.21(b), shall cease (and any portion of any such payment or reduction made for any period of time after such date shall be refunded to the Concessionaire by the Province), to reflect that there is no longer any saving in the Concessionaire's insurance cost as a result of the Concessionaire not having to insure the Uninsurable Risk.

6.26 Proceeds of Property Insurance if Agreement Terminated

If this Agreement is terminated, all proceeds of any property insurance that is required as part of the Required Insurance (excluding the insurance required by Sections 1.4(b) and 3.1(b) of Schedule 15 [Insurance Requirements]), to the extent such proceeds have not been used to pay the cost of, or are not owed in respect of, Reinstatement Work in respect of the loss or damage in respect of which such proceeds were payable, shall be paid to and retained by the Province as its sole property, and for such purposes the Province and the Concessionaire shall sign all such documents and do all such things as may be reasonably required for such proceeds to be paid to the Province by insurers and the Insurance Trustee.

6.27 Benchmarking of O&M Liability Insurance

- (a) For purposes of this Section 6.27 [Benchmarking of O&M Liability Insurance] and Section 6.29 [Rationalizing Insurance Adjustment Dates]:
 - (i) **“Actual O&M Liability Insurance Premium Cost”** means the amount payable by the Concessionaire for any 12 month period during the Term as the annual actual premium costs, excluding any brokerage fees and commissions, to obtain, maintain or replace the O&M Liability Insurance, as the case may be;
 - (ii) **“Adjusted Actual O&M Liability Insurance Premium Cost”** means the amount payable or paid by the Concessionaire for any 12 month period during the Term as the annual actual premium costs, excluding any brokerage fees and commissions, to obtain, maintain or replace the O&M Liability Insurance, as the case may be, after factoring in year-end premium adjustments made to reflect Operation and Maintenance actually performed during the applicable 12 month period;

- (iii) **“Estimated O&M Liability Insurance Premium Cost”** means [REDACTED], being the amount estimated by the Concessionaire and specified in the Financial Model as at the Effective Date as the amount that would be payable by the Concessionaire as the annual actual premium cost, excluding any brokerage fees and commissions, to obtain the O&M Liability Insurance as at the First O&M Liability Insurance Adjustment Date;
 - (iv) **“First O&M Liability Insurance Adjustment Date”** means the Western Segment Substantial Completion Date;
 - (v) **“O&M Liability Insurance”** means insurance coverages on the terms and at the limits that the Concessionaire is required to maintain or cause to be maintained under Section 6.1(c), provided that:
 - (A) notwithstanding that any limits for such insurance are specified in Part 2 [Liability Insurance Required for Operation] of Schedule 15 to be minimums or “not less than” a specified amount, the O&M Liability Insurance shall mean insurance with limits equal to those minimums or specified amounts and not higher amounts; and
 - (B) notwithstanding that any deductibles for such insurance are specified in Part 2 [Liability Insurance Required for Operation] of Schedule 15 to be maximums or “of up to” a specified amount, the O&M Liability Insurance shall mean insurance with deductibles equal to those maximums or specified amounts and not lower amounts;
 - (vi) **“O&M Liability Insurance Adjustment Date”** means the First O&M Liability Insurance Adjustment Date and thereafter, until the Termination Date, each date that is two years, or a multiple of two years, after the First O&M Liability Insurance Adjustment Date;
 - (vii) **“O&M Liability Insurance Adjustment Period”** means each successive period of two years commencing on the Effective Date and on each O&M Liability Insurance Adjustment Date thereafter, provided that the last O&M Liability Insurance Adjustment Period shall commence on the O&M Liability Insurance Adjustment Date immediately preceding the Termination Date and shall end on the Termination Date; and
 - (viii) **“O&M Liability Insurance Adjustment Year”** means each successive period of one year commencing on the Effective Date and on each anniversary of the Effective Date thereafter, provided that the last O&M Liability Insurance Adjustment Year shall commence on the anniversary of the last O&M Liability Insurance Adjustment Date immediately preceding the Termination Date and shall end on the Termination Date.
- (b) The Concessionaire shall deliver to the Province’s Representative by not later than 30 days before each O&M Liability Insurance Adjustment Date:
- (i) written verification issued by the Concessionaire’s insurers or such insurers’ insurance broker or insurance intermediary of the Actual O&M Liability

SOUTH FRASER PERIMETER ROAD PROJECT

- 72 -

Insurance Premium Cost, including premium calculations and other supporting documentation to the reasonable satisfaction of the Province's Representative, as at the date for renewing or replacing the O&M Liability Insurance, for the next succeeding O&M Liability Insurance Adjustment Year; and

- (ii) the Adjusted Actual O&M Liability Insurance Premium Cost incurred by the Concessionaire during the course of each of the O&M Liability Insurance Adjustment Years in the immediately preceding O&M Liability Insurance Period;

and for greater certainty the Concessionaire shall provide the amounts comprising the Actual O&M Liability Insurance Premium Cost and the Adjusted Actual O&M Liability Insurance Premium Cost in the aggregate and broken down with the amounts for each component insurance comprising the O&M Liability Insurance separately identified.

- (c) On request of the Province's Representative and, in any event, by not later than 30 days before each O&M Liability Insurance Adjustment Date, the Concessionaire shall, or shall cause the Concessionaire's insurers or such insurers' insurance broker or insurance intermediary to, fully inform the Province's Representative in writing, including by providing supporting documentation (such documentation to include particulars as to the Claims Matters, as defined below in this Section 6.27(c), and the Actual O&M Liability Insurance Premium Cost and the Adjusted Actual O&M Liability Insurance Premium Cost for each of the O&M Liability Insurance Adjustment Years in the immediately preceding O&M Liability Insurance Adjustment Period), to the reasonable satisfaction of the Province, as to whether or not any component of the Actual O&M Liability Insurance Premium Cost or the Adjusted Actual O&M Liability Insurance Premium Cost referred to in Section 6.27(b) is due solely or in part to claims matters relating to the Concessionaire, any insured person for whom the Concessionaire is in law responsible, the Project Work or the Concession Highway (in this Section 6.27 [Benchmarking of O&M Liability Insurance], "**Claims Matters**") and, if so, its estimate as to any portion of the Actual O&M Liability Insurance Premium Cost or the Adjusted Actual O&M Liability Insurance Premium Cost changes that reflects such Claims Matters.
- (d) At either the Province's or the Concessionaire's election in writing by notice to the other within 14 days after receipt by the Province of the information described in Section 6.27(c) with respect to each O&M Liability Insurance Adjustment Date, the Province will, within 30 days thereafter, retain a duly qualified and independent third party (who will be subject to the Concessionaire's reasonable approval) unrelated to either the Province or the Concessionaire (in this Section 6.27 [Benchmarking of O&M Liability Insurance], the "**Independent Third Party**") to prepare in a manner impartial to the Province and to the Concessionaire, and to deliver contemporaneously to the Province's Representative and to the Concessionaire's Representative, the report described in Section 6.27(f) (in this Section 6.27 [Benchmarking of O&M Liability Insurance], the "**Insurance Report**"), within 45 days or such other reasonable period of time after the O&M Liability Insurance Adjustment Date, but in any event by no later than 75 days after the O&M Liability Insurance Adjustment Date, unless such time period is further extended to reflect the additional time period, if any, required to resolve any dispute under Section 6.27(e), and in that event by no later than the expiry of such extended time period.

SOUTH FRASER PERIMETER ROAD PROJECT

- 73 -

- (e) In the event that the Concessionaire, acting reasonably, does not promptly approve a person proposed by the Province to act as the Independent Third Party, the Concessionaire shall promptly notify the Province's Representative of that fact and provide the reasons for not approving such person, and if the parties are unable to resolve the matter it shall constitute a dispute which, together with the Concessionaire's reasons and any substitute person proposed by either or both of the Province and the Concessionaire, shall be submitted to the Dispute Resolution Procedure and the time limitations for retaining an Independent Third Party and for delivering the Insurance Report by the Independent Third Party and the calculations by the Province pursuant to Section 6.27(h) will each be extended by the number of days equal to the period of time required to obtain a decision on the matter from the Dispute Resolution Procedure commencing on the date of submission of the matter to the Dispute Resolution Procedure.
- (f) Each Insurance Report to be delivered by an Independent Third Party shall:
- (i) examine the reasons as to why the Concessionaire's Actual O&M Liability Insurance Premium Cost and Adjusted Actual O&M Liability Insurance Premium Cost have changed since the previous O&M Liability Insurance Adjustment Date (or, in the case of the First O&M Liability Insurance Adjustment Date, since the Effective Date), including an estimate as to the portion, if any, of the Actual O&M Liability Insurance Premium Cost or the Adjusted Actual O&M Liability Insurance Premium Cost changes that reflects Claims Matters; and
 - (ii) review and consider relevant market factors, including industry standard premium costs for insurance coverages equivalent to the O&M Liability Insurance over the immediately preceding O&M Liability Insurance Adjustment Period (or, in the case of the First O&M Liability Insurance Adjustment Date, since the Effective Date).
- (g) The Province and the Concessionaire shall share equally the fees and costs of each Independent Third Party, and the Concessionaire shall pay to the Province the Concessionaire's portion of such fees and costs within 30 days after demand.
- (h) Not later than 90 days after each O&M Liability Insurance Adjustment Date (or if such time period is extended to reflect the additional time period, if any, required to resolve any dispute under Section 6.27(e), then not later than the expiry of such extended time period), the Province shall complete the calculations required to make the determinations and arrive at the payment adjustments referred to in Sections 6.27(i) to (k) inclusive, and will deliver a copy of the calculations to the Concessionaire.
- (i) If on review of the information delivered under Section 6.27(b) and Section 6.27(c) or Section 6.27(f) in respect of any O&M Liability Insurance Adjustment Date the Province determines that there is a decrease or an increase of more than 10% (in this Section 6.27 [Benchmarking of O&M Liability Insurance], the "**Threshold Amount**") in the amount of the Actual O&M Liability Insurance Premium Cost of which the Concessionaire gives notice pursuant to Section 6.27(b) over the amount of the Actual O&M Liability Insurance Premium Cost applicable as at the immediately preceding O&M Liability Insurance Adjustment Date (or, in the case of the First O&M Liability Insurance Adjustment Date, over the Estimated O&M Liability Insurance Premium Cost, indexed from the Effective

SOUTH FRASER PERIMETER ROAD PROJECT

- 74 -

Date), then the Availability Payments shall be adjusted as provided in Section 6.27(j) or Section 6.27(k), subject to Section 6.27(n).

- (j) If as at any O&M Liability Insurance Adjustment Date there is an increase in the Actual O&M Liability Insurance Premium Cost as determined under Section 6.27(i), then, subject to Section 6.27(n), the Availability Payment payable in respect of the month immediately following the month in which the O&M Liability Insurance Adjustment Date occurs, and for each succeeding month of the Term, shall be increased by an amount that is equal to one twelfth ($\frac{1}{12}$) of 80% of that portion of the net increase in the Actual O&M Liability Insurance Premium Cost (or the Adjusted Actual O&M Liability Insurance Premium Cost, if applicable) (in either case excluding the portion, if any, of the Actual O&M Liability Insurance Premium Cost (or the Adjusted Actual O&M Liability Insurance Premium Cost, if applicable) that reflects Claims Matters) that exceeds the Threshold Amount, subject to further or other adjustments to the Availability Payments under this Section 6.27 [Benchmarking of O&M Liability Insurance] or the other provisions of this Agreement.
- (k) If as at any O&M Liability Insurance Adjustment Date there is a decrease in the Actual O&M Liability Insurance Premium Cost as determined under Section 6.27(i), then, subject to Section 6.27(n), the Availability Payment payable in respect of the month immediately following the month in which the O&M Liability Insurance Adjustment Date occurs, and for each succeeding month of the Term, shall be decreased by an amount that is equal to one twelfth ($\frac{1}{12}$) of 80% of that portion of the net decrease in the Actual O&M Liability Insurance Premium Cost (or the Adjusted Actual O&M Liability Insurance Premium Cost, if applicable) (in either case excluding the portion, if any, of the Actual O&M Liability Insurance Premium Cost (or the Adjusted Actual O&M Liability Insurance Premium Cost, if applicable) that reflects Claims Matters) that exceeds the Threshold Amount, subject to further or other adjustments to the Availability Payments under this Section 6.27 [Benchmarking of O&M Liability Insurance] or the other provisions of this Agreement.
- (l) For the purposes of the calculations made under Section 6.27(i) and Section 6.27(j) or Section 6.27(k) in respect of any O&M Liability Insurance Adjustment Date, the Province shall use the information provided by the Concessionaire's insurers or such insurers' insurance brokers or insurance intermediaries pursuant to Section 6.27(c) in respect of that O&M Liability Insurance Adjustment Date (unless in respect of that O&M Liability Insurance Adjustment Date an Insurance Report has been prepared, in which case the Province will use the information provided in the Insurance Report instead of that provided pursuant to Section 6.27(c)) to determine the portion, if any, of the Actual O&M Liability Insurance Premium Cost (or the Adjusted Actual O&M Liability Insurance Premium Cost, if applicable) changes that reflects Claims Matters.
- (m) If the Concessionaire disagrees with any of the calculations of the Province under any of Sections 6.27(h), (i), (j) and (k), the Concessionaire will so notify the Province within 30 days after the date of delivery thereof under Section 6.27(h) and, if the Province and the Concessionaire have not resolved the disagreement within 30 days after receipt of the notification of disagreement, the matter will be considered a dispute and resolved by the Dispute Resolution Procedure.

SOUTH FRASER PERIMETER ROAD PROJECT

- 75 -

- (n) Any adjustment to the Availability Payments pursuant to Section 6.27(j) or Section 6.27(k) in respect of any O&M Liability Insurance Adjustment Date, whether determined by the Province and agreed to by the Concessionaire or determined pursuant to the Dispute Resolution Procedure, will have effect from the date for payment of the Availability Payment in respect of the month immediately following the month in which the relevant O&M Liability Insurance Adjustment Date occurs, provided that if adjustments to monthly Availability Payments are to be made under this Section 6.27 [Benchmarking of O&M Liability Insurance] before Availability Payments are payable under this Agreement, then in lieu of each such adjustment to the monthly Availability Payments, the Province shall pay to the Concessionaire monthly the net amount by which the aggregate of such adjustments is positive, or the Concessionaire shall pay to the Province monthly the net amount by which the aggregate of such adjustments is negative, until such time as Availability Payments become payable under this Agreement, after which time the net adjustments shall be reflected in an adjustment to the Availability Payments.
- (o) Any increase to or reduction in the Availability Payments to be made pursuant to this Section 6.27 [Benchmarking of O&M Liability Insurance] will be, in the case of an increase, payable by the Province and, in the case of a reduction, deducted by the Province, as of the dates for payment of such Availability Payments.
- (p) In respect of each O&M Liability Insurance Adjustment Date, the Province will review the Adjusted Actual O&M Liability Insurance Premium Cost for each of the O&M Liability Insurance Adjustment Years in the immediately preceding O&M Liability Insurance Adjustment Period, and if the difference in amounts between the Actual O&M Liability Insurance Premium Cost and the corresponding Adjusted Actual O&M Liability Insurance Premium Cost applicable to the last O&M Liability Insurance Adjustment Year in the immediately preceding O&M Liability Insurance Adjustment Period is, in the Province's reasonable discretion and after consultation with the Concessionaire, substantial, then the Province will base the determination of the percentage increase or decrease in the Actual O&M Liability Insurance Premium Cost described in Sections 6.27(i), (j) and (k) on such Adjusted Actual O&M Liability Insurance Premium Cost.

6.28 Benchmarking of O&M Property Insurance

- (a) For the purposes of this Section 6.28 [Benchmarking of O&M Property Insurance] and Section 6.29 [Rationalizing Insurance Adjustment Dates]:
- (i) **“Actual O&M Property Insurance Premium Cost”** means the amount payable by the Concessionaire for any 12 month period during the Term as the annual actual premium costs, excluding any Excluded O&M Property Insurance Premium Cost, to obtain, maintain or replace the O&M Property Insurance, as the case may be;
- (ii) **“Adjusted Actual O&M Property Insurance Premium Cost”** means the amount payable or paid by the Concessionaire for any 12 month period during the Term as the annual actual premium costs, excluding any Excluded O&M Property Insurance Premium Cost, to obtain, maintain or replace the O&M Property Insurance, as the case may be, after factoring in year-end premium

SOUTH FRASER PERIMETER ROAD PROJECT

- 76 -

adjustments made to reflect Operation and Maintenance actually performed during the applicable 12 month period;

Section 21

- (iii) **“Estimated O&M Property Insurance Premium Cost”** means [REDACTED], being the amount estimated by the Concessionaire and specified in the Financial Model as at the Effective Date as the amount that would be payable by the Concessionaire as the annual actual premium cost, excluding any Excluded O&M Property Insurance Premium Cost, to obtain the O&M Property Insurance as at the First O&M Property Insurance Adjustment Date;
- (iv) **“Excluded O&M Property Insurance Premium Cost”** means, with respect to any O&M Property Insurance, the aggregate of:
 - (A) any brokerage fees and commissions payable by the Concessionaire to obtain, maintain, renew or replace the O&M Property Insurance; and
 - (B) any additional premium cost of the O&M Property Insurance that results at any time from the application of the proviso to Section 3.1(g)(ii) of Schedule 15 [Insurance Requirements];
- (v) **“First O&M Property Insurance Adjustment Date”** means the Total Completion Date;
- (vi) **“O&M Property Insurance”** means insurance coverages on the terms and at the limits that the Concessionaire is required to maintain or cause to be maintained under Section 6.1(f), together with Specified Business Interruption Insurance on the terms (including as to waiting periods), at the limits and from Qualified Insurers, as specified in the definition thereof in Section 1.1 [Definitions] of Schedule 1 (but only if and so long as such Specified Business Interruption Insurance is maintained by the Concessionaire in respect of the Project), provided that:
 - (A) notwithstanding that any limits for such insurance are specified in Part 3 [Property Insurance Required for Operation] of Schedule 15 or in the definition of Specified Business Interruption Insurance in Section 1.1 [Definitions] of Schedule 1, as the case may be, to be minimums or “not less than” a specified amount, the O&M Property Insurance shall mean insurance with limits equal to those minimums or specified amounts and not higher amounts; and
 - (B) notwithstanding that any deductibles for such insurance are specified in Part 3 [Property Insurance Required for Operation] of Schedule 15 or in the definition of Specified Business Interruption Insurance in Section 1.1 [Definitions] of Schedule 1, as the case may be, to be maximums or “of up to” a specified amount, the O&M Property Insurance shall mean insurance with deductibles equal to those maximums or specified amounts and not lower amounts;
- (vii) **“O&M Property Insurance Adjustment Date”** means the First O&M Property Insurance Adjustment Date and thereafter, until the Termination Date, each date

SOUTH FRASER PERIMETER ROAD PROJECT

- 77 -

that is two years, or a multiple of two years, after the First O&M Property Insurance Adjustment Date;

- (viii) **“O&M Property Insurance Adjustment Period”** means each successive period of two years commencing on the First O&M Property Insurance Adjustment Date and on each O&M Property Insurance Adjustment Date thereafter, provided that the last O&M Property Insurance Adjustment Period shall commence on the O&M Property Insurance Adjustment Date immediately preceding the Termination Date and shall end on the Termination Date; and
 - (ix) **“O&M Property Insurance Adjustment Year”** means each successive period of one year commencing on the First O&M Property Insurance Adjustment Date and on each anniversary of the First O&M Property Insurance Adjustment Date thereafter, provided that the last O&M Property Insurance Adjustment Year shall commence on the anniversary of the last O&M Property Insurance Adjustment Date immediately preceding the Termination Date and shall end on the Termination Date.
- (b) The Concessionaire shall deliver to the Province’s Representative by not later than 30 days before each O&M Property Insurance Adjustment Date:
- (i) written verification issued by the Concessionaire’s insurers or such insurers’ insurance broker or insurance intermediary of the Actual O&M Property Insurance Premium Cost, including premium calculations and other supporting documentation to the reasonable satisfaction of the Province’s Representative, as at the date for obtaining, renewing or replacing the O&M Property Insurance, for the next succeeding O&M Property Insurance Adjustment Year; and
 - (ii) the Adjusted Actual O&M Property Insurance Premium Cost incurred by the Concessionaire during the course of each of the O&M Property Insurance Adjustment Years in the immediately preceding O&M Property Insurance Period;

and for greater certainty the Concessionaire shall provide the amounts comprising the Actual O&M Property Insurance Premium Cost and the Adjusted Actual O&M Property Insurance Premium Cost in the aggregate and broken down with the amounts for each component insurance (including any Specified Business Interruption Insurance) comprising the O&M Property Insurance separately identified.

- (c) On request of the Province’s Representative and, in any event, by not later than 30 days before each O&M Property Insurance Adjustment Date, the Concessionaire shall, or shall cause the Concessionaire’s insurers or such insurers’ insurance broker or insurance intermediary to, fully inform the Province’s Representative in writing, including by providing supporting documentation (such documentation to include particulars as to the Claims Matters, as defined below in this Section 6.28(c), and the Actual O&M Property Insurance Premium Cost and the Adjusted Actual O&M Property Insurance Premium Cost for each of the O&M Property Insurance Adjustment Years in the immediately preceding O&M Property Insurance Adjustment Period), to the reasonable satisfaction of the Province, as to whether or not any component of the Actual O&M Property Insurance Premium Cost or the Adjusted Actual O&M Property Insurance Premium Cost referred to

SOUTH FRASER PERIMETER ROAD PROJECT

- 78 -

in Section 6.28(b) is due solely or in part to claims matters relating to the Concessionaire, any insured person for whom the Concessionaire is in law responsible, the Project Work or the Concession Highway (in this Section 6.28 [Benchmarking of O&M Property Insurance], “**Claims Matters**”) and, if so, its estimate as to any portion of the Actual O&M Property Insurance Premium Cost or the Adjusted Actual O&M Property Insurance Premium Cost changes that reflects such Claims Matters.

- (d) At either the Province’s or the Concessionaire’s election in writing by notice to the other within 14 days after receipt by the Province of the information described in Section 6.28(c) with respect to each O&M Property Insurance Adjustment Date, the Province will, within 30 days thereafter, retain a duly qualified and independent third party (who will be subject to the Concessionaire’s reasonable approval) unrelated to either the Province or the Concessionaire (in this Section 6.28 [Benchmarking of O&M Property Insurance], the “**Independent Third Party**”) to prepare in a manner impartial to the Province and to the Concessionaire, and to deliver contemporaneously to the Province’s Representative and to the Concessionaire’s Representative, the report described in Section 6.28(f) (in this Section 6.28 [Benchmarking of O&M Property Insurance], the “**Insurance Report**”), within 45 days or such other reasonable period of time after the O&M Property Insurance Adjustment Date, but in any event by no later than 75 days after the O&M Property Insurance Adjustment Date, unless such time period is further extended to reflect the additional time period, if any, required to resolve any dispute under Section 6.28(e), and in that event by no later than the expiry of such extended time period.
- (e) In the event that the Concessionaire, acting reasonably, does not promptly approve a person proposed by the Province to act as the Independent Third Party, the Concessionaire shall promptly notify the Province’s Representative of that fact and provide the reasons for not approving such person, and if the parties are unable to resolve the matter it shall constitute a dispute which, together with the Concessionaire’s reasons and any substitute person proposed by either or both of the Province and the Concessionaire, shall be submitted to the Dispute Resolution Procedure and the time limitations for retaining an Independent Third Party and for delivering the Insurance Report by the Independent Third Party and the calculations by the Province pursuant to Section 6.28(h) will each be extended by the number of days equal to the period of time required to obtain a decision on the matter from the Dispute Resolution Procedure commencing on the date of submission of the matter to the Dispute Resolution Procedure.
- (f) Each Insurance Report to be delivered by an Independent Third Party shall:
- (i) examine the reasons as to why the Concessionaire’s Actual O&M Property Insurance Premium Cost and Adjusted Actual O&M Property Insurance Premium Cost have changed since the previous O&M Property Insurance Adjustment Date (or, in the case of the First O&M Property Insurance Adjustment Date, examine the reasons as to why the Concessionaire’s Actual O&M Property Insurance Premium Cost has changed from the Estimated O&M Property Insurance Premium Cost), including an estimate as to the portion, if any, of the Actual O&M Property Insurance Premium Cost or the Adjusted Actual O&M Property Insurance Premium Cost changes (or, in the case of the First O&M Property

SOUTH FRASER PERIMETER ROAD PROJECT

- 79 -

Insurance Adjustment Date, changes from the Estimated O&M Property Insurance Premium Cost) that reflects Claims Matters; and

- (ii) review and consider relevant market factors, including industry standard premium costs for insurance coverages equivalent to the O&M Property Insurance over the immediately preceding Insurance Adjustment Period (or, in the case of the First O&M Property Insurance Adjustment Date, since the Effective Date).
- (g) The Province and the Concessionaire shall share equally the fees and costs of each Independent Third Party, and the Concessionaire shall pay to the Province the Concessionaire's portion of such fees and costs within 30 days after demand.
- (h) Not later than 90 days after each O&M Property Insurance Adjustment Date (or if such time period is extended to reflect the additional time period, if any, required to resolve any dispute under Section 6.28(e), then not later than the expiry of such extended time period), the Province shall complete the calculations required to make the determinations and arrive at the payment adjustments referred to in Sections 6.28(i) to (k) inclusive, and will deliver a copy of the calculations to the Concessionaire.
- (i) If on review of the information delivered under Section 6.28(b) and Section 6.28(c) or Section 6.28(f) in respect of any O&M Property Insurance Adjustment Date the Province determines that there is a decrease or an increase of more than 10% (in this Section 6.28 [Benchmarking of O&M Property Insurance], the "**Threshold Amount**") in the amount of the Actual O&M Property Insurance Premium Cost of which the Concessionaire gives notice pursuant to Section 6.28(b) over the amount of the Actual O&M Property Insurance Premium Cost applicable as at the immediately preceding O&M Property Insurance Adjustment Date (or, in the case of the First O&M Property Insurance Adjustment Date, over the Estimated O&M Property Insurance Premium Cost, indexed from the Effective Date), then the Availability Payments shall be adjusted as provided in Section 6.28(j) or Section 6.28(k).
- (j) If as at any O&M Property Insurance Adjustment Date there is an increase in the Actual O&M Property Insurance Premium Cost as determined under Section 6.28(i), the Availability Payment payable in respect of the month immediately following the month in which the O&M Property Insurance Adjustment Date occurs, and for each succeeding month of the Term, shall be increased by an amount that is equal to one twelfth ($\frac{1}{12}$) of 80% of that portion of the net increase in the Actual O&M Property Insurance Premium Cost (or the Adjusted Actual O&M Property Insurance Premium Cost, if applicable) (in either case excluding the portion, if any, of the Actual O&M Property Insurance Premium Cost (or the Adjusted Actual O&M Property Insurance Premium Cost, if applicable) that reflects Claims Matters) that exceeds the Threshold Amount, subject to further or other adjustments to the Availability Payments under this Section 6.28 [Benchmarking of O&M Property Insurance] or the other provisions of this Agreement.
- (k) If as at any O&M Property Insurance Adjustment Date there is a decrease in the Actual O&M Property Insurance Premium Cost as determined under Section 6.27(i), the Availability Payments payable in respect of the month immediately following the month in which the O&M Property Insurance Adjustment Date occurs, and for each succeeding

SOUTH FRASER PERIMETER ROAD PROJECT

- 80 -

month of the Term, shall be decreased by an amount that is equal to one twelfth ($1/12$) of 80% of that portion of the net decrease in the Actual O&M Property Insurance Premium Cost (or the Adjusted Actual O&M Property Insurance Premium Cost, if applicable) (in either case excluding the portion, if any, of the Actual O&M Property Insurance Premium Cost (or the Adjusted Actual O&M Property Insurance Premium Cost, if applicable) that reflects Claims Matters) that exceeds the Threshold Amount, subject to further or other adjustments to the Availability Payments under this Section 6.28 [Benchmarking of O&M Property Insurance] or the other provisions of this Agreement.

- (l) For the purposes of the calculations made under Section 6.28(i) and Section 6.28(j) or Section 6.28(k) in respect of any O&M Property Insurance Adjustment Date, the Province shall use the information provided by the Concessionaire's insurers or such insurers' insurance brokers or insurance intermediaries pursuant to Section 6.28(c) in respect of that O&M Property Insurance Adjustment Date (unless in respect of that O&M Property Insurance Adjustment Date an Insurance Report has been prepared, in which case the Province will use the information provided in the Insurance Report instead of that provided pursuant to Section 6.28(c)) to determine the portion, if any, of the Actual O&M Property Insurance Premium Cost (or the Adjusted Actual O&M Property Insurance Premium Cost, if applicable) changes that reflect Claims Matters.
- (m) If the Concessionaire disagrees with any of the calculations of the Province under any of Sections 6.28(h), (i), (j) and (k), the Concessionaire will so notify the Province within 30 days after the date of delivery thereof under Section 6.28(h) and, if the Province and the Concessionaire have not resolved the disagreement within 30 days of receipt of the notification of disagreement, the matter will be considered a dispute and resolved by the Dispute Resolution Procedure.
- (n) Any adjustment to the Availability Payments pursuant to Section 6.28(j) or Section 6.28(k) in respect of any O&M Property Insurance Adjustment Date, whether determined by the Province and agreed to by the Concessionaire or determined pursuant to the Dispute Resolution Procedure, will have effect from the date for payment of the Availability Payment in respect of the month immediately following the month in which the relevant O&M Property Insurance Adjustment Date occurs.
- (o) Any increase to or reduction in the Availability Payments to be made pursuant to this Section 6.28 [Benchmarking of O&M Property Insurance] will be, in the case of an increase, payable by the Province, and in the case of a reduction, deducted by the Province, as of the dates for payment of such Availability Payments.
- (p) In respect of each O&M Property Insurance Adjustment Date, the Province will review the Adjusted Actual O&M Property Insurance Premium Cost for each of the O&M Property Insurance Adjustment Years in the immediately preceding O&M Property Insurance Adjustment Period, and if the difference in amounts between the Actual O&M Property Insurance Premium Cost and the corresponding Adjusted Actual O&M Property Insurance Premium Cost applicable to the last O&M Property Insurance Adjustment Year in the immediately preceding O&M Property Insurance Adjustment Period is, in the Province's reasonable discretion and after consultation with the Concessionaire, substantial, then the Province will base the determination of the percentage increase or

SOUTH FRASER PERIMETER ROAD PROJECT

- 81 -

decrease in the Actual O&M Property Insurance Premium Cost described in Sections 6.28(i), (j) and (k) on such Adjusted Actual O&M Property Insurance Premium Cost.

6.29 Rationalizing Insurance Adjustment Dates

The Concessionaire shall, in consultation with the Province, and subject to the Province's prior written consent pursuant to the Consent Procedure (such consent not to be unreasonably withheld provided the parties acting reasonably have entered into and record in writing their agreement to amend this Agreement by amending Sections 6.27 [Benchmarking of O&M Liability Insurance] and 6.28 [Benchmarking of O&M Property Insurance] to reflect any adjustment of dates), use all reasonable efforts to adjust the O&M Liability Insurance Adjustment Dates with the insurers under the O&M Liability Insurance to coincide with the O&M Property Insurance Adjustment Dates, with effect on the First O&M Property Insurance Adjustment Date or a subsequent O&M Property Insurance Adjustment Date, so that changes in premium costs in the O&M Liability Insurance and the O&M Property Insurance will thereafter be adjusted as at the same dates.

6.30 Alternate Risk Financing Measures

From time to time during the Term, the Province may, but will not be obliged to, pursue and implement, subject to the Concessionaire's consent, alternate risk financing measures for the Project if the Province considers in its discretion that such alternate measures would result in coverage substantially similar to the insurance coverages described in Schedule 15 [Insurance Requirements] being obtained in a more cost efficient manner.

**PART 7
PROVINCE CHANGES AND CONCESSIONAIRE PROPOSALS**

7.1 Province Changes

The Province may, at any time during the Term, require Province Changes (including Minor Works under Section 7.3(a)) subject to and in accordance with the provisions of this Part and Schedule 11 [Changes], and the Concessionaire shall be entitled to apply for relief from its obligations or claim compensation under this Agreement, or both, to the extent, if any, provided in this Part and such Schedule.

7.2 Concessionaire Proposals

The Concessionaire may, at any time during the Term:

- (a) request Concessionaire Proposals (either as Minor Works under Section 7.3(b) or as Value Engineering Proposals under Section 7.4) for consideration by the Province subject to and in accordance with the provisions of this Part and Schedule 11 [Changes], provided that the Province shall not be required to consider any Concessionaire Proposal unless and until the Concessionaire provides to the Province's Representative sufficient information to enable the Province's Representative to adequately consider and evaluate such Concessionaire Proposal; and
- (b) request that the Province consider, in its discretion, initiating as a Province Change any other matter, provided that, if the Concessionaire becomes aware that any element of the

SOUTH FRASER PERIMETER ROAD PROJECT

- 82 -

Project Requirements does not comply with and satisfy the specific requirements of any of subsections (a), (b), (c) or (e) of Section 4.1 [Concessionaire to Carry Out Project Work], the Concessionaire shall so notify the Province's Representative prior to complying with such specific requirements and shall, in the case of any such discrepancy arising after the Effective Date, request that the Province initiate as a Province Change an amendment to the Project Requirements so that they comply with and satisfy such specific requirements.

7.3 Minor Works

If at any time during the Term:

- (a) the Province initiates a Province Change under Section 7.1 [Province Changes] that:
 - (i) does not require any material amendment to this Agreement (other than any specific amendment of the Project Requirements to which such Province Change relates);
 - (ii) in the case of a Province Change initiated by the Province prior to the Total Completion Date:
 - (A) will not negatively affect any milestone date set out in the Project Schedule; and
 - (B) sets out in the proposal a Minor Works Valuation that, when added to the aggregate of all of the Minor Works Valuations for all of the other prior Minor Works initiated by the Province:
 - (1) cannot reasonably be expected to exceed \$10,000,000 (index linked); and
 - (2) during the current Contract Year, cannot reasonably be expected to exceed \$2,000,000 (index linked); and
 - (iii) in the case of a Province Change initiated by the Province from and after the Total Completion Date, sets out in the proposal a Minor Works Valuation that, when added to the aggregate of all of the Minor Works Valuations for all of the other prior Minor Works initiated by the Province during the current Contract Year (but from and after the Total Completion Date), cannot reasonably be expected to exceed \$500,000 (index linked); or
- (b) the Concessionaire establishes to the satisfaction of the Province, acting reasonably, that a Concessionaire Proposal initiated by the Concessionaire under Section 7.2(a):
 - (i) does not require any material amendment to this Agreement (other than any specific amendment of the Project Requirements to which such Concessionaire Proposal relates); and
 - (ii) has a Minor Works Valuation of less than or equal to zero,

SOUTH FRASER PERIMETER ROAD PROJECT

- 83 -

then such Province Change or Concessionaire Proposal, as the case may be, shall be considered “**Minor Works**” and shall be prepared and evaluated in accordance with the provisions of Part 1 [Minor Works] of Schedule 11.

7.4 Value Engineering Proposals

The Concessionaire may initiate Concessionaire Proposals as “**Value Engineering Proposals**” to be prepared and evaluated in accordance with Part 3 [Value Engineering Proposals] of Schedule 11.

7.5 Responsibility for Province Changes and Concessionaire Proposals

The Concessionaire shall not be entitled to any payment, compensation, extension of time or other relief for a Province Change or Concessionaire Proposal except to the extent provided in a Change Certificate issued in accordance with Schedule 11 [Changes].

7.6 Payments in Respect of Province Changes and Concessionaire Proposals

Any payments between the parties and any adjustments to Availability Payments in respect of Province Changes or Concessionaire Proposals shall be made in accordance with Part 10 [Payments].

**PART 8
SUPERVENING EVENTS**

8.1 Supervening Events

- (a) If, in the case of:
 - (i) the Concessionaire, a Compensation Event or Relief Event occurs; or
 - (ii) either the Province or the Concessionaire, a Force Majeure Event occurs,then if and to the extent that such event interferes adversely with, or causes a failure of, the performance of, in the case of the Concessionaire, the Project Work or, in the case of the Province, any obligation under this Agreement, then, subject to Section 8.1(b), the affected or entitled party (the “**Applicant**”) may apply for relief from its obligations, apply for extensions of time (including extensions of the Expiry Date pursuant to Section 8.4(d)), claim compensation and/or claim a termination right under this Agreement to the extent provided in this Part.
- (b) Notwithstanding any other provision of this Part, an Applicant shall only be entitled to relief from its obligations, extensions of time (including extensions of the Expiry Date pursuant to Section 8.4(d)), compensation and/or a termination right under this Agreement in accordance with this Part in respect of a Supervening Event:
 - (i) in the case of a claim of any Supervening Event by the Concessionaire other than a No Threshold Compensation Event:
 - (A) if the interference with or prevention of the Project Work referred to in Section 8.1(a) arising from such Supervening Event is in respect of either

SOUTH FRASER PERIMETER ROAD PROJECT

- 84 -

or both the Design and the Construction, and such Supervening Event is either:

- (1) one of the first four Supervening Events claimed by the Concessionaire and determined in accordance with this Part to have occurred in any Contract Year from the Effective Date until the Western Segment Substantial Completion Date (or portion of such Contract Year in the case of the first and last Contract Years which commence during such period), each of which has resulted in either or both of the following:
 - (I) a Change in Costs in respect of the Design and the Construction of greater than \$200,000 (index linked); or
 - (II) a delay of three or more days to the occurrence of any of the Eastern Segment Substantial Completion Date, the Western Segment Substantial Completion Date and the Total Completion Date; or
 - (2) claimed by the Concessionaire in a Contract Year (or portion thereof in the case of the first and last Contract Years commencing in the period referred to in Section 8.1(b)(i)(A)(1)) after four other Supervening Events meeting the requirements of this Part, including Section 8.1(b)(i)(A)(1), have occurred; or
- (B) if such Supervening Event results in a Change in Costs in respect of the Operation, the Maintenance and the Rehabilitation of greater than \$25,000 (index linked);
- (ii) if and to the extent that such Supervening Event is not caused by, could not reasonably have been prevented by and is beyond the reasonable control of the Applicant;
 - (iii) in the case of a claim of any Supervening Event by the Concessionaire, if and to the extent that such Supervening Event and/or the effect thereof is not required by the Project Requirements to be contemplated or taken into account by the Concessionaire in the design of the Concession Highway, the Other Highway Infrastructure, the Port Infrastructure or the Municipal Infrastructure, as the case may be (provided that this shall not exclude damage caused by a Seismic Event that would otherwise be included pursuant to the definition of the relevant Supervening Event in Section 1.1 [Definitions] of Schedule 1);
 - (iv) if and to the extent that such Supervening Event and/or the effect thereof does not result from or is not contributed to by, directly or indirectly:
 - (A) in the case of a claim of any Supervening Event by the Concessionaire, any Concessionaire Non-Excusable Event; or
 - (B) in the case of a claim of a Force Majeure Event by the Province, any Province Non-Excusable Event; and

SOUTH FRASER PERIMETER ROAD PROJECT

- 85 -

- (v) if the Applicant provides a Supervening Event Notice in respect of such Supervening Event pursuant to Section 8.2(a) no more than 12 months after the date of the occurrence or commencement of such Supervening Event.
- (c) Nothing in this Part shall limit the Province's right to request a Province Change pursuant to Section 7.1 [Province Changes] in response to the occurrence of any Supervening Event, including a Province Change to give to the Concessionaire instructions to accelerate construction or take other steps to avoid any delay or impediment, or reduce the period of any future delay or mitigate the effect of any future impediment, resulting from such Supervening Event. Subject to a cancellation of such request for a Province Change as a result of the successful exercise by the Concessionaire of its rights in accordance with Section 4.2 [Concessionaire Refusal to Proceed] of Schedule 11, in the event that the Province requests such a Province Change the procedures in respect of such Supervening Event set out in this Part shall terminate and the matter shall be fully determined in accordance with Part 7 [Province Changes and Concessionaire Proposals] and Schedule 11 [Changes], provided that the Supervening Event and its consequences (as such consequences may be affected by the Province Change) shall be dealt with as part of the resulting Province Change.

8.2 Procedures Upon Occurrence of a Supervening Event

The following procedures shall apply if a Supervening Event occurs:

- (a) as soon as practicable, and in any event within five Business Days after the Applicant has knowledge that the Supervening Event has caused, or is reasonably likely to cause, an entitlement under this Part, the Applicant shall give to the Province, in the case of the Concessionaire as Applicant, or the Concessionaire, in the case of the Province as Applicant, a notice ("**Supervening Event Notice**") identifying the particular Supervening Event and summarizing, to the extent the Applicant has knowledge thereof, the consequences and the nature of the Applicant's claim;
- (b) following the delivery of a Supervening Event Notice, as soon as practicable, and in any event within 30 Business Days after the delivery of the Supervening Event Notice, the Applicant shall give to the Province, in the case of the Concessionaire as Applicant, or the Concessionaire, in the case of the Province as Applicant:
 - (i) any additional details or information, including available supporting documentation, in support of its claim in respect of the occurrence of the Supervening Event; and
 - (ii) if applicable, a detailed breakdown of all estimated Direct Losses that have been, will be or are reasonably likely to be incurred by the Applicant as a result of the Supervening Event; and
 - (iii) all other relevant information which would be required to be included in a Change Report under Section 2.3 [Preparation of Change Report] of Schedule 11 if such Supervening Event was a Province Change including, at the option of the Applicant or if requested by the other applicable party pursuant to Section 10.2

SOUTH FRASER PERIMETER ROAD PROJECT

- 86 -

[Adjustment of Availability Payments], the information required pursuant to Section 10.2(a);

- (c) if a Supervening Event for which a Supervening Event Notice has been delivered ceases, the Applicant shall give to the Province, in the case of the Concessionaire as Applicant, or the Concessionaire, in the case of the Province as Applicant, as soon as practicable notice thereof and of when performance of its affected obligations can be resumed;
- (d) a party may not make multiple or duplicative claims in respect of any Supervening Event, and the relief, extensions of time (including extensions of the Expiry Date pursuant to Section 8.4(d)), compensation and/or termination right in respect of a Supervening Event as is agreed to by the parties or otherwise determined in accordance with the Dispute Resolution Procedure pursuant to Section 8.2(h)(ii) shall be the only relief, extensions of time (including extensions of the Expiry Date pursuant to Section 8.4(d)), compensation and/or termination right to which the Applicant shall be entitled in respect of such Supervening Event;
- (e) the other parties shall provide the Applicant any information reasonably requested by the Applicant in order for the Applicant to make its claim;
- (f) where the claim in respect of a Supervening Event includes Claims to which Section 9.9 [Conduct of Claims Indemnified by the Province] applies, such Claims shall be subject to the provisions of Section 9.9 [Conduct of Claims Indemnified by the Province] and otherwise the claim in respect of such Supervening Event shall be subject to the provisions of this Part;
- (g) the Applicant shall demonstrate to the reasonable satisfaction of the Province, in the case of the Concessionaire as Applicant, or the Concessionaire, in the case of the Province as Applicant, that:
 - (i) the applicable criteria required under Section 8.1(b) have been met;
 - (ii) the Supervening Event has caused or will cause the Applicant to suffer the effects from which or for which the Applicant seeks relief, extensions of time (including extensions of the Expiry Date pursuant to Section 8.4(d)), compensation and/or a termination right under this Part; and
 - (iii) it has complied with its mitigation obligations under Section 3.2 [Mitigation By Province] or Section 4.10 [Mitigation By Concessionaire], as applicable; and
- (h) following the delivery of a Supervening Event Notice under Section 8.2(a) hereof, the Province and the Concessionaire shall consult and seek to agree to the effect of the relevant Supervening Event, provided that either of them may submit for resolution in accordance with the Dispute Resolution Procedure the question of:
 - (i) whether such Supervening Event has occurred, if within 10 Business Days following the delivery of the Supervening Event Notice the Province and the Concessionaire have not agreed to the occurrence of such Supervening Event; and/or

SOUTH FRASER PERIMETER ROAD PROJECT

- 87 -

- (ii) the extent of relief, extensions of time (including extensions of the Expiry Date pursuant to Section 8.4(d)) and/or compensation to which the Applicant is entitled, if within 20 Business Days following the exchange of all relevant information required under this Section, the Province and the Concessionaire have not agreed to the extent of such relief, extensions of time (including extensions of the Expiry Date pursuant to Section 8.4(d)) and/or compensation.

8.3 Concessionaire's Entitlements Upon Occurrence of a Compensation Event

Subject to Sections 8.1(b) and 8.12 [Delay in Notification] and to the Concessionaire's obligations under Section 4.10 [Mitigation By Concessionaire], if at any time a Compensation Event has occurred:

- (a) to the extent that, and for so long as, the Concessionaire is prevented by the Compensation Event from performing any obligation under this Agreement (other than those obligations arising as a result of the Compensation Event, including the Concessionaire's obligations under Section 6.15 [Restoration and Reinstatement of Damage or Destruction]):
 - (i) the Concessionaire shall be relieved from any liability or consequence under this Agreement (including termination by the Province other than as expressly provided for in Section 8.7 [Termination for Damage or Destruction]) arising from its inability to perform such obligation; and
 - (ii) no NCE Points or Default Points shall be assigned in respect of any such prevented performance;
- (b) subject to Section 8.7 [Termination for Damage or Destruction], Section 8.9 [Allocation of Risks of Participants and Trespassers] and Section 8.11 [Effect of Insurance], and save to the extent that the Concessionaire is entitled to be indemnified therefor pursuant to Section 9.6 [Limited Indemnity for Contamination] in respect of a Compensation Event falling within paragraph (o) of the definition thereof in Section 1.1 [Definitions] of Schedule 1, the Concessionaire shall be compensated through a lump sum payment from the Province pursuant to Section 10.1 [Lump Sum Payment and Financing] or, where applicable, adjustments to the Availability Payments pursuant to Section 10.2 [Adjustment of Availability Payments], for the amount of any Direct Losses incurred, or to be incurred, by the Concessionaire as a result of the Compensation Event, provided that:
 - (i) in the case of a Compensation Event referred to in subsection (t) of the definition of Compensation Event in Section 1.1 [Definitions] of Schedule 1, such amount shall not include the first [REDACTED] (index linked) of the aggregate amount of the Direct Losses incurred by the Concessionaire to mitigate the effects of all Protest Actions during the Term;
 - (ii) in the case of a Compensation Event referred to in subsection (v) of the definition of Compensation Event in Section 1.1 [Definitions] of Schedule 1, such amount shall be reduced by [REDACTED] (index linked);

 **Section 17**

SOUTH FRASER PERIMETER ROAD PROJECT

- 88 -

- (iii) in the case of a Compensation Event referred to in subsection (w) of the definition of Compensation Event in Section 1.1 [Definitions] of Schedule 1, such amount shall be reduced by [REDACTED] (index linked); and
 - (iv) in the case of a Compensation Event (or a Force Majeure Event in the circumstances set out in Section 8.6(a)(i)) that causes damage to or destruction of all or any part of the Project Infrastructure or the Project Site, the Province shall make payment of the portion of the amount that is payable for the Reinstatement Work in respect of such damage or destruction based on the same criteria and subject to satisfaction of all the same conditions as are set out in Sections 6.18(c) and (d) for the disbursement of Property Damage Insurance Proceeds under Section 6.18(b), except that the Province shall not be required to deposit the amount with the Insurance Trustee;
- (c) subject to Section 8.9 [Allocation of Risks of Participants and Trespassers], if it has been agreed or determined that the Compensation Event has resulted or will result in a delay to the occurrence of the Eastern Segment Substantial Completion Date, the Western Segment Substantial Completion Date and/or the Total Completion Date, then if the Compensation Event occurs:
- (i) prior to the Eastern Segment Substantial Completion Date, then the Eastern Segment Substantial Completion Longstop Date shall be postponed;
 - (ii) prior to the Western Segment Substantial Completion Date, then the Western Segment Substantial Completion Longstop Date shall be postponed;
 - (iii) after the Western Segment Substantial Completion Date but prior to the Total Completion Target Date, then the Total Completion Target Date shall be postponed; or
 - (iv) after the Total Completion Target Date but prior to the Total Completion Date, then the adjustment of the Availability Payment in accordance with Section 3.2(d) of Schedule 10 [Performance Mechanism] shall not apply,

in each case by or for, as the case may be, such time as is reasonable in the circumstances to take account solely of the effect of the delay caused by the Compensation Event to the relevant date or dates, provided that the Expiry Date and the Term shall not be extended, and in each case the Project Schedule shall be amended accordingly to reflect such delay to the relevant date or dates, including any resulting delays to other related milestone dates set out therein.

8.4 Concessionaire's Entitlements Upon Occurrence of a Relief Event

Subject to Sections 8.1(b) and 8.12 [Delay in Notification] and to the Concessionaire's obligations under Section 4.10 [Mitigation By Concessionaire], if a Relief Event has occurred:

- (a) to the extent that, and for so long as, the Concessionaire is prevented by the Relief Event from performing any obligation under this Agreement (other than those obligations

SOUTH FRASER PERIMETER ROAD PROJECT

- 89 -

arising as a result of the Relief Event, including the Concessionaire's obligations under Section 6.15 [Restoration and Reinstatement of Damage or Destruction]):

- (i) the Province shall not exercise any right it would otherwise have under this Agreement to terminate this Agreement arising from the Concessionaire's inability to perform such obligation (other than as expressly provided for in this Section or Section 8.7 [Termination for Damage or Destruction]); and
 - (ii) no NCE Points or Default Points shall be assigned in respect of any such prevented performance; and
- (b) if it has been agreed or determined that the Relief Event has resulted or will result in a delay to the occurrence of the Eastern Segment Substantial Completion Date, the Western Segment Substantial Completion Date and/or the Total Completion Date, then if the Relief Event occurs:
- (i) prior to the Eastern Segment Substantial Completion Date, then the Eastern Segment Substantial Completion Longstop Date shall be postponed;
 - (ii) prior to the Western Segment Substantial Completion Date, then the Western Segment Substantial Completion Longstop Date shall be postponed;
 - (iii) in the case only of the Relief Events referred to in subsections (a), (b), (c), (d), (h), (i), (j) and (k) of the definition of Relief Event in Section 1.1 [Definitions] of Schedule 1:
 - (A) after the Western Segment Substantial Completion Date but prior to the Total Completion Target Date, then the Total Completion Target Date shall be postponed; or
 - (B) after the Total Completion Target Date but prior to the Total Completion Date, then the adjustment of the Availability Payment in accordance with Section 3.2(d) of Schedule 10 [Performance Mechanism] shall not apply,

in each case by or for, as the case may be, such time as is reasonable in the circumstances to take account solely of the effect of the delay caused by such Relief Event to the relevant date or dates and the Project Schedule shall be amended accordingly to reflect such delay to the relevant date or dates, including any resulting delays to other related milestone dates set out therein, provided that the Expiry Date and the Term shall not be extended (except pursuant to Section 8.4(d)) and provided further that, in the circumstances set out in Section 8.4(b)(iii), such postponement or non-application shall apply only:

- (iv) while such Relief Event is continuing; and
- (v) thereafter, only as and for so long as the Concessionaire is complying with a plan to address the impact of such Relief Event on the Project Infrastructure and Project Site in accordance with Good Industry Practice, which plan has been prepared by the Concessionaire, submitted to the Province's Representative

SOUTH FRASER PERIMETER ROAD PROJECT

- 90 -

pursuant to the Consent Procedure within five days of the occurrence of such Relief Event, and accepted by the Province's Representative, acting reasonably,

and up to a maximum aggregate total postponement and/or non-application of 180 days under all of Sections 8.4(b)(iii)(A), 8.4(b)(iii)(B), 8.5(b)(iii) and 8.5(b)(iv);

(c) subject to Section 8.4(e), if:

- (i) a Relief Event referred to in subsection (b), (c) or (d) of the definition of Relief Event in Section 1.1 [Definitions] of Schedule 1 occurs prior to the Western Segment Substantial Completion Date; and
- (ii) it has been agreed or determined that such Relief Event has resulted or will result in a delay of more than 30 days to the occurrence of the Western Segment Substantial Completion Date (the total period of such delay being referred to in this Section 8.4(c) as the "**Delay Period**"),

then

- (iii) in respect of each calendar month that both commences and ends during the Compensation Period (as defined below), the Province shall pay to the Concessionaire an amount equal to:

Section 17

- (A) [REDACTED] (being [REDACTED] % of the portion of the Maximum Availability Payment in respect of such month shown in Column 1 of Appendix D [Maximum Availability Payments] of Schedule 10;

minus

- (B) the Maximum Availability Payment for the Eastern Segment in respect of such month; and

- (iv) in respect of each calendar month any day or days of which occur during the Compensation Period but which is not a calendar month that is referred to in Section 8.4(c)(iii), the Province shall pay to the Concessionaire an amount equal to $CP \times S/D$, where:

- (A) CP is the amount that would be payable under Section 8.4(c)(iii) in respect of the relevant calendar month if all of the days in such calendar month were during the Compensation Period;

- (B) S is the number of days in such month that occur during the Compensation Period; and

- (C) D is the number of days in such month; and

- (v) Sections 12.3(b) and 12.3(g) of Schedule 10 [Performance Mechanism] shall apply *mutatis mutandis* to each calendar month referred to in Sections 8.4(c)(iii) and (iv) and Section 13.3 of Schedule 10 [Performance Mechanism] shall apply

SOUTH FRASER PERIMETER ROAD PROJECT

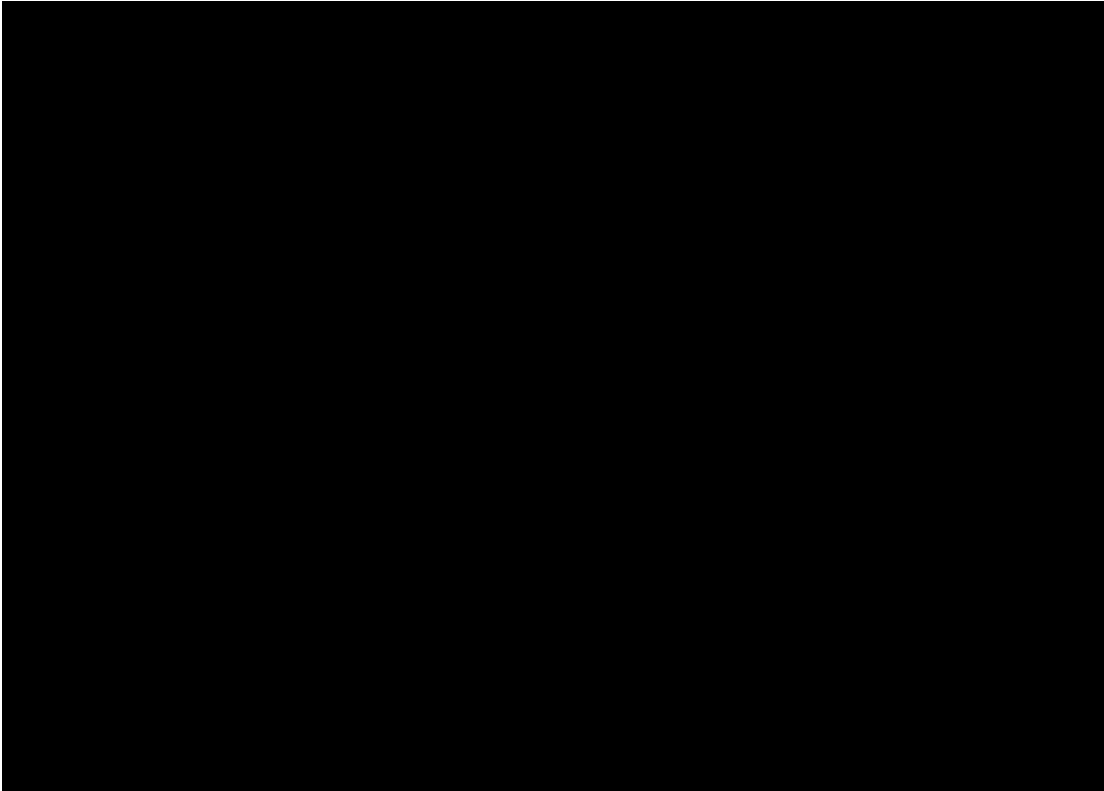
mutatis mutandis to determine the due date for any payment that the Province is obliged to make pursuant to Section 8.4(c)(iii) or (iv),

provided that, if the Compensation Period continues for more than 180 days, the Province may at any time thereafter during the Compensation Period terminate this Agreement by notice to the other parties having immediate effect, subject to Section 14.7 [Notice of Intention to Terminate and Dispute], and compensation on termination shall be payable for such termination in accordance with Part 2 [Compensation on Non-Default Termination] and Part 7 [General Provisions] of Schedule 13.

In this Section 8.4(c), “**Compensation Period**” means the period that:

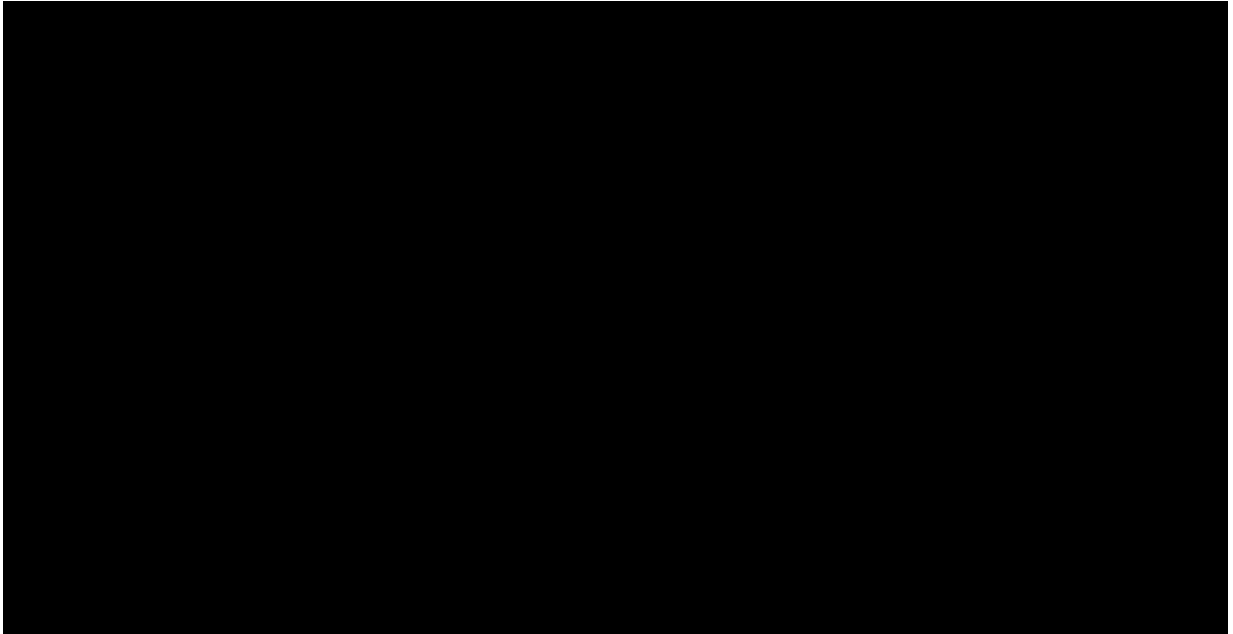
- (A) commences on (and includes) the date that is 31 days after the Western Segment Required Substantial Completion Date; and
- (B) ends on (and includes) the earlier of:
 - (1) the date which occurs X days after the commencement of the period determined in accordance with (A), where X is the number of days in the Delay Period minus thirty; and
 - (2) the Western Segment Substantial Completion Date;

(d)

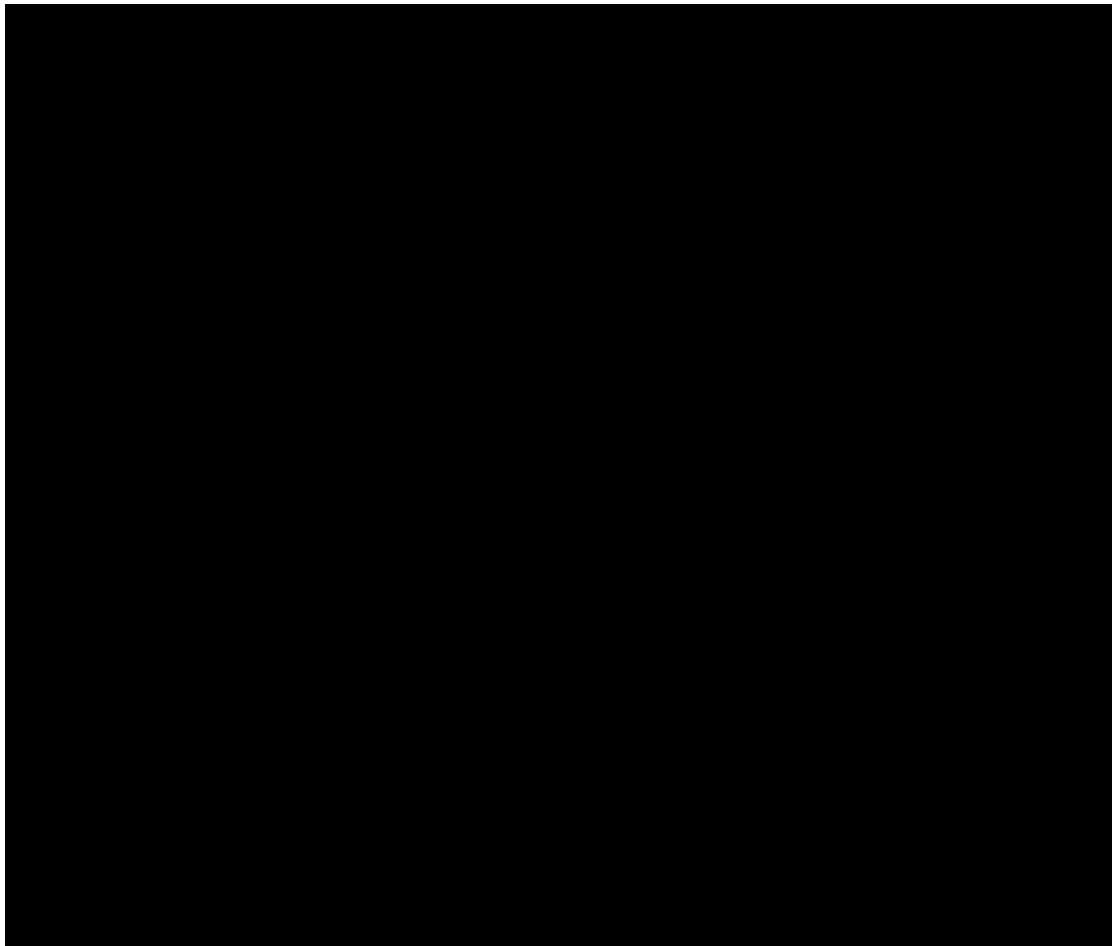


Section 17

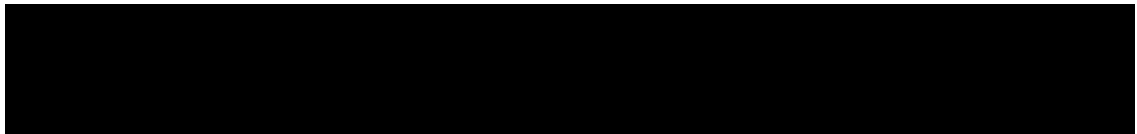
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Section 17



Section 17



Section 17 →



- (e) in no circumstances shall the Province be obliged to pay an amount to the Concessionaire pursuant to Section 8.4(c) and pursuant to Section 8.4(d)(iii)(B)(2) in respect of the same calendar month (or portion thereof).

8.5 Parties' Entitlements Upon Occurrence of a Force Majeure Event

Subject to Sections 8.1(b) and 8.12 [Delay in Notification] and to the Applicant's obligations under Section 3.2 [Mitigation By Province] or Section 4.10 [Mitigation By Concessionaire], as applicable, if at any time a Force Majeure Event has occurred:

- (a) to the extent that, and for so long as, the Applicant is prevented by the Force Majeure from performing any obligation under this Agreement (other than those obligations arising as a result of the Force Majeure Event, including the Concessionaire's obligations under Section 6.15 [Restoration and Reinstatement of Damage or Destruction]):
 - (i) no other party shall exercise any right it would otherwise have under this Agreement to terminate this Agreement arising from the Applicant's inability to perform such obligation (other than as expressly provided for in Section 8.6 [Termination for Force Majeure Event] or Section 8.7 [Termination for Damage or Destruction]); and

SOUTH FRASER PERIMETER ROAD PROJECT

- 94 -

- (ii) if the Applicant is the Concessionaire, no NCE Points or Default Points shall be assigned in respect of any such prevented performance; and
- (b) if it has been agreed or determined that the Force Majeure Event has resulted or will result in a delay to the occurrence of the Eastern Segment Substantial Completion Date, the Western Segment Substantial Completion Date and/or the Total Completion Date, then if the Force Majeure Event occurs:
 - (i) prior to the Eastern Segment Substantial Completion Date, then the Eastern Segment Substantial Completion Longstop Date shall be postponed;
 - (ii) prior to the Western Segment Substantial Completion Date, then the Western Segment Substantial Completion Longstop Date shall be postponed;
 - (iii) after the Western Segment Substantial Completion Date but prior to the Total Completion Target Date, then the Total Completion Target Date shall be postponed; or
 - (iv) after the Total Completion Target Date but prior to the Total Completion Date, then the adjustment of the Availability Payment in accordance with Section 3.2(d) of Schedule 10 [Performance Mechanism] shall not apply,

in each case by or for, as the case may be, such time as is reasonable in the circumstances to take account solely of the effect of the delay caused by such Force Majeure Event to the relevant date or dates and the Project Schedule shall be amended accordingly to reflect such delay to the relevant date or dates, including any resulting delays to other related milestone dates set out therein, provided that the Expiry Date and the Term shall not be extended and provided further that, in the circumstances set out in Sections 8.5(b)(iii) and 8.5(b)(iv), such postponement or non-application shall apply only:

- (v) while such Force Majeure Event is continuing; and
- (vi) thereafter, only as and for so long as the Concessionaire is complying with a plan to address the impact of such Force Majeure Event on the Project Infrastructure and Project Site in accordance with Good Industry Practice, which plan has been prepared by the Concessionaire, submitted to the Province's Representative pursuant to the Consent Procedure within five days of the occurrence of such Force Majeure Event, and accepted by the Province's Representative, acting reasonably,

and up to a maximum aggregate total postponement and/or non-application of 180 days under all of Sections 8.4(b)(iii)(A), 8.4(b)(iii)(B), 8.5(b)(iii) and 8.5(b)(iv).

8.6 Termination for Force Majeure Event

- (a) If the occurrence of a Force Majeure Event frustrates or renders impossible for a continuous period of more than 180 days the performance by the Province or the Concessionaire of its respective obligations with respect to all or a material portion of the Project or the Project Work, as the case may be, so as to frustrate the overall purpose and intent of the Project, then either the Province or the Concessionaire may at any time,

SOUTH FRASER PERIMETER ROAD PROJECT

- 95 -

provided that such frustration is then continuing, terminate this Agreement by notice to the other parties having immediate effect, subject to Sections 8.1(b) and 14.7 [Notice of Intention to Terminate and Dispute], provided that, if the Province does not exercise such right to terminate within 180 days of the occurrence of such Force Majeure Event but the Concessionaire does so exercise such right, the Province may by notice to the Concessionaire reject such termination of this Agreement by the Concessionaire and upon such rejection by the Province:

- (i) without prejudice to the other relief available to the Concessionaire in respect of such Force Majeure Event pursuant to Section 8.5 [Parties' Entitlements Upon Occurrence of a Force Majeure Event], the Concessionaire shall be compensated in accordance with Section 8.3(b), but only in respect of Direct Losses incurred or to be incurred by the Concessionaire as a result of the Force Majeure Event as and from the date of the exercise by the Concessionaire of its termination right; and
 - (ii) the Province may at any time thereafter, provided that such frustration is then continuing, terminate this Agreement by notice to the Concessionaire having immediate effect, subject to Section 14.7 [Notice of Intention to Terminate and Dispute].
- (b) If this Agreement is terminated by either the Province or the Concessionaire pursuant to Section 8.6(a), compensation on termination shall be payable in accordance with Part 2 [Compensation on Non-Default Termination] and Part 7 [General Provisions] of Schedule 13.

8.7 Termination for Damage or Destruction

If all or any substantial part of the Project Infrastructure or the Project Site is damaged or destroyed as a result of the occurrence of:

- (a) any event (other than a Force Majeure Event, or a Compensation Event referred to in subsection (v) or subsection (w) of the definition of Compensation Event in Section 1.1 [Definitions] of Schedule 1) and:
 - (i) the information provided by the Concessionaire and approved by the Province's Representative as part of the Reinstatement Plan pursuant to Section 6.16 [Reinstatement Plan] establishes that there are insufficient funds available to the Concessionaire from all sources to allow the Concessionaire to complete the Reinstatement Work while meeting its scheduled payment obligations under the Senior Lending Agreements (the "**Reinstatement Funds Deficiency**"); and
 - (ii) no party has agreed to fund the Reinstatement Funds Deficiency,

then:

 - (iii) in the event that it is agreed or established that either:

SOUTH FRASER PERIMETER ROAD PROJECT

- 96 -

- (A) such damage or destruction of all or a substantial part of the Project Infrastructure or Project Site results from or is contributed to by a Concessionaire Non-Excusable Event, including as a result of a failure by the Concessionaire to comply with and implement all design requirements specified in the Project Requirements applicable to the damaged Project Infrastructure or Project Site; or
- (B) the cause of the Reinstatement Funds Deficiency is a breach by the Concessionaire of any of its obligations with respect to the Required Insurance set out in Part 6 [Insurance, Damage and Destruction] and Schedule 15 [Insurance Requirements], including a failure by the Concessionaire to fund deductibles and/or waiting periods for which it is responsible under this Agreement,

the Province may terminate this Agreement by notice to the Concessionaire having immediate effect, subject to Section 14.7 [Notice of Intention to Terminate and Dispute], in which event compensation on termination shall be payable in accordance with Part 3 [Compensation on Termination for Concessionaire Default] and Part 7 [General Provisions] of Schedule 13; or

- (iv) in any case where Section 8.7(a)(iii) does not apply, either the Province or the Concessionaire may terminate this Agreement by notice to the other parties having immediate effect, subject to Section 14.7 [Notice of Intention to Terminate and Dispute], in which event compensation on termination shall be payable in accordance with Part 2 [Compensation on Non-Default Termination] and Part 7 [General Provisions] of Schedule 13; or
- (b) a Compensation Event referred to in subsection (v) or subsection (w) of the definition of Compensation Event in Section 1.1 [Definitions] of Schedule 1, the Province shall elect, by notice to the Concessionaire having immediate effect, either:
 - (i) to compensate the Concessionaire in accordance with Section 8.3(b), and this Agreement will continue; or
 - (ii) subject to Section 14.7 [Notice of Intention to Terminate and Dispute], to terminate this Agreement, in which event compensation on termination shall be payable in accordance with Part 2 [Compensation on Non-Default Termination] and Part 7 [General Provisions] of Schedule 13,

provided that the Province may not in such case elect to terminate this Agreement pursuant to Section 8.7(b)(ii) if the Concessionaire releases the Province from all obligations under Section 8.7(b)(i) and deposits with the Insurance Trustee an amount equal to the estimated amount to complete the Reinstatement Work as set out in the Reinstatement Plan pursuant to Section 6.16 [Reinstatement Plan]. Such amount shall be held and disbursed based on the same criteria as are provided in Sections 6.18(c) and (d) for the disbursement of Property Damage Insurance Proceeds under Section 6.18 [Application of Proceeds of Insurance] (subject to satisfaction of all conditions to such disbursement provided for in that Section).

SOUTH FRASER PERIMETER ROAD PROJECT

- 97 -

8.8 Responsibility for Participants and Trespassers

- (a) Except as otherwise expressly provided in this Agreement, neither the Province nor BCTFA shall be responsible for the presence on or around or entry onto or around the Project Site or the Project Infrastructure, or any other interference with or affecting the Project Site or the Project Infrastructure or the vicinity of them or the Project Work by or caused by, any participants (“**Participants**”) in a Labour Dispute or a Protest Action, or any persons other than Participants not entitled to be on the Project Site or the Project Infrastructure (“**Trespassers**”), nor for any act, omission or default of any Participant or Trespasser (in any such case whether before or during the Term). The presence on or around or entry onto or around the Project Site or the Project Infrastructure of, or any other interference with or affecting the Project Site or the Project Infrastructure or the vicinity of them or the Project Work by or caused by, any Participant or Trespasser and any lawful or unlawful activities of any such person shall not be a breach of the obligation of the Province hereunder to permit the Concessionaire to have access to the Project Site, nor a breach of any other obligation or representation or warranty of the Province under this Agreement.
- (b) The management of any Participants and/or any Trespassers during the Term shall be the responsibility of the Concessionaire. If at any time during the Term any part of the Project Site or the Project Infrastructure is occupied by Participants and/or Trespassers, then as soon as reasonably practicable the Concessionaire shall notify the Province of such occurrence and of the action which the Concessionaire proposes to take to deal with such Participants and/or Trespassers. The Concessionaire may exercise any legal remedies available to it to remove Participants and/or Trespassers (including the obtaining of injunctions and enforcement orders in respect thereof), provided that the Concessionaire shall give the Province’s Representative reasonable (and in any event not less than 24 hours) notice prior to commencing any legal proceedings for that purpose and provided further that the Concessionaire shall not give directly or indirectly to any Participant or Trespasser any inducement, monetary or otherwise, with a view to avoiding, limiting or influencing the manner of protest activities by that Participant or Trespasser or by other Participants or Trespassers, provided that the Concessionaire shall not by virtue of this Section be prevented from entering into bona fide settlements of Claims brought against it by Participants or Trespassers which provide for reasonable payments in satisfaction of such Claims or agreeing to any reasonable cost orders in any proceedings.
- (c) The Concessionaire may request the assistance of the Province (at the cost of the Concessionaire) to remove Participants where the Concessionaire demonstrates to the Province’s reasonable satisfaction that it has exercised all legal remedies available to it to remove the Participants (provided that for this purpose the Concessionaire may but shall not be obligated to prosecute injunctive or other judicial remedies beyond the Court of first instance) and that the continued presence of the Participants is having a material adverse effect on the conduct of the Project Work that the Concessionaire is unable to mitigate. Following such request, the Province shall notify the Concessionaire whether the Province can lawfully provide any assistance in relation to the removal of the Participants that is not independently available to the Concessionaire and, to the extent that such assistance can be lawfully provided, the Province shall provide such assistance

SOUTH FRASER PERIMETER ROAD PROJECT

- 98 -

(at the Concessionaire's cost) to the extent it is, in the discretion of the Province, reasonable and appropriate in the circumstances to do so.

- (d) Where the Concessionaire is given assistance by the Province in accordance with Section 8.8(c) hereof, the Concessionaire shall indemnify and hold harmless the Province and the Province Indemnified Persons, and each of them, in respect of all Direct Losses and/or Claims suffered or incurred by the Province and the Province Indemnified Persons, or any of them, as a result of or in connection with the provision of such assistance.

8.9 Allocation of Risks of Participants and Trespassers

- (a) In the event of any Protest Action, the Concessionaire shall be entitled to compensation, extensions of time and/or other relief in respect thereof as a Compensation Event in accordance with this Part and the following additional parameters:
 - (i) the Concessionaire shall only be entitled to extensions of time in respect of Protest Actions pursuant to Section 8.3(c) [Concessionaire's Entitlements Upon Occurrence of a Compensation Event] if and to the extent that the Concessionaire establishes that the Participants in such Protest Action continue to occupy any part of the Project Site or the Project Infrastructure for a period of more than seven days after the Concessionaire has exhausted all legal remedies available to it to seek injunctive relief or other judicial remedies from a Court of first instance to remove them and to enforce any injunction or other remedy granted by such Court to remove them (provided that for this purpose the Concessionaire may but shall not be obligated to prosecute injunctive or other judicial remedies beyond the Court of first instance); and
 - (ii) the Concessionaire shall only be entitled to compensation in respect of Protest Actions pursuant to Section 8.3(b) [Concessionaire's Entitlements Upon Occurrence of a Compensation Event], if and, subject to Section 8.11 [Effect of Insurance], to the extent that the Concessionaire establishes that it has incurred during the Term costs to mitigate the effects of Protest Actions, including:
 - (A) the costs of exercising any legal remedy available to the Concessionaire in respect of Protest Actions (including in accordance with its obligations under Section 8.8 [Responsibility for Participants and Trespassers]);
 - (B) the increased costs, including financing costs, attributable to any extension of time to which the Concessionaire is entitled;
 - (C) the cost of remedying any damage caused by Protest Actions; and
 - (D) the taking of any mitigation action in relation to Protest Actions,which aggregate (excluding amounts referred to in Section 8.11 [Effect of Insurance]) more than [REDACTED] (index linked),

provided that the limitations on the compensation and extensions of time available to the Concessionaire from that otherwise available to the Concessionaire in the event of a

SOUTH FRASER PERIMETER ROAD PROJECT

- 99 -

Compensation Event, as set out in Sections 8.9(a)(i) and 8.9(a)(ii) hereof, shall not apply to the extent that such Protest Action arose, directly or indirectly, as a result of any Province Non-Excusable Event.

- (b) Except as expressly provided in Section 8.9(a), as between the Province and the Concessionaire the Concessionaire shall bear, without recourse to the Province, any Losses suffered by:
 - (i) the Concessionaire, its agents, Principal Contractors and Subcontractors or employees of any of them;
 - (ii) the Province or BCTFA to the extent such Losses are Direct Losses arising:
 - (A) from any interference, obstruction, or other hindrance to the Project including the presence of a Participant and/or Trespasser on the Project Site or the Project Infrastructure;
 - (B) from any damage caused to the Project Infrastructure;
 - (C) as a result of any measures taken by or on behalf of or at the request or direction of the Concessionaire; and/or
 - (D) as a result of the failure by the Concessionaire to take or cause to be taken measures which should have been taken,
- that are caused by any Participant and/or Trespasser, including any damage to property, any bodily injury or death, and any loss of income.
- (c) Nothing in this Section shall affect:
 - (i) any right of the Province or BCTFA to make or recover any Claim against any Participant or Trespasser for public nuisance or for damage suffered by the Province or BCTFA or their respective agents, contractors or subcontractors of any tier or any employees of any of them; or
 - (ii) any right of the Concessionaire to make or recover any Claim against any Participant or Trespasser for damage suffered by the Concessionaire, its agents, Principal Contractors or Subcontractors or any employees of any of them.

8.10 Sharing of Increased Capital Expenditures in Specified Circumstances

- (a) In the event that the occurrence of a Change in Law other than:
 - (i) a Discriminatory Change in Law;
 - (ii) a Change in Law relating to Taxes; or
 - (iii) a Change in Law occurring prior to the Total Completion Date and to the extent affecting the Project Requirements relating to the Construction Activities,

SOUTH FRASER PERIMETER ROAD PROJECT

changes the Project Requirements to alter, add, demolish, extend or vary the quality or function of the Project Infrastructure and thereby causes the Concessionaire to incur additional Capital Expenditures to perform Project Work which the Concessionaire would not have incurred but for such occurrence, then the Concessionaire shall be entitled, subject to the Concessionaire’s obligations under Section 4.10 [Mitigation By Concessionaire], to receive compensation through a lump sum payment from the Province pursuant to Section 10.1 [Lump Sum Payment and Financing] or, where applicable, adjustments to the Availability Payments pursuant to Section 10.2 [Adjustment of Availability Payments], in respect of such additional aggregate Capital Expenditures incurred by the Concessionaire as a direct consequence of all occurrences of such Change in Law during the Term (the “Additional Change in Law Capital Expenditures”) in an amount calculated in accordance with Table 8.10(a) set forth below.

Table 8.10(a) Sharing of Additional Change in Law Capital Expenditures

Additional Change in Law Capital Expenditure	Province Share of Additional Change in Law Capital Expenditure	Concessionaire Share of Additional Change in Law Capital Expenditure	Maximum Cumulative Concessionaire Share of Additional Change in Law Capital Expenditure during Term
Applicable to first [redacted]			
Applicable to next incremental [redacted]			
Applicable to amount over [redacted]			

Section 17 and 21




- (b) In the event that the discovery of any Undisclosed Utilities causes the Concessionaire to incur additional Capital Expenditures in order to carry out the Project Work and otherwise comply with the Project Requirements as a result of the existence or actual location of such Utilities which the Concessionaire would not have incurred but for such discovery, then the Concessionaire shall be entitled, subject to the Concessionaire’s obligations under Section 4.10 [Mitigation By Concessionaire], to receive compensation through a lump sum payment from the Province pursuant to Section 10.1 [Lump Sum Payment and Financing] or, where applicable, adjustments to the Availability Payments pursuant to Section 10.2 [Adjustment of Availability Payments], in respect of such additional aggregate Capital Expenditures incurred by the Concessionaire as a direct consequence of the discovery of all such Undisclosed Utilities during the Term (the “Additional Utilities Capital Expenditures”) in an amount calculated in accordance with Table 8.10(c) set forth below.

SOUTH FRASER PERIMETER ROAD PROJECT

Table 8.10(c) Sharing of Additional Utilities Capital Expenditures

Additional Utilities Capital Expenditure	Province Share of Additional Utilities Capital Expenditure	Concessionaire Share of Additional Utilities Capital Expenditure	Maximum Cumulative Concessionaire Share of Additional Utilities Capital Expenditure during Term
Applicable to first [REDACTED]			
Applicable to next incremental [REDACTED]			
Applicable to amount over [REDACTED]			

Section 17 and 21



8.11 Effect of Insurance

Notwithstanding anything to the contrary in this Part 8 [Supervening Events], the Concessionaire shall not be entitled to any compensation under this Part 8 [Supervening Events] in respect of any Supervening Event to the extent, in respect of the Supervening Event:

- (a) that:
 - (i) the Concessionaire recovers or is entitled to recover under any Required Insurance, or would have been able to recover under any Required Insurance if such Required Insurance had been taken out and maintained in accordance with this Agreement; or
 - (ii) the Supervening Event or any aspect thereof is insured against, or required to be insured against, under any Required Insurance, or would have been insured against under any Required Insurance if such Required Insurance had been taken out and maintained in accordance with this Agreement;

whether or not such Required Insurance was in fact effected or, if effected, was vitiated, and whether vitiated as a result of any act or omission of the Concessionaire (or by any person for whom the Concessionaire is in law responsible) including, but not limited to, by reason of non-disclosure or under-insurance or failure or insolvency of the insurer, or for any other reason (excluding only vitiation caused by any act or omission of the Province or any person for whom the Province is in law responsible, but only to the extent non-vitiation terms protecting against vitiation in the case of such act or omission are not required by the terms of this Agreement to be included in the applicable insurance policies);

- (b) that the Concessionaire recovers or is entitled to recover under any policy of insurance that is not Required Insurance but that the Concessionaire has in fact taken out and maintained; or

SOUTH FRASER PERIMETER ROAD PROJECT

- 102 -

- (c) that there are proceeds of insurance held by the Insurance Trustee that are (subject to the Concessionaire fulfilling all conditions to the disbursement thereof) available for satisfaction of the Claims or Direct Losses arising as a result of such Supervening Event, in whole or in part; or
- (d) that the Province makes or authorizes, or is obligated under this Agreement (subject to the Concessionaire fulfilling all conditions thereto) to make or authorize, payment to or for the account of or on behalf of the Concessionaire under any of Sections 6.18 [Application of Proceeds of Insurance], 6.21(b)(i) and Section 6.22 [Third Party Liability Insurance as an Uninsurable Risk]; or
- (e) of any amounts in respect of deductibles and waiting periods under any insurance referred to in either of Sections 8.11(a) and (b);

provided that, in the case of a Compensation Event described in subsection (t), subsection (v) or subsection (w) of the definition of Compensation Event in Section 1.1 [Definitions] of Schedule 1, the Province shall not reduce pursuant to this Section 8.11 [Effect of Insurance] the compensation it would otherwise have paid under this Part 8 [Supervening Events] by reason of proceeds of insurance that the Concessionaire recovers or is entitled to recover up to the following limits:

- (f) in the case of all Compensation Events described in subsection (t) of the definition of Compensation Event, up to an aggregate limit over the Term of [REDACTED]; ← Section 17
- (g) in the case of a Compensation Event described in subsection (v) of the definition of Compensation Event, up to a limit of [REDACTED] per Seismic Event; and
- (h) in the case of a Compensation Event described in subsection (w) of the definition of Compensation Event, up to a limit of [REDACTED] per Flood.

8.12 Delay in Notification

↗ Section 17

- (a) If a Supervening Event Notice is provided by an Applicant to the other relevant party more than 12 months after the date of the occurrence or commencement of such Supervening Event contrary to Section 8.1(b)(v), then the Applicant shall not be entitled to any compensation, extension of time (including extensions of the Expiry Date pursuant to Section 8.4(d)) or relief from its obligations under this Agreement in respect of the Supervening Event that was the subject of such Supervening Event Notice.
- (b) If a Supervening Event Notice or any required information is provided by an Applicant to the other relevant party after the relevant dates referred to in Section 8.2 [Procedures Upon Occurrence of a Supervening Event], then the Applicant shall not be entitled to any compensation, extension of time (including extensions of the Expiry Date pursuant to Section 8.4(d)) or relief from its obligations under this Agreement in respect of the Supervening Event that was the subject of such Supervening Event Notice to the extent that the amount thereof was increased as a result of such delay in providing such notice or information.

SOUTH FRASER PERIMETER ROAD PROJECT

- 103 -

**PART 9
INDEMNITIES AND LIMITATIONS ON LIABILITY****9.1 Indemnification by Concessionaire**

Without limiting the Concessionaire's duties, obligations and liabilities under the TIA and under Section 2.3 [Assumption of Risk and Responsibility], and subject to Section 9.2 [Exceptions to Indemnification by Concessionaire], the Concessionaire shall indemnify and hold harmless the Province and the Province Indemnified Persons, and each of them, from and against any and all Claims and Direct Losses at any time suffered or incurred by, or brought or made against, the Province and the Province Indemnified Persons, or any of them, that arise directly or indirectly out of, in the course of, in connection with or as a result of, the Project Work, or any use or occupation of or event, loss or occurrence on or to the Project Site or the Project Infrastructure during the Term, or any obligation of the Concessionaire under this Agreement, including Claims and Direct Losses:

- (a) for or in respect of bodily injury including death resulting at any time therefrom;
- (b) for or in respect of any damage to or loss of property, whether real or personal, including, without limitation, damage to or loss of:
 - (i) all or any part of the Project Infrastructure or any other property belonging to the Province or BCTFA or for which either of them is responsible;
 - (ii) Infrastructure or property of any Governmental Authority or other Relevant Authority, or of any Utility Supplier, Railway or other third party; and
 - (iii) lands (and improvements thereon) adjacent to the Project Site;
- (c) for or in respect of any damage to or loss of Plant or Construction Plant;
- (d) suffered by the Concessionaire or any person for whom the Concessionaire is in law responsible or any employees of any of them or any user of the Concession Highway or other third party, that arise out of or in the course of or in connection with or as a result of the Project Work or the use or occupation of the Project Site and the Project Infrastructure or any part thereof (including any Claims in respect of environmental mitigation measures);
- (e) caused by or arising from or relating to any act or omission of any user of the Project Site or the Project Infrastructure or other person on or about the Project Site or the Project Infrastructure;
- (f) arising as a result of or in connection with any adoption, use or application by or on behalf of the Concessionaire, any Principal Contractor or any Subcontractor, or any other person for whom the Concessionaire is in law responsible in relation to any Project Work, of any Design Data, Disclosed Data or other data or documents provided or made available by or on behalf of the Province or BCTFA, whether before or after execution of this Agreement, except as expressly provided in Section 2.15(e);
- (g) arising as a result of or in connection with a breach of the provisions of Schedule 21 [Delegated Obligations, Rights, Powers and Functions] by the Concessionaire or as a

SOUTH FRASER PERIMETER ROAD PROJECT

- 104 -

result of any failure by the Concessionaire to perform any of the Delegated Obligations or any exercise by the Concessionaire of any of the Delegated Rights, Powers and Functions thereunder;

- (h) that are to be borne by the Concessionaire in accordance with Section 8.8 [Responsibility for Participants and Trespassers] or Section 8.9 [Allocation of Risks of Participants and Trespassers] or that arise out of or in connection with any measures taken or not taken by the Concessionaire, or by or on behalf of the Province or BCTFA at the request of the Concessionaire, against or in connection with Participants or Trespassers;
- (i) arising as a result of or in connection with any act or omission of the Concessionaire or any person for whom the Concessionaire is in law responsible or employees of any of them that directly or indirectly causes any breach of any statutory duties or obligations;
- (j) arising as a result of or in connection with any Existing Contamination or Subsequent Contamination, or any remediation, handling or legal requirement of a Governmental Authority in respect of Existing Contamination or Subsequent Contamination;
- (k) arising as a result of or in connection with any infringement or misappropriation of any other person's Intellectual Property Rights or breach of obligations of confidentiality by the Concessionaire or any person for whom the Concessionaire is in law responsible;
- (l) arising as a result of or in connection with any breach in the due observance and performance of any of the obligations of the Concessionaire under this Agreement or any of the other Project Documents; or
- (m) arising as a result of or in connection with any wrongful act, wrongful omission, negligence or wilful misconduct of the Concessionaire or persons for whom the Concessionaire is in law responsible in connection with the Project Work, or during the Term.

9.2 Exceptions to Indemnification by Concessionaire

The obligations of the Concessionaire to indemnify under Section 9.1 [Indemnification by Concessionaire] (and, to the extent this Section (or any subsection of this Section) is expressly made applicable thereto, under other indemnities under this Agreement) in respect of Claims and Direct Losses shall not apply to any Claims or Direct Losses to the extent that:

- (a) the Province is obligated to indemnify the Concessionaire in respect of Claims and Direct Losses arising out of the same events or circumstances pursuant to Section 9.5 [Indemnification by the Province] or Section 9.6 [Limited Indemnity for Contamination];
- (b) the Claims or Direct Losses are directly attributable to any wilful misconduct or breach in the due performance or observance of any of the obligations of the Province or BCTFA under this Agreement or any other Province Project Document, by the Province, BCTFA, or any person for whom the Province is in law responsible;
- (c) the Claims or Direct Losses are directly attributable to:
 - (i) a Province Change;

SOUTH FRASER PERIMETER ROAD PROJECT

- 105 -

- (ii) a Compensation Event or Force Majeure Event to the extent such Compensation Event or Force Majeure Event does not arise or result (directly or indirectly) from any Concessionaire Non-Excusable Event; or
- (iii) the non-performance of any obligations of the Province under the BNSF Master Agreement that the Concessionaire is not obligated to perform pursuant to Section 6.9 [BNSF Master Agreement] of Schedule 8;

and provided that such Claims or Direct Losses do not arise or result (directly or indirectly) from any Concessionaire Non-Excusable Event;

- (d) the Province and/or the Province Indemnified Persons, as the case may be:
 - (i) have received or are entitled to receive insurance proceeds in respect of such Claims and Direct Losses under the Required Insurance; or
 - (ii) would have been entitled to receive insurance proceeds in respect of such Claims and Direct Losses under the Required Insurance where the Claims or Direct Losses arise from a risk that, at the time of the relevant occurrence giving rise to the Claims or Direct Losses, was Uninsurable and the Province had previously elected under Section 6.21(a)(ii) to allow this Agreement to continue notwithstanding the risk being Uninsurable;
- (e) the Claims or Direct Losses relate to rent, user fees, property taxes (if any) or occupancy costs that are or become payable by the Province or BCTFA under Project Site Agreements or Project Site Encumbrances to the extent that the Concessionaire is not obligated to pay such amounts pursuant to Section 5.3 [Exception to Concessionaire Responsibilities] of Schedule 8;
- (f) the Claims or Direct Losses consist of payments that the Province has made or is obligated to make to the Concessionaire under Section 8.4(c); or
- (g) the Claims or Direct Losses consist of:
 - (i) compensation that the Province has paid or is obligated to pay to the Concessionaire; or
 - (ii) adjustments to the Availability Payments that the Province has made or is obligated to make;

under Section 8.10 [Sharing of Increased Capital Expenditures in Specified Circumstances], provided that such Claims or Direct Losses do not arise or result (directly or indirectly) from any Concessionaire Non-Excusable Event.

9.3 Effect of Indemnities

Subject to Section 9.12 [No Double Compensation]:

- (a) the Concessionaire's liability to the Province and the Province Indemnified Persons, or any of them, under any indemnity in this Agreement is without prejudice to any other

SOUTH FRASER PERIMETER ROAD PROJECT

- 106 -

right or remedy available to the Province and the Province Indemnified Persons, or any of them, provided that any Claim of the Province against the Concessionaire in respect of the subject matters of the indemnity in Section 9.1 [Indemnification by Concessionaire], if made in tort or for breach of contract rather than for indemnification under Section 9.1 [Indemnification by Concessionaire], shall be subject to the exceptions set out in Section 9.2 [Exceptions to Indemnification by Concessionaire] to the same extent as if the Claim had been made under Section 9.1 [Indemnification by Concessionaire]; and

- (b) any obligation of the Concessionaire to indemnify and hold harmless under any provision of this Agreement is in addition to and not in substitution for or in limitation of any other obligation of the Concessionaire to indemnify and hold harmless under any other provision of this Agreement.

9.4 Conduct of Claims Indemnified by Concessionaire

- (a) If the Province or any Province Indemnified Person (in this Section individually referred to as an “**Indemnified Party**” and collectively referred to as the “**Indemnified Parties**”) receives any notice, demand, letter or other document concerning any Claim from which it appears that the Indemnified Party is or may become entitled to indemnification by the Concessionaire under this Agreement, the Indemnified Party shall give notice to the Concessionaire as soon as reasonably practicable and in any event within 30 days after receipt thereof, provided that a failure by an Indemnified Party to give such notice and particulars of a Claim within such time shall not adversely affect the rights of the Indemnified Party under the applicable indemnity except to the extent that such failure materially and adversely affects or prejudices the ability to defend or contest the Claim.
- (b) Subject to Sections 9.4(c), (d), (e), (f) and (g), on the giving of a notice pursuant to Section 9.4(a) the Concessionaire shall be entitled to, and shall, resist the Claim that is the subject of the notice, in the name of the Indemnified Party or the Indemnified Parties at the Concessionaire’s own expense, and have the conduct of any defence, dispute, compromise or appeal of the Claim (including any arbitration proceedings in respect thereof) and of any incidental negotiations. The Indemnified Parties shall give the Concessionaire and its counsel all reasonable cooperation, access and assistance for the purposes of considering and resisting such Claim including providing or making available to the Concessionaire and its counsel documents and information and witnesses for attendance at examinations for discovery and trials, subject always to any and all applicable Laws and solicitor and client privilege, and the Concessionaire shall pay all costs and expenses incurred by the Indemnified Parties in providing such cooperation, access and assistance.
- (c) The defence and any other legal proceedings in respect of any Claim that is subject to Section 9.4(b) shall be through legal counsel, and shall be conducted in a manner, acceptable to the Indemnified Party and the Concessionaire, acting reasonably. If:
 - (i) the Concessionaire and an Indemnified Party are or become parties to the same Claim and the representation of all parties by the same counsel would be inappropriate due to differing interest or a conflict of interest;

SOUTH FRASER PERIMETER ROAD PROJECT

- 107 -

- (ii) a conflict of interest or a perceived conflict of interest exists between the interests of an Indemnified Party and the Concessionaire or some other person who may be represented by counsel retained by the Concessionaire;
- (iii) it appears that an Indemnified Party might not be entitled to indemnification by the Concessionaire in respect of all of the liability arising out of the Claim, unless the Concessionaire agrees on a with prejudice basis that all liability of the Indemnified Party arising out of the Claim is covered by the applicable indemnity; or
- (iv) the Concessionaire fails to resist the Claim with all due diligence and in a timely manner;

then the Indemnified Party shall be represented by separate counsel selected by the Indemnified Party and the indemnity obligations of the Concessionaire with respect to the Claim (including with respect to the cost of such separate legal representation) shall continue to apply and all reasonable costs and expenses (including reasonable actual legal fees and expenses) of the Indemnified Party doing so shall be included in the indemnity from the Concessionaire. An Indemnified Party may retain separate counsel to act on its behalf in respect of the Claim in circumstances other than those described in the immediately preceding sentence, in which event the indemnity obligations of the Concessionaire with respect to the Claim shall continue to apply but the fees and disbursements of such separate counsel shall be paid by the Indemnified Party. In any case where an Indemnified Party is represented by separate counsel, the Concessionaire and its counsel shall (at the cost of the Concessionaire) give the Indemnified Party and its counsel all reasonable cooperation, access and assistance including providing or making available to the Indemnified Party and its counsel documents and information and witnesses for attendance at examinations for discovery and trials, subject always to any and all applicable Laws and solicitor and client privilege. For greater certainty, the representation of an Indemnified Party by separate counsel as contemplated in this Section 9.4(c) and actions taken by such separate counsel in the course of such representation, including attendance at examinations, hearings and trials, shall not constitute a taking over of the conduct of the relevant legal proceedings by the Indemnified Party for the purposes of Section 9.4(f).

- (d) With respect to any Claim that is subject to Section 9.4(b):
 - (i) the Concessionaire shall keep the Indemnified Parties fully informed and consult with the Indemnified Parties about the conduct of the Claim;
 - (ii) to the extent that an Indemnified Party is not entitled to be indemnified by the Concessionaire for all of the liability arising out of the subject matter of the Claim, no action shall be taken pursuant to Section 9.4(b) that increases the amount of any payment to be made by the Indemnified Party in respect of that part of the Claim that is not covered by the indemnity from the Concessionaire;
 - (iii) the Concessionaire shall not pay or settle or make any admission of liability in respect of such Claim, whether before or after a suit, if any, is commenced,

SOUTH FRASER PERIMETER ROAD PROJECT

- 108 -

without the prior consent of the Indemnified Party, such consent not to be unreasonably withheld or delayed;

- (iv) the Concessionaire shall not bring the name of the Indemnified Party into disrepute; and
 - (v) the Concessionaire shall resist the Claim with all due diligence and in a timely manner.
- (e) If:
- (i) within 30 days after the notice from the Indemnified Party under Section 9.4(a) the Concessionaire fails to notify the Indemnified Party of its intention to resist the Claim pursuant to Section 9.4(b); or
 - (ii) the Concessionaire fails to comply in any material respect with the provisions of Section 9.4(d);

the Indemnified Party shall be free to pay or settle any Claim on such terms as it may think fit, without prejudice to its right to indemnification by the Concessionaire and its other rights and remedies under this Agreement, but subject to the other provisions of this Agreement including Sections 3.2 [Mitigation By Province] and 9.10 [Costs and Expenses].

- (f) The Indemnified Party shall be free at any time to give notice to the Concessionaire that the Indemnified Party is taking over the conduct of any defence, dispute, compromise or appeal of any Claim that is subject to Section 9.4(b) or of any incidental negotiations. Upon receipt of such notice the Concessionaire shall promptly take all steps necessary to transfer the conduct of such Claim to the Indemnified Party and shall provide the Indemnified Party with all reasonable cooperation, access and assistance (including providing or making available to the Indemnified Party and its counsel documents and information and witnesses for attendance at examinations for discovery and trials, subject always to any and all applicable Laws and solicitor and client privilege) for the purposes of considering and resisting such Claim. If the Indemnified Party gives any notice pursuant to this Section 9.4(f), then, except as otherwise expressly provided by this Agreement, the Concessionaire shall be released from its indemnity in favour of such Indemnified Party in respect of such Claim except where such notice was given by the Indemnified Party as a consequence of the failure of the Concessionaire to resist the Claim with all due diligence and in a timely manner or to otherwise perform its obligations in accordance with this Section 9.4 [Conduct of Claims Indemnified by Concessionaire].
- (g) Notwithstanding the foregoing, all parties shall comply with the requirements of any insurer who may have an obligation to indemnify any of the parties in respect of a Claim, and the rights of any party to have conduct of any Claim shall be subject to the rights of such insurer under the applicable policy of insurance.

SOUTH FRASER PERIMETER ROAD PROJECT

- 109 -

9.5 Indemnification by the Province

Subject and without prejudice to the limitations on liability provided for in the TIA (but without derogating from any rights or protections available pursuant to the TIA), and subject to Sections 6.4 [Deductibles], 6.6 [Release of the Province for Insured Loss] and 9.7 [Exceptions to Indemnification by the Province], the Province shall indemnify and hold harmless the Concessionaire and the Concessionaire Indemnified Persons, and each of them, from and against any and all Claims and Direct Losses at any time suffered or incurred by the Concessionaire and the Concessionaire Indemnified Persons, or any of them, to the extent resulting from any negligent act or negligent omission of the Province or BCTFA or any person for whom the Province is in law responsible in relation to the Project Work, the Project Site or the Project Infrastructure, other than:

- (a) Claims and Direct Losses arising as a result of or in connection with any negligent act or negligent omission of the Province or BCTFA or any person for whom the Province is in law responsible referred to in either of Sections 2.13(a)(ii) or 2.15 [Disclosed Data];
- (b) Claims and Direct Losses arising as a result of or in connection with the matters referred to in Section 9.1(h) to the extent any such Claim or Direct Loss has not been caused or contributed to by the failure of the Province or BCTFA to perform its obligations in accordance with Schedule 8 [Lands];
- (c) Claims and Direct Losses arising as a result of or in connection with negligent acts or negligent omissions occurring prior to the date of this Agreement or after the Termination Date;
- (d) Claims and Direct Losses arising as a result of or in connection with any Existing Contamination or Subsequent Contamination, or any migration or leaching of Existing Contamination or Subsequent Contamination, or any remediation, handling or legal requirement of any Governmental Authority in respect of Existing Contamination or Subsequent Contamination, provided this exclusion shall not prejudice the Concessionaire's rights under Section 9.6 [Limited Indemnity for Contamination]; and
- (e) Claims and Direct Losses arising as a result of or in connection with any negligent act or negligent omission of the Province or any person for whom the Province is in law responsible in the course of taking action under any of Sections 11.4(a), 11.4(b) and 11.5(a), except to the extent of any failure of the Province or any Third Party Contractor engaged by the Province for the purposes of exercising the Province's rights under any of those Sections to comply with all applicable Laws and Permits in the course of exercising the Province's rights under any of those Sections.

9.6 Limited Indemnity for Contamination

Subject and without prejudice to the limitations on liability provided for in the TIA (but without derogating from any rights or protections available pursuant to subsection 8(7) of the TIA), the Province shall, solely for the purpose of holding the Concessionaire and the Concessionaire Indemnified Persons harmless against any Relevant Third Party claim (but not so as to give rise to or constitute any separate or new cause of action against the Province aside from any cause of action for recovery of such losses or damages awarded by a court to such Relevant Third Party against the Concessionaire or the Concessionaire Indemnified Persons pursuant to such Relevant Third Party claim), indemnify and hold

SOUTH FRASER PERIMETER ROAD PROJECT

- 110 -

harmless the Concessionaire and the Concessionaire Indemnified Persons in respect of any Claims and Direct Losses arising from any damage, injury or other harm suffered by such Relevant Third Party and/or Relevant Property that was caused by Existing Contamination or Province Subsequent Contamination that migrated or leached into or onto the Relevant Property, except to the extent such migration or leaching of such Existing Contamination or Province Subsequent Contamination (and/or damage, injury or other harm suffered) was caused or contributed to by any act or omission of the Concessionaire or any person for whom the Concessionaire is in law responsible after the Concessionaire had knowledge of the Existing Contamination or Province Subsequent Contamination, as the case may be.

9.7 Exceptions to Indemnification by the Province

The obligations of the Province to indemnify under Section 9.5 [Indemnification by the Province] or Section 9.6 [Limited Indemnity for Contamination] shall not apply to any Claims or Direct Losses to the extent that:

- (a) the Claims or Direct Losses are directly attributable to any Concessionaire Non-Excusable Event; or
- (b) the Claims or Direct Losses are otherwise compensated for or eligible for compensation or other relief under the terms of this Agreement (including Part 7 [Province Changes and Concessionaire Proposals], Part 8 [Supervening Events] and Schedule 13 [Compensation on Termination]).

9.8 Limitation of Province Liability

Neither the Province nor BCTFA shall under any circumstances be liable to the Concessionaire or any of the Concessionaire Indemnified Persons or any persons for whom the Concessionaire is in law responsible, whether in contract, tort, by statute or otherwise, and whether or not arising from any negligent act or negligent omission on the part of the Province or BCTFA or any persons for whom the Province is in law responsible, for any Claims or Direct Losses of any person arising out of or in the course of or in connection with the Project Work or any Existing Contamination or Subsequent Contamination. The foregoing limitation of liability shall not apply in relation to any liability of the Province for:

- (a) Claims and Direct Losses to the extent the Province must indemnify the Concessionaire or any of the Concessionaire Indemnified Persons therefor under Sections 9.5 [Indemnification by the Province], 9.6 [Limited Indemnity for Contamination] and 9.7 [Exceptions to Indemnification by the Province];
- (b) any failure by the Province or BCTFA to make proper payment to the Concessionaire in accordance with the terms of this Agreement; or
- (c) any breach of the Province's or BCTFA's obligations under this Agreement, except where the Concessionaire has an express remedy under this Agreement in respect of such breach, which remedy shall be exhaustive of the Concessionaire's rights in respect of such breach.

SOUTH FRASER PERIMETER ROAD PROJECT

- 111 -

9.9 Conduct of Claims Indemnified by the Province

- (a) If the Concessionaire or any Concessionaire Indemnified Person (in this Section individually referred to as an “**Indemnified Party**” and collectively referred to as the “**Indemnified Parties**”) receives any notice, demand, letter or other document concerning any Claim from which it appears that the Indemnified Party is or may become entitled to indemnification by the Province under this Agreement, or to compensation by the Province in respect of a Supervening Event under Part 8 [Supervening Events], the Indemnified Party shall give notice to the Province as soon as reasonably practicable and in any event within 30 days after receipt thereof or in accordance with Part 8 [Supervening Events], if applicable, provided that, subject to Section 8.12 [Delay in Notification], a failure by an Indemnified Party to give such notice and particulars of a Claim within such time shall not adversely affect the rights of the Concessionaire under the applicable indemnity or compensation provision except to the extent that such failure materially and adversely affects or prejudices the ability to defend or contest the Claim.
- (b) Subject to Sections 9.9(c), (d), (e) and (f), on the giving of a notice pursuant to Section 9.9(a) the Province shall be entitled to resist the Claim that is the subject of the notice in the name of the Indemnified Party or Indemnified Parties at the Province’s own expense, and to have the conduct of any defence, dispute, compromise or appeal of the Claim (including any arbitration proceedings in respect thereof) and of any incidental negotiations. The Indemnified Parties shall give the Province and its counsel all reasonable cooperation, access and assistance for the purposes of considering and resisting such Claim including providing or making available to the Province and its counsel documents and information and witnesses for attendance at examinations for discovery and trials, subject always to any and all applicable Laws and solicitor and client privilege, and the Province shall pay all costs and expenses incurred by the Indemnified Parties in providing such cooperation, access and assistance.
- (c) The defence and any other legal proceedings in respect of any Claim that is subject to Section 9.9(b) shall be through legal counsel, and shall be conducted in a manner, acceptable to the Indemnified Party and the Province, acting reasonably. If:
- (i) the Province and/or BCTFA and an Indemnified Party are or become parties to the same Claim and the representation of all parties by the same counsel would be inappropriate due to differing interest or a conflict of interest;
 - (ii) a conflict of interest or a perceived conflict of interest exists between the interests of an Indemnified Party and the Province and/or BCTFA or some other person who may be represented by counsel retained by the Province and/or BCTFA;
 - (iii) it appears that an Indemnified Party might not be entitled to indemnification or compensation by the Province in respect of all of the liability arising out of the Claim, unless the Province agrees on a with prejudice basis that all liability of the Indemnified Party arising out of the Claim is covered by the applicable indemnity or compensation provision; or
 - (iv) the Province fails to resist the Claim with all due diligence and in a timely manner;

SOUTH FRASER PERIMETER ROAD PROJECT

- 112 -

then the Indemnified Party shall be represented by separate counsel selected by the Indemnified Party and the indemnity or compensation obligations of the Province, as applicable, with respect to the Claim (including with respect to the cost of such separate legal representation) shall continue to apply and all reasonable costs and expenses (including reasonable actual legal fees and expenses) of the Indemnified Party doing so shall be included in the indemnity or compensation from the Province. An Indemnified Party may retain separate counsel to act on its behalf in respect of the Claim in circumstances other than those described in the immediately preceding sentence, in which event the indemnity or compensation obligations of the Province, as applicable, with respect to the Claim shall continue to apply but the fees and disbursements of such separate counsel shall be paid by the Indemnified Party. In any case where an Indemnified Party is represented by separate counsel, the Province and BCTFA and its or their counsel shall (at the cost of the Province) give the Indemnified Party and its counsel all reasonable cooperation, access and assistance including providing or making available to the Indemnified Party and its counsel documents and information and witnesses for attendance at examinations for discovery and trials, subject always to any and all applicable Laws and solicitor and client privilege.

- (d) With respect to any Claim that is subject to Section 9.9(b):
 - (i) the Province shall keep Indemnified Parties fully informed and consult with the Indemnified Parties about the conduct of the Claim;
 - (ii) to the extent that an Indemnified Party is not entitled to be indemnified or compensated by the Province for all of the liability arising out of the subject matter of the Claim, no action shall be taken pursuant to Section 9.9(b) which increases the amount of any payment to be made by the Indemnified Party in respect of that part of the Claim that is not covered by the indemnity or compensation provision from the Province;
 - (iii) the Province shall not pay or settle or make any admission of liability in respect of such Claim, whether before or after a suit, if any, is commenced, without the consent of the Indemnified Party, such consent not to be unreasonably withheld or delayed;
 - (iv) the Province shall not bring the name of the Indemnified Party into disrepute; and
 - (v) the Province shall resist the Claim with all due diligence and in a timely manner.
- (e) If:
 - (i) within 30 days after the notice from the Indemnified Party under Section 9.9(a) the Province fails to notify the Indemnified Party of its intention to resist the Claim pursuant to Section 9.9(b); or
 - (ii) the Province fails to comply in any material respect with the provisions of Section 9.9(d);

SOUTH FRASER PERIMETER ROAD PROJECT

- 113 -

the Indemnified Party shall be free to pay or settle the Claim on such terms as it may think fit, without prejudice to its right to indemnification or compensation by the Province and its other rights and remedies under this Agreement, but subject to the other provisions of this Agreement including Sections 4.10 [Mitigation By Concessionaire] and 9.10 [Costs and Expenses].

- (f) Notwithstanding the foregoing, all parties shall comply with the requirements of any insurer who may have an obligation to indemnify any of the parties in respect of a Claim, and the rights of any party to have conduct of any Claim shall be subject to the rights of such insurer under the applicable policy of insurance.

9.10 Costs and Expenses

Where in accordance with any provision of this Agreement a party is entitled to claim indemnification or reimbursement from another party for any costs, expenses or other amounts, the indemnifying or reimbursing party shall be obligated to provide indemnification or reimbursement only to the extent that the costs, expenses or other amounts claimed were reasonably incurred having regard to all relevant circumstances at the time.

9.11 No Liability for Indirect Losses

Notwithstanding any other provision of this Agreement, no party to this Agreement shall be obligated to pay to any other party to this Agreement, or liable to any other party to this Agreement for, whether in contract or in tort or on any other basis whatsoever, any Indirect Losses.

9.12 No Double Compensation

Notwithstanding any other provision of this Agreement, but without prejudice to the rights of a party to terminate this Agreement in accordance with its terms, no party shall be entitled to recover compensation or make a Claim under this Agreement in respect of any Loss that it has incurred (or any failure of another party) to the extent that it has already been compensated in respect of that Loss or failure pursuant to this Agreement or otherwise, and, for the purposes of this Section, Performance Incentive Payments, Non-Availability Events Deductions and Non-Compliance Events Deductions shall only be considered compensation to the Province or BCTFA in respect of the breaches or failures by the Concessionaire or other events or circumstances that give rise thereto to the extent such payments or deductions are made, and such payments or deductions shall be without prejudice to the right of the Province to claim and recover from the Concessionaire, subject to the other provisions of this Agreement, Direct Losses to the extent any such payment or deduction does not compensate the Province in full for such Direct Losses, and such right of the Province is hereby expressly preserved.

9.13 No Compensation Where Insured

Notwithstanding anything to the contrary in this Agreement, except in the case of compensation for Claims and Direct Losses under Part 8 [Supervening Events] (in which case Section 8.11 [Effect of Insurance] applies), and in the case of compensation on termination under Schedule 13 [Compensation on Termination] (in which case Section 7.1 [No Compensation to Extent of Insurance] of Schedule 13 applies), neither the Province nor BCTFA shall be liable to the Concessionaire, whether in contract or in tort or on any other basis whatsoever, for any Claims or Direct Losses, and any amounts payable by the Province or BCTFA shall be reduced, to the extent, in respect of such Claims or Direct Losses:

SOUTH FRASER PERIMETER ROAD PROJECT

- 114 -

- (a) that:
- (i) the Concessionaire recovers or is entitled to recover under any Required Insurance, or would have been able to recover under any Required Insurance if such Required Insurance had been taken out and maintained in accordance with this Agreement; or
 - (ii) the Claims or Direct Losses are insured against, or required to be insured against under any Required Insurance, or would have been insured against under any Required Insurance if such Required Insurance had been taken out and maintained in accordance with this Agreement;

whether or not such Required Insurance was in fact effected or, if effected, was vitiated, and whether vitiated as a result of any act or omission of the Concessionaire (or of any person for whom the Concessionaire is in law responsible) including, but not limited to, by reason of non-disclosure or under-insurance or failure or insolvency of the insurer, or for any other reason (excluding only vitiation caused by any act or omission of the Province or any person for whom the Province is in law responsible, but only to the extent non-vitiation terms protecting against vitiation in the case of such act or omission are not required by the terms of this Agreement to be included in the applicable insurance policies); or

- (b) that the Concessionaire recovers or is entitled to recover under any policy of insurance that is not Required Insurance but that the Concessionaire has in fact taken out and maintained; or
- (c) that there are proceeds of insurance held by the Insurance Trustee that are (subject to the Concessionaire fulfilling all conditions to the disbursement thereof) available for satisfaction of such Claims or Direct Losses, in whole or in part; or
- (d) that the Province makes or authorizes, or is obligated under this Agreement (subject to the Concessionaire fulfilling all conditions thereto) to make or authorize, payment to or for the account of or on behalf of the Concessionaire, under any of Sections 6.18 [Application of Proceeds of Insurance], 6.21(b)(i) and 6.22 [Third Party Liability Insurance as an Uninsurable Risk]; or
- (e) of any amounts in respect of deductibles and waiting periods under any insurance referred to in either of Sections 9.13(a) and (b).

9.14 Acknowledgement Regarding Equivalent Project Relief

The Province and BCTFA acknowledge and agree that:

- (a) the Principal Contracts may provide that Principal Contractors may claim relief from the Concessionaire only if and to the extent that such claim or relief is granted to the Concessionaire under this Agreement; and
- (b) the Concessionaire will not be precluded from advancing any claim or seeking any relief under this Agreement solely by reason that the Concessionaire is not liable to a Principal Contractor only (and not any of its employees, agents, contractors or subcontractors of

SOUTH FRASER PERIMETER ROAD PROJECT

- 115 -

any tier or the employees of any of them) under a Principal Contract until or only to the extent that such claim or relief is granted by the Province to the Concessionaire under this Agreement;

provided that all such claims shall be made and administered by the Concessionaire, and nothing in this Section creates any contract or obligation directly between the Province or BCTFA and any Principal Contractor or gives any Principal Contractor any rights as against the Province or BCTFA.

9.15 Survival

The provisions of this Part 9 [Indemnities and Limitations on Liability] and each other indemnity contained in this Agreement shall survive the expiration or termination of this Agreement.

9.16 Federal Cost Contribution Agreement Indemnity

In accordance with the Federal Cost Contribution Agreement, the Concessionaire shall indemnify and save harmless the Federal Government and its ministers, officers, employees and agents from and against all claims, liabilities, and demands of any kind with respect to any injury to persons (including, without limitation, death), damage to or loss or destruction of property, economic loss or infringement of rights caused by or arising directly or indirectly from:

- (a) the design, construction, rehabilitation or improvement of the Project Infrastructure;
- (b) the performance of this Agreement, or the breach of any term or condition of this Agreement by the Concessionaire or its officers, employees or agents;
- (c) the on-going operation, maintenance and repair of the Project Infrastructure; or
- (d) any omission or any wilful or negligent act of the Concessionaire or any of its officers, employees or agents.

**PART 10
PAYMENTS**

10.1 Lump Sum Payment and Financing

- (a) Subject to Sections 10.1(b) and 10.2 [Adjustment of Availability Payments], if it is agreed or determined in accordance with this Agreement that a party is entitled to payment from another party in respect of any of:
 - (i) a Province Change or Value Engineering Proposal (other than Minor Works) under Part 7 [Province Changes and Concessionaire Proposals];
 - (ii) a Compensation Event (other than in the circumstances described in Section 8.3(b)(iv)) under Part 8 [Supervening Events];
 - (iii) a Force Majeure Event (which, for greater certainty, shall only be in the circumstances described in Section 8.6(a)(i)) under Part 8 [Supervening Events];and

SOUTH FRASER PERIMETER ROAD PROJECT

- 116 -

- (iv) any of the events described in Section 8.10 [Sharing of Increased Capital Expenditures in Specified Circumstances],

then the affected party may make written demand for such payment from time to time following such agreement or determination and, in respect of any Direct Losses, after such Direct Losses have been incurred, and such payment will be due and payable within 30 days of delivery of written demand supported with all relevant information required in accordance with this Agreement.

- (b) If at any time it is agreed or determined that the Province is obligated to make payment to the Concessionaire of a lump sum payment in respect of any of the events referred to in Section 10.1(a), at the Province's request the Concessionaire shall use all reasonable efforts to obtain the financing required to make such payment on the best terms reasonably available and, to the extent that the Concessionaire is able to obtain such financing, there will be a corresponding increase made to the Availability Payments in accordance with Section 10.2 [Adjustment of Availability Payments]. The Province shall promptly pay to the Concessionaire an amount equal to the reasonable out-of-pocket expenses incurred by the Concessionaire in seeking such financing, provided that the Province approved such expenses in writing prior to the Concessionaire incurring them. The Province acknowledges that the Senior Lenders have no obligation to provide any financing referred to in this Section 10.1(b) or to subordinate or share their security with any such financing.

10.2 Adjustment of Availability Payments

If either the Province or the Concessionaire gives notice to the other in accordance with this Agreement that it wishes the other to consider whether an entitlement to payment under this Agreement referred to in Section 10.1 is more efficiently effected by adjustments (both increases and decreases) to the Availability Payments, or if Section 10.1(b) applies, the following procedure shall apply:

- (a) within the applicable time period provided in this Agreement for the delivery of such information, the Concessionaire shall provide to the Province:
 - (i) the proposed update to the then current Financial Model to achieve the objectives and outputs set out in Section 10.2(a)(ii), and the basis for the assumptions used in the proposed update to the Financial Model, with such proposed update to be ascertained by entering into the Financial Model with effect from the relevant date determined in accordance with Section 10.2(b):
 - (A) in all cases, any resulting changes to the milestone dates set out in the Project Schedule provided for in accordance with this Agreement;
 - (B) for a Province Change under Section 7.1 [Province Changes], the Change in Costs determined pursuant to Schedule 11 [Changes];
 - (C) for any Value Engineering Proposal, Compensation Event or Force Majeure Event in the circumstances described in Section 8.6(a)(i), the applicable cost adjustments determined in accordance with this Agreement;

SOUTH FRASER PERIMETER ROAD PROJECT

- 117 -

- (D) for any of the events described in Section 8.10 [Sharing of Increased Capital Expenditures in Specified Circumstances], the applicable additional Capital Expenditures determined in accordance with this Agreement;
- (ii) the proposed percentage adjustments (upwards or downwards, as the case may be) to the amount of the Availability Payments that would otherwise be payable (and which will, unless otherwise expressly agreed by the Province and the Concessionaire, be the same percentage for each remaining Contract Year in which Availability Payments are payable) so that, upon comparing the output of the Financial Model (as at the adjustment date) before and after the proposed adjustments to the Availability Payments, and taking into account the timing of liability for taxation and the time when the adjustments to the Availability Payments will take effect, such comparison of the output from such Financial Model shows that:
 - (A) the Equity IRR in respect of equity subscribed and Junior Debt advanced to the Concessionaire prior to the adjustment shall be unchanged; and
 - (B) the Concessionaire would not, by reason of the effect of the occurrence of the adjustment or any consequential Change in Cost during the Term as shown in the Financial Model (as adjusted), be placed, in respect of any of the Project Documents, in a position either better or worse (which includes no greater or less margin of compliance or forecast compliance with respect to any Senior Debt financial covenants) than it would have been in if the circumstance giving rise to the adjustment had not occurred,except in each case to the extent required to reflect:
 - (C) any benefit to the Concessionaire arising from a Value Engineering Proposal; or
 - (D) those risks which are being retained by the Concessionaire in accordance with Part 8 [Supervening Events] in the case of a Force Majeure Event in the circumstances described in Section 8.6(a)(i) or any of the events described in Section 8.10 [Sharing of Increased Capital Expenditures in Specified Circumstances];
- (b) adjustments to the Availability Payments shall be determined from the outputs obtained from the updated Financial Model on the basis that the relevant adjustment date is:
 - (i) in the case of an adjustment occurring before the Western Segment Required Substantial Completion Date, the Western Segment Required Substantial Completion Date (with such adjustments including within the relevant costs the accrued interest and other associated financing costs up to the Western Segment Required Substantial Completion Date); or
 - (ii) in the case of an adjustment occurring after the Western Segment Required Substantial Completion Date, the start of the next payment period in the

SOUTH FRASER PERIMETER ROAD PROJECT

- 118 -

Financial Model falling after the first scheduled date after completion or implementation of the adjustments; and

- (c) in the event that it is agreed by the Province and the Concessionaire that the entitlement to payment should be effected by such adjustments, or if Section 10.1(b) applies, the Province and the Concessionaire shall implement such adjustments and update the Financial Model accordingly or, if there is no such agreement and Section 10.1(b) does not apply, payment in respect of such entitlement will be made in accordance with Section 10.1(a); and
- (d) if completion or implementation of the adjustments is delayed beyond the scheduled date for completion or implementation by reference to which the Financial Model has been re-run in accordance with this Section, the date of adjustment to the Availability Payments shall be delayed by a period equal to the delay in the completion or implementation of the required adjustments.

10.3 Province Rights to Audit

The Concessionaire shall, before, during and at any time after the payment of any lump sum contemplated in Section 10.1(a) or the implementation of any adjustments to the Availability Payments contemplated in Section 10.2 [Adjustment of Availability Payments], ensure that the Province has unrestricted rights of audit over the Financial Model, any update or adjustment to the Financial Model, and any other financial model, and to all documentation (including any aspect of the calculation of any such lump sum or adjustments) used in connection with, or relevant to, the calculation of any such lump sum or adjustments.

10.4 Province's Right of Set-Off

Subject to Section 7.4 [Rights of Set-Off] of Schedule 13, and without prejudice to and without limiting or derogating from any statutory right of the Province to withhold any sum of money due or becoming due to the Concessionaire, the Province and BCTFA may set off any liquidated amounts owing by the Concessionaire to the Province or BCTFA under this Agreement or any of the other Province Project Documents, or to any other ministry, office, instrumentality or agency of the Province, against any payments due by the Province or BCTFA to the Concessionaire under this Agreement.

10.5 Payments in Canadian Dollars

All payments under this Agreement shall be made in Canadian Dollars for value on or before the due date to the bank account of the recipient (located in the City of Vancouver or the City of Victoria, British Columbia) specified in the applicable invoice, debit note, or Report (save as otherwise provided in the Lenders' Remedies Agreement), quoting the invoice or debit note number or the Report against which payment is made.

10.6 Due Date for Payments

- (a) If no date is specified for the making of any payment by a party under this Agreement, such party shall make such payment on or before the date that is 30 days after the receipt by such party of the demand, invoice, debit note or Report to which such payment relates,

SOUTH FRASER PERIMETER ROAD PROJECT

- 119 -

or the final determination of the amount of such payment by the parties in accordance with this Agreement, as the case may be.

- (b) If the date for making any payment under this Agreement falls on a day that is not a Business Day, the date for making such payment shall be extended to the next Business Day.

10.7 Taxes on Payments

- (a) For the purposes of this Section:
- (i) **“Change in HST Law”** means a Change in Law relating to HST or PST, including the reimposition of PST or the imposition of any successor or replacement tax for HST or PST (but does not include the coming into force of the *Consumption Tax Rebate and Transition Act* (British Columbia));
 - (ii) **“Irrecoverable Tax”** means HST or PST incurred by the Concessionaire in respect of the supply of any Property or service to the Concessionaire which is consumed, used or supplied or to be consumed, used or supplied exclusively by the Concessionaire in the course of carrying out the Project Work to the extent that the Concessionaire is unable to recover or be credited with input tax credits, refunds, rebates or exemptions for such HST or PST (as the case may be);
 - (iii) **“Property”** means:
 - (A) in connection with PST, “tangible personal property” as defined in the *Social Service Tax Act* (British Columbia); and
 - (B) in connection with HST, “Property” as defined in the *Excise Tax Act* (Canada);
 - (iv) **“Recipient”** means the party to which a taxable supply is provided under this Agreement;
 - (v) **“Recoverable Tax”** means HST or PST incurred by the Concessionaire in respect of the supply of any Property or service to the Concessionaire which is consumed, used or supplied or to be consumed, used or supplied exclusively by the Concessionaire in the course of carrying out the Project Work to the extent that the Concessionaire is able to recover or be credited with input tax credits, refunds, rebates or exemptions for such HST or PST (as the case may be); and
 - (vi) **“Supplier”** means the party providing a taxable supply under this Agreement.
- (b) All payments (including payments in kind) to be made by a party under this Agreement are:
- (i) exclusive of HST; and
 - (ii) subject to this Section, inclusive of all other applicable Taxes (other than HST).

SOUTH FRASER PERIMETER ROAD PROJECT

- 120 -

- (c) In the event that any HST is imposed on the Recipient in connection with the provision of any taxable supply under this Agreement to the Recipient by the Supplier, the Recipient shall be responsible for the payment of such HST where required in accordance with the *Excise Tax Act* (Canada). The Recipient shall pay such HST to the Supplier and the Supplier shall remit such HST in accordance with its obligations under the *Excise Tax Act* (Canada).
- (d) The Concessionaire acknowledges and agrees that as and from the Effective Date it shall levy, collect and remit HST on the supply of the Project Work provided that if, following the Effective Date, the Province provides to the Concessionaire certification that according to Laws or agreement between the Province and the Federal Government it is no longer required to pay HST, the Concessionaire shall at the later of the time that the Concessionaire receives such certification and the date the Province is no longer required to pay HST, cease levying and collecting HST on the supply of the Project Work.
- (e) The Province shall pay to the Concessionaire from time to time as the same is incurred by the Concessionaire and on invoicing by the Concessionaire amounts equal to any Irrecoverable Tax if and to the extent such Irrecoverable Tax results solely from a Change in HST Law and to the extent required to place the Concessionaire (including for purposes of this provision the Partners and Parent Partners) in a position under this Agreement neither better nor worse than it would have been in had the Change in HST Law not occurred, provided that all amounts paid under this Section 10.7(e) shall be grossed up by an amount equal to the amount of income tax actually payable in a Contract Year by the Concessionaire and/or the Partners or the Parent partners that can be demonstrated by the Concessionaire results from being subjected to the Irrecoverable Tax and/or receipt of the payment under this Section 10.7(e) after taking into account any other income tax credits, deductions or relief to which the Concessionaire or the Partners or the Parent Partners may be eligible.
- (f) The Concessionaire shall from time to time as the same is incurred by the Concessionaire pay to the Province amounts equal to any Recoverable Tax if and to the extent such Recoverable Tax results solely from a Change in HST Law and to the extent required to place the Concessionaire (including for purposes of this provision the Partners and Parent Partners) in a position under this Agreement neither better nor worse than it would have been in had the Change in HST Law not occurred, and provide to the Province a statement showing in reasonable detail the calculation of such Recoverable Tax. Any payment of Recoverable Tax by the Concessionaire to the Province under this Section 10.7(f) shall be treated as a refund or reduction of the Availability Payments payable by the Province to the Concessionaire pursuant to Schedule 10 [Performance Mechanism].
- (g) If, following any Change in HST Law resulting in Irrecoverable Tax as contemplated in Section 10.7(e) or resulting in Recoverable Tax as contemplated in Section 10.7(f), there are one or more occurrences of an additional Change in HST Law, the provisions of Section 10.7(e) or Section 10.7(f), as the case may be, shall apply *mutatis mutandis* in respect thereof, with the intention that the Concessionaire (including for purposes of this provision the Partners and Parent Partners) should be placed thereby in a position under this Agreement neither better nor worse than it would have been in had such additional Change in HST Law not occurred.

SOUTH FRASER PERIMETER ROAD PROJECT

- 121 -

- (h) Any payment required to be made by the Province to the Concessionaire pursuant to Section 10.7(e) or 10.7(g), or by the Concessionaire to the Province pursuant to Section 10.7(f) or 10.7(g), shall be paid by the relevant party within 10 Business Days following the delivery by the other relevant party of an invoice or debit note for such payment, provided that the Province shall not be required to pay any amount to the Concessionaire pursuant to Section 10.7(e) or or 10.7(g) until the Concessionaire has delivered to the Province's Representative written details of the amount claimed and the grounds for and computation of the amount claimed.
- (i) The Concessionaire shall provide to the Province's Representative any information, calculations, computations and documentation reasonably requested by the Province's Representative from time to time in relation to the amount of any HST and/or PST chargeable in accordance with this Agreement and payable by the Province to the Concessionaire or by the Concessionaire to the Province in accordance with this Agreement.

10.8 Payment of Disputed Amounts

- (a) A party shall have the right to dispute, in good faith, any amount specified as payable from one party to another in any invoice, debit note or Report.
- (b) A party shall pay any undisputed portion of any amount that is the subject of a dispute to the other relevant party in accordance with this Agreement, but any disputed portion or amount shall not be payable until the dispute is resolved in accordance with this Agreement.
- (c) If payment of any amount payable under this Agreement is delayed while the matter is in dispute in accordance with Section 10.8(a), upon resolution of such dispute a party shall pay any amount agreed or determined to be due by such party within 10 Business Days following such resolution, together with interest on such amount calculated at an interest rate that is 1% per annum over the Prime Rate at that time, compounded monthly from the time such amount originally became payable (but for such dispute) under this Agreement until the earlier of:
 - (i) the date of such payment in accordance with this Section 10.8(c); and
 - (ii) the due date for such payment under this Section 10.8(c).

For greater certainty, Section 10.10 [Interest on Overdue Amounts] shall apply to any amount payable pursuant to this Section 10.8(c) that is not paid within such 10 Business Days.

10.9 Inaccuracies in Payments

Subject to Section 7.4 [Full and Final Settlement] of Schedule 13, if there is any inaccuracy in any invoice, debit note, or Report issued by a party pursuant to this Agreement providing for the payment of an amount from one party to the other, whether determined upon an examination by the Province pursuant to Section 1.6 [Audit and Inspection] of Schedule 17 or otherwise:

SOUTH FRASER PERIMETER ROAD PROJECT

- 122 -

- (a) the necessary adjustments in such invoice, debit note or Report and resulting payment shall be made by the applicable party within 10 Business Days after the date such inaccuracy is established by agreement or pursuant to the Dispute Resolution Procedure; and
- (b) if such inaccuracy results in an underpayment being made by one party to another party (as against the sum that would have been paid but for such inaccuracy), then the paying party shall, in addition to paying such underpayment to such other party, pay interest thereon at a rate per annum equal to the Default Rate from the date of payment by the paying party to such other party pursuant to the original invoice, debit note or Report to the date of payment of such underpayment by the paying party.

10.10 Interest on Overdue Amounts

If payment of any amount payable under this Agreement is not made when due (including payments payable pursuant to Schedule 13 [Compensation on Termination] and any payments required pursuant to Sections 10.7(g), 10.8(c) and 10.9(a)), interest shall, unless another interest rate is indicated in this Agreement, be payable on such amount at the Default Rate and shall be calculated from the date due under this Agreement until paid, compounded monthly.

10.11 Interest without Prejudice

The right of a party to receive interest in respect of the late payment of any amount due under this Agreement is without prejudice to any other rights that party may have under this Agreement.

10.12 Payment of Interest by Province

Notwithstanding any other term of this Agreement, the payment of interest by the Province pursuant to this Agreement is subject to the provisions of the *Financial Administration Act* (British Columbia).

**PART 11
PROVINCE'S ACCESS, MONITORING AND STEP-IN RIGHTS**

11.1 Province Access

The Province, BCTFA, the Province's Representative and any contractors, consultants or other persons authorized by any of them, including Third Party Contractors, shall:

- (a) have unrestricted access at all reasonable times throughout the Term to the Project Site and the Project Infrastructure in order to do any or all of the following:
 - (i) perform any obligations or functions or exercise any rights of the Province's Representative, the Province or BCTFA under this Agreement;
 - (ii) fulfil any statutory, public or other duties or functions;
 - (iii) conduct any study, test or trial for purposes of research initiated by the Province or BCTFA or any other person authorized by the Province or BCTFA; and

SOUTH FRASER PERIMETER ROAD PROJECT

- 123 -

- (iv) construct, operate, manage, maintain, repair, rehabilitate or reconstruct on the Project Site any Infrastructure and Structures other than the Concession Infrastructure, including water, leachate and gas collection systems, provided that the exercise by the Province or BCTFA of such right in accordance with this Section 11.1(a)(iv) shall constitute a Compensation Event and the provisions of Part 8 [Supervening Events] shall apply;
- (b) have reasonable access at all reasonable times and upon reasonable prior notice to any site or workshop where Plant is being manufactured for the purposes of general inspection and auditing and of attending any test or investigation being carried out in respect of the Project Work; and
- (c) have the right to attend regular Project Site and other similar progress meetings,

provided that any access granted in accordance with this Section shall be exercised in accordance with any health and safety procedures established by the Concessionaire pursuant to Sections 4.13 [Health and Safety Program] and 4.14 [Concessionaire's Occupational Health and Safety Obligations] for the time being in force in relation to the areas to which such access is granted, provided that nothing in this Section shall be construed so as to impede the proper performance of the roles, functions and duties of the Province and BCTFA as set out in this Agreement.

11.2 Uncovering of Work

- (a) The Concessionaire shall ensure that the Province's Representative is afforded advance notice of and a full opportunity to witness inspection and test activity in accordance with the Inspection and Test Plan. If the Concessionaire does not provide such notice and opportunity, the Concessionaire shall at the request of the Province's Representative uncover any relevant part of the Project Work which has been covered up or otherwise put out of view or remove any relevant part of the Project Work that has been proceeded with in order to permit the Province's Representative to witness the relevant inspection or test activity. The Concessionaire shall bear all costs of any such uncovering or removal, regardless of whether or not any defect is discovered in the relevant Project Work.
- (b) The Province's Representative shall have the right to request the Concessionaire to open up and inspect any part or parts of the Project Work where the Province's Representative (following consultation with the Concessionaire) reasonably believes that such part or parts of the Project Work is or are defective or that the Concessionaire has failed to comply with the requirements of this Agreement, and the Concessionaire shall comply with such request. If the Province's Representative exercises such right, it shall consult with the Concessionaire as to the timing of the opening up and inspection of the relevant part or parts of the Project Work with a view to avoiding or, if unavoidable, minimizing any delay caused to the conduct of the remaining Project Work.
- (c) If the Province's Representative requires an uncovering of the Project Work pursuant to Section 11.2(b) and such Project Work is not subsequently found to be defective and is found to have complied with the requirements of this Agreement, then such uncovering of the Project Work shall constitute a Compensation Event and the provisions of Part 8 [Supervening Events] shall apply.

SOUTH FRASER PERIMETER ROAD PROJECT

- 124 -

11.3 Increased Monitoring

- (a) Without prejudice to any other rights of the Province under this Agreement, if at any time during the Term:
 - (i) the Concessionaire is assigned 10 or more Default Points in any 12 calendar month period; or
 - (ii) a Concessionaire Default occurs; or
 - (iii) any material discrepancy, inaccuracy or error (including error by omission or incompleteness) is discovered by the Province or the Province's Representative in respect of any monthly report delivered by the Concessionaire to the Province in accordance with Part 12 [Monthly Reports] of Schedule 10,

then the Province's Representative may by notice to the Concessionaire increase the level of its monitoring of the Concessionaire above that otherwise permitted under this Agreement, including pursuant to Section 4.4 [Province Monitoring] of Schedule 7, until such time as the Concessionaire has demonstrated to the reasonable satisfaction of the Province's Representative that it will perform and is capable of performing its obligations under this Agreement.

- (b) A notice to the Concessionaire provided by the Province's Representative pursuant to Section 11.3(a) shall specify the additional measures to be taken by the Province's Representative in monitoring the Concessionaire in response to the matters which led to such notice being sent.
- (c) If the Province's Representative carries out increased monitoring pursuant to this Section and requires the Concessionaire to pay the Province's costs and expenses in respect thereof pursuant to Section 11.3(d), and it is subsequently agreed or determined pursuant to the Dispute Resolution Procedure that the Province was not entitled to carry out such increased monitoring in accordance with this Section, then the carrying out of such increased monitoring shall constitute a Compensation Event and the provisions of Part 8 [Supervening Events] shall apply.
- (d) The Concessionaire shall pay to the Province on demand all costs and expenses incurred by the Province in carrying out such actions under this Section, together with an administration fee equal to fifteen percent (15%) of such costs and expenses, and all without prejudice to any other rights of the Province.

11.4 Province's Emergency Rights

- (a) Without prejudice to any other rights of the Province under this Agreement, and whether or not the Province has then given notice of default or notice of termination in accordance with any provisions of this Agreement entitling it to do so or the Concessionaire has then given notice of termination in accordance with any provisions of this Agreement entitling it to do so, and regardless of any dispute with respect to whether or not there is a valid right or obligation to terminate, if at any time during the Term the Province reasonably believes that it needs to take action in relation to the Concession Highway or the Project Work due to the occurrence of an Emergency, then the Province may in its discretion do

SOUTH FRASER PERIMETER ROAD PROJECT

- 125 -

either or both of the following (but this shall not obligate the Province to mitigate, rectify or protect against, or attempt to mitigate, rectify or protect against, such Emergency or, after having commenced to mitigate, rectify or protect against or attempt to mitigate, rectify or protect against such Emergency, to continue to do so):

- (i) upon notice from the Province's Representative to the Concessionaire (which notice shall not be required to be in writing) take or cause to be taken all such steps and actions as may be reasonably required to mitigate, rectify or protect against such Emergency and, to the extent and for the period necessary for such purposes, enter upon the Project Site and the Project Infrastructure or any part thereof to carry out any work, provided that the Province shall, and shall cause any applicable third parties engaged by it pursuant to this Section to, comply with all applicable Laws and Permits and to carry out any action under this Section expeditiously; or
 - (ii) by written notice from the Province's Representative to the Concessionaire, require the Concessionaire to take such steps as the Province, acting reasonably, considers necessary or expedient to mitigate, rectify or protect against such Emergency including, if such Emergency has been caused or contributed to by a breach of any Principal Contract or Subcontract, taking all action in respect of such Principal Contract or Subcontract as the Concessionaire considers necessary or expedient, and the Concessionaire shall use all reasonable efforts to comply with the Province's requirements as soon as reasonably practicable.
- (b) If the Province's Representative gives notice to the Concessionaire pursuant to Section 11.4(a)(ii) and the Concessionaire either:
- (i) does not confirm, within the time period specified by the Province's Representative in the notice given pursuant to Section 11.4(a)(ii) (or, if no such time period is specified, within five Business Days), that it is willing to take such steps as are referred to or required in such notice or present an alternative plan to the Province to mitigate, rectify and protect against such Emergency that the Province may accept or reject, acting reasonably; or
 - (ii) fails to take the steps as are referred to or required in such notice or accepted alternative plan within such time as set out in such notice or accepted alternative plan or within such time as the Province, acting reasonably, shall stipulate,

then the Province may, in addition to the ability to take the actions set out in Section 11.4(a), without further advance notice to the Concessionaire, to the extent and for the period necessary for such purpose, suspend the progress of the relevant Project Work, and suspend in whole or in part the relevant rights of the Concessionaire under this Agreement (including the rights of the Concessionaire under Section 2.5 [Grant of Land License] and Schedule 8 [Lands] as applicable to the relevant Project Work), provided that any such suspension of the Concessionaire's rights shall cease on the date upon which the Province has completed mitigating, rectifying or protecting against such Emergency or notifies the Concessionaire that such suspension shall cease.

SOUTH FRASER PERIMETER ROAD PROJECT

- 126 -

- (c) No action taken by the Province under Section 11.4(a) or 11.4(b) shall be deemed to be a termination of this Agreement or relieve the Concessionaire from any of its obligations under this Agreement (except to the extent any such obligation is fully performed by the Province or cannot reasonably be performed due to such action taken by the Province), and, subject to Section 11.4(d), the Province shall not incur any liability to the Concessionaire for any act or omission of the Province or any other person in the course of taking such action, except to the extent of any failure by the Province or any Third Party Contractor engaged by the Province for the purposes of exercising the Province's rights under this Section to comply with all applicable Laws and Permits in the course of exercising the Province's rights under Section 11.4(a) or 11.4(b).
- (d) To the extent that an Emergency has been caused by a Province Non-Excusable Event or a Compensation Event, any actions of the Province under this Section in respect of such Emergency shall constitute a Compensation Event and the provisions of Part 8 [Supervening Events] shall apply.
- (e) Except where the Province carries out actions under this Section in the circumstances contemplated in Section 11.4(d), the Concessionaire shall pay to the Province on demand all costs and expenses incurred by the Province in carrying out such actions under this Section, including any costs paid by the Province to the Concessionaire in accordance with Section 11.6 [Availability of Certain Assets on Step-In], together with an administration fee equal to fifteen percent (15%) of such costs and expenses, and all without prejudice to any other rights of the Province.

11.5 Province's Other Step-In Rights

- (a) Without prejudice to any other rights of the Province under this Agreement, and whether or not the Province has then given notice of default or notice of termination in accordance with any provisions of this Agreement entitling it to do so or the Concessionaire has then given notice of termination in accordance with any provisions of this Agreement entitling it to do so, and regardless of any dispute with respect to whether or not there is a valid right or obligation to terminate, if at any time during the Term:
 - (i) the Concessionaire is assigned one or more Default Point pursuant to Section 10.4(b) or 10.4(c) of Schedule 10 [Performance Mechanism] and the Province reasonably believes that the matter giving rise to the assignment of such Default Point remains unremedied;
 - (ii) a Concessionaire Default occurs and the Province reasonably believes that such Concessionaire Default remains unremedied; or
 - (iii) the Province receives a Notice of Failure to Comply from the Concessionaire pursuant to Section 4.17(b),

then the Province may in its discretion do either or both of the following (but this shall not obligate the Province to remedy such matter or attempt to do so, or, after having commenced to remedy such matter or attempt to do so, to continue to do so), by five Business Days' notice to the Concessionaire:

SOUTH FRASER PERIMETER ROAD PROJECT

- 127 -

- (iv) to the extent and for the period necessary for such purpose, suspend the progress of any or all of the Project Work, and suspend in whole or in part the rights of the Concessionaire under this Agreement (including the rights of the Concessionaire under Section 2.5 [Grant of Land License] and Schedule 8 [Lands]), provided that any such suspension of the Concessionaire's rights shall cease on the date upon which the Province has completed remedying such matter or notifies the Concessionaire that such suspension shall cease; and
 - (v) take or cause to be taken all such steps and actions as may be reasonably required to remedy such matter and, to the extent and for the period necessary for such purpose, enter upon the Project Site and the Project Infrastructure or any part thereof to carry out any work, provided that the Province shall, and shall cause any Third Party Contractors engaged by the Province for the purposes of exercising the Province's rights under this Section to, comply with all applicable Laws and Permits and to carry out any action under this Section expeditiously.
- (b) No action taken by the Province under Section 11.5(a) shall be deemed to be a termination of this Agreement or relieve the Concessionaire from any of its obligations under this Agreement (except to the extent any such obligation is fully performed by the Province or cannot reasonably be performed due to such action taken by the Province), and the Province shall not incur any liability to the Concessionaire for any act or omission of the Province or any other person in the course of taking such action, except to the extent of any failure by the Province or any Third Party Contractor engaged by the Province for the purposes of exercising the Province's rights under this Section to comply with all applicable Laws and Permits in the course of exercising the Province's rights under Section 11.5(a).
- (c) If the Province takes action under Section 11.5(a) and it is subsequently agreed or determined pursuant to the Dispute Resolution Procedure that the Province was not entitled to take such action in accordance with this Section, then the taking of any such action shall constitute a Compensation Event and the provisions of Part 8 [Supervening Events] shall apply.
- (d) Except where the Province carries out actions under this Section in the circumstances contemplated in Section 11.5(a)(iii) or where Section 11.5(c) applies, the Concessionaire shall pay to the Province on demand all costs and expenses incurred by the Province in carrying out such actions, including any costs paid by the Province to the Concessionaire in accordance with Section 11.6 [Availability of Certain Assets on Step-In]), together with an administration fee equal to fifteen percent (15%) of such costs and expenses, and all without prejudice to any other rights of the Province.

11.6 Availability of Certain Assets on Step-In

Where the Province exercises its rights under Section 11.4 [Province's Emergency Rights] or Section 11.5 [Province's Other Step-In Rights], for the duration of the exercise of such rights the Concessionaire shall, and shall cause its Principal Contractors and Subcontractors to, to the extent requested by the Province, acting reasonably, make available to the Province or, at the direction of the Province to a third party designated by the Province, at a fair market price or rent, as the case may be, and at the risk of the Province, all facilities and all or any part of the stocks of material, road vehicles, spare

SOUTH FRASER PERIMETER ROAD PROJECT

- 128 -

parts, equipment and machinery (including Construction Plant) and other moveable property then owned by the Concessionaire or any of its Principal Contractors or Subcontractors that is reasonably required for the purposes of the exercise of such rights by the Province.

PART 12
CONCESSIONAIRE DEFAULT AND PROVINCE REMEDIES

12.1 Concessionaire Default

Each occurrence of any one or more of the following events or circumstances shall constitute a “**Concessionaire Default**”:

- (a) any of the following:
 - (i) any Concessionaire Insolvency Event; or
 - (ii) the abandonment of the Project by the Concessionaire; or
 - (iii) the Concessionaire or any Partner ceasing to perform a substantial portion of its business or the suspension or non-performance of a substantial portion of the business of the Concessionaire or any Partner (except as a result of the exercise by the Province of its rights under Part 11 [Province’s Access, Monitoring and Step-In Rights]), whether voluntarily or involuntarily, that has or could reasonably be expected to have a material adverse effect on the performance by the Concessionaire of its obligations under this Agreement or any other Project Document, and such situation is not remedied by the resumption of business or the cessation of the suspension or non-performance of business, within 30 Business Days after the date notice to do so is given by the Province to the Concessionaire;
- (b) any Change in Control or other transaction that is not permitted by Sections 16.6 [Change in Control of Concessionaire Before One Year After Substantial Completion] to 16.8 [Consent to Change in Control Not Required in Certain Cases] inclusive;
- (c) any breach by the Concessionaire of any of Sections 16.1 [Province Consent Required to Assignment by Concessionaire] to 16.3 [Other Requirements for Assignment by Concessionaire] inclusive;
- (d) any breach of Section 4.5 [Prohibited Acts];
- (e) any failure by the Concessionaire to comply with Schedule 23 [Privacy Protection] in a material respect and such failure is not remedied within 30 Business Days after the date notice of such failure is given by the Province to the Concessionaire (and for the purposes of this subsection such failure shall be considered remedied when the Concessionaire has taken steps satisfactory to the Province to mitigate the effects of the failure and has implemented measures satisfactory to the Province to prevent a recurrence of the failure);

SOUTH FRASER PERIMETER ROAD PROJECT

- 129 -

- (f) any of the following:
- (i) any breach by the Concessionaire of any of Sections 5.4 [Conditions to Implementation of a Refinancing], 5.7 [Province's Share of Refinancing Gain], 5.9 [Implementation of Refinancing], 5.10 [Province Rights to Audit], 5.15 [Restricted Persons Prohibited] and 5.16 [Qualified Refinancing]; or
 - (ii) any breach by the Concessionaire of either Section 5.1 [Restrictions on Changes to Partnership Agreements and Junior Lending Agreements] or Section 5.2 [Restrictions on Changes to Senior Lending Agreements and Refinancing], that is not a breach referred to in Section 12.1(f)(i), and that would, or might reasonably be expected to, or does, have any of the effects described in either of Section 2.6(b)(i) or Section 2.6(b)(iii) of Schedule 2 [Representatives, Review Procedure and Consent Procedure] or any of Sections 2.7(a)(i) to (iv) inclusive of Schedule 2 [Representatives, Review Procedure and Consent Procedure], except where such breach or such effects are capable of being remedied and such breach or such effects are in fact remedied within 30 Business Days after the date notice of such breach is given by the Province to the Concessionaire; or
 - (iii) any of the Senior Lending Agreements, Junior Lending Agreements or Partnership Agreements:
 - (A) not constituting, or ceasing to constitute, the valid, binding and enforceable obligation of any of the parties thereto; or
 - (B) is terminated, assigned, materially amended or varied, or materially departed from, other than in accordance with Sections 5.1 [Restrictions on Changes to Partnership Agreements and Junior Lending Agreements] and 5.2 [Restrictions on Changes to Senior Lending Agreements and Refinancing];and such occurrence is not caused by a breach referred to in Section 12.1(f)(i) or Section 12.1(f)(ii), and such occurrence would, or might reasonably be expected to, or does, have any of the effects described in either of Section 2.6(b)(i) or Section 2.6(b)(iii) of Schedule 2 [Representatives, Review Procedure and Consent Procedure] or any of Sections 2.7(a)(i) to (iv) inclusive of Schedule 2 [Representatives, Review Procedure and Consent Procedure], except where such occurrence or such effects are capable of being remedied and such occurrence or such effects are in fact remedied within 30 Business Days after the date notice of such occurrence is given by the Province to the Concessionaire;
- (g) any of the following:
- (i) any breach by the Concessionaire of Section 16.10 [Restrictions on Changes to Principal Contracts]; or
 - (ii) any of the Principal Contracts:

SOUTH FRASER PERIMETER ROAD PROJECT

- 130 -

- (A) not constituting, or ceasing to constitute, the valid, binding and enforceable obligation of any of the parties thereto, other than as expressly contemplated in Section 16.10(a); or
- (B) is terminated, assigned, materially amended or varied, or materially departed from, other than in accordance with Section 16.10 [Restrictions on Changes to Principal Contracts];

and such occurrence is not caused by a breach referred to in Section 12.1(g)(i);

and such breach or occurrence would, or might reasonably be expected to, or does, have any of the effects described in either of Section 2.6(b)(i) or Section 2.6(b)(iii) of Schedule 2 [Representatives, Review Procedure and Consent Procedure] or any of Sections 2.7(h)(i) to (iv) inclusive of Schedule 2 [Representatives, Review Procedure and Consent Procedure], except where such breach, such occurrence or such effects are capable of being remedied and such breach, such occurrence or such effects are in fact remedied within 30 Business Days after the date notice of such breach or such occurrence is given by the Province to the Concessionaire;

- (h) a sale, transfer, lease or other disposition by the Concessionaire or any Partner of the whole or any part (that is material in the context of the performance of the Concessionaire's obligations under this Agreement) of its undertaking, property or assets by a single transaction or a number of transactions (whether related or not and whether at the same time or over a period of time) that has or could reasonably be expected to have a material adverse effect on the financial position of the Concessionaire or the performance by the Concessionaire of its obligations under this Agreement, except where such occurrence or the relevant material adverse effect is capable of being remedied and is in fact remedied within 30 Business Days after the date notice of such occurrence is given by the Province to the Concessionaire;
- (i) any representation or warranty made by the Concessionaire in Section 4.21 [Concessionaire's Representations and Warranties] being incorrect in any material respect when made and the incorrectness of the fact or facts misrepresented has or might reasonably be expected to have a material adverse effect on the ability of the Concessionaire or the Province to perform their respective obligations, or the ability of the Province to exercise any of its rights, under this Agreement or any of the other Province Project Documents, except where such incorrect representation or warranty or the relevant material adverse effect is capable of being remedied and is in fact remedied within 60 Business Days after the date notice of such incorrect representation or warranty is given by the Province to the Concessionaire;
- (j) any Required Insurance is not taken out, maintained, paid for or renewed in accordance with Part 6 [Insurance, Damage and Destruction] and Schedule 15 [Insurance Requirements] (excluding for the avoidance of doubt any Required Insurance in respect of any risk that has become Uninsurable so long as such risk remains Uninsurable), or is cancelled by any insurer;
- (k) evidence that Required Insurance has in fact been taken out, maintained, paid for and renewed in accordance with Part 6 [Insurance, Damage and Destruction] and Schedule 15

SOUTH FRASER PERIMETER ROAD PROJECT

- 131 -

[Insurance Requirements] (excluding for the avoidance of doubt any Required Insurance in respect of any risk that has become Uninsurable so long as such risk remains Uninsurable) is not provided to the Province in accordance with Part 6 [Insurance, Damage and Destruction] and Schedule 15 [Insurance Requirements];

- (l) a failure by the Concessionaire to comply with the requirements or directive of a final award (after all rights of further appeal have been exhausted or have expired) in a matter arbitrated or litigated in accordance with the Dispute Resolution Procedure and such failure to comply is not remedied within 30 Business Days after the date notice of such non-compliance is given by the Province to the Concessionaire or within such longer period of time after the date such notice is given (if a longer period of time is reasonably required to comply) so long as the Concessionaire has commenced to comply within such 30 Business Days and proceeds with such compliance with all due diligence and continuity to completion;
- (m) at any time the Default Points Balance is 60 or more Default Points;
- (n) failure by the Concessionaire to achieve Substantial Completion of:
 - (i) the Eastern Segment on or before the Eastern Segment Substantial Completion Longstop Date; or
 - (ii) the Western Segment on or before the Western Segment Substantial Completion Longstop Date;
- (o) a failure by the Concessionaire to pay to the Province when due and payable any amount that is due and payable by the Concessionaire to the Province under this Agreement, and such payment is not the subject of an unresolved dispute pursuant to the Dispute Resolution Procedure, and such failure is not remedied within 20 Business Days after the date notice that such payment is overdue is given by the Province to the Concessionaire;
- (p) a failure by the Concessionaire to perform or observe any of its material obligations under this Agreement or any of the other Province Project Documents that is not referred to in any of Sections 12.1(a) to (o) inclusive, and without regard to whether or not the Concessionaire has received or receives NCE Points or Default Points for or as a result of such failure (and such failure shall be deemed not to have been referred to in Section 12.1(m) above by reason that the Concessionaire is assigned or has been assigned NCE Points or Default Points for or as a result of such failure), and such failure is not remedied within 30 Business Days after the date notice of such failure is given by the Province to the Concessionaire.

Each notice that may be given to the Concessionaire referred to in any of Sections 12.1(e), 12.1(f)(ii), 12.1(f)(iii), 12.1(g), 12.1(h), 12.1(i), 12.1(l), 12.1(o) and 12.1(p) shall specify in reasonable detail according to the information then reasonably available to the Province the failure, breach, occurrence or other matter in respect of which the notice is given, and shall state clearly that the notice is given under this Section of this Agreement and could lead to a Concessionaire Default and to termination of this Agreement.

SOUTH FRASER PERIMETER ROAD PROJECT

- 132 -

12.2 Notice of Default by Concessionaire

The Concessionaire shall notify the Province of the occurrence, and details, of any Concessionaire Default and of any event or circumstance that has occurred and may or would, with the passage of time or otherwise, constitute or give rise to a Concessionaire Default, in any case promptly upon the Concessionaire becoming aware of such occurrence.

12.3 Remedies of the Province for Concessionaire Default

If and whenever a Concessionaire Default occurs and is continuing, the Province may, at its option and without prejudice to any of its other rights or remedies or to any rights or action which accrue or shall already have accrued to the Province, exercise any or all of the following rights and remedies as the Province, in its discretion, shall determine:

- (a) if the Concessionaire Default is one referred to in any of Sections 12.1(a), (b), (c), (e), (f), (g), (h), (i), (l), (m) and (n), the Province may terminate this Agreement by notice to the Concessionaire having immediate effect, subject to Section 14.7 [Notice of Intention to Terminate and Dispute];
- (b) if the Concessionaire Default is one referred to in Section 12.1(o), and provided that the aggregate amount of:
 - (i) the sum that is the subject of that Concessionaire Default; and
 - (ii) all other sums that:
 - (A) are due and payable and remain unpaid by the Concessionaire to the Province;
 - (B) are not the subject of an unresolved dispute pursuant to the Dispute Resolution Procedure; and
 - (C) have each been outstanding and unpaid by the Concessionaire to the Province for more than 20 Business Days after the date a notice of non-payment thereof was given by the Province to the Concessionaire under Section 12.1(o);

exceeds \$250,000 (index linked), the Province may give further notice to the Concessionaire of such aggregate amount and the non-payment thereof requiring the Concessionaire to pay such aggregate amount within 10 Business Days after the date such further notice is given by the Province to the Concessionaire, and if such aggregate amount is not paid by the Concessionaire within such 10 Business Days, then the Province may terminate this Agreement by notice to the Concessionaire having immediate effect, subject to Section 14.7 [Notice of Intention to Terminate and Dispute];

- (c) if the Concessionaire Default is one referred to in Section 12.1(p), the Province may give notice to the Concessionaire of the Concessionaire Default requiring the Concessionaire at the option of the Concessionaire either:

SOUTH FRASER PERIMETER ROAD PROJECT

- 133 -

- (i) to remedy the Concessionaire Default referred to in that notice within 20 Business Days after the date such notice is given by the Province to the Concessionaire; or
- (ii) to submit to the Province's Representative pursuant to the Review Procedure, within 20 Business Days after the date such notice is given by the Province to the Concessionaire, a reasonable schedule and plan for the remedying of such Concessionaire Default specifying in reasonable detail the manner and latest date by which such Concessionaire Default will be remedied;

and in either case Section 12.4 [Termination for Failure to Remedy According to Program] shall apply;

- (d) if the Concessionaire Default is one referred to in Section 12.1(j) or Section 12.1(k):
 - (i) the Province may in its discretion, and without prejudice to its rights under Section 12.3(d)(ii), after advising the Concessionaire of the Province's intention to do so, remedy the Concessionaire Default or engage one or more third parties to do so, and in connection therewith the Province may take or cause to be taken all such steps and actions as may be reasonably required to remedy the Concessionaire Default (but this shall not obligate the Province to (A) remedy or to attempt to remedy a Concessionaire Default or (B) after having commenced to remedy or to attempt to remedy a Concessionaire Default, to continue to do so), and the Concessionaire shall pay to the Province on demand all costs and expenses incurred by the Province in remedying or attempting to remedy such Concessionaire Default, together with an administrative fee equal to fifteen percent (15%) of such costs and expenses. No such action by the Province shall be deemed to be a termination of this Agreement or relieve the Concessionaire from any of its obligations under this Agreement (except to the extent any such obligation is fully performed by the Province); and
 - (ii) if the Concessionaire Default is not remedied within 20 Business Days after notice of such Concessionaire Default is given by the Province to the Concessionaire, the Province may terminate this Agreement by notice to the Concessionaire having immediate effect, subject to Section 14.7 [Notice of Intention to Terminate and Dispute];
- (e) in the case of a Concessionaire Default under Section 12.1(d):
 - (i) where the breach is occasioned by the Concessionaire or by an employee of the Concessionaire who is not acting independently of the Concessionaire or by any person duly authorized to act for and on behalf of the Concessionaire (but for greater certainty excluding any person (and any subcontractor of any such person) referred to in Section 12.3(e)(iii)), terminate this Agreement in its entirety by notice having immediate effect, subject to Section 14.7 [Notice of Intention to Terminate and Dispute];
 - (ii) where the breach is occasioned by an employee of the Concessionaire who is acting independently of the Concessionaire, then unless the Concessionaire

SOUTH FRASER PERIMETER ROAD PROJECT

- 134 -

causes the termination of such employee's employment within 30 days after the earlier of the Concessionaire becoming aware of the breach and notification to the Concessionaire of the breach and (if considered by the Concessionaire, acting reasonably, to be necessary) employs a replacement to perform such terminated employee's functions within such 30 day period, terminate this Agreement in its entirety by notice having immediate effect, subject to Section 14.7 [Notice of Intention to Terminate and Dispute];

- (iii) where the breach is occasioned by a Principal Contractor, or by an agent or employee of a Principal Contractor who is not acting independently of that Principal Contractor, then unless the Concessionaire causes the termination of the engagement or employment of the relevant Principal Contractor within 30 days and provides details of a proposed replacement in accordance with Sections 16.10 [Restrictions on Changes to Principal Contracts] and 16.13 [Replacement Principal Contract] within 40 days, in each case, after the earlier of the Concessionaire becoming aware of the breach and notification to the Concessionaire of the breach or such longer period as the Province may in its discretion by notice permit, terminate this Agreement in its entirety by further notice given after the end of such 30 day or 40 day period (as the case may be), such further notice having immediate effect, subject to Section 14.7 [Notice of Intention to Terminate and Dispute];
- (iv) where the breach is occasioned by an employee of a Principal Contractor who is acting independently of that Principal Contractor, then unless such Principal Contractor causes the termination of such employee's employment within 30 days after the earlier of the Concessionaire becoming aware of the breach and notification to the Concessionaire of the breach and the Principal Contractor (if necessary) employs a replacement to perform such terminated employee's functions within such 30 day period, terminate this Agreement in its entirety by notice having immediate effect, subject to Section 14.7 [Notice of Intention to Terminate and Dispute];
- (v) where the breach is occasioned by any person other than as referred to above in Sections 12.3(e)(i) to 12.3(e)(iv) inclusive, and whether or not any benefit to the Concessionaire or the employer of the person occasioning the breach was intended, then unless the Concessionaire causes the termination of the employment of such person (and, in the case of a person other than a person employed by the Concessionaire or a Principal Contractor, the termination of the engagement or employment of that person's employer) within 30 days after the earlier of the Concessionaire becoming aware of the breach and notification to the Concessionaire of the breach or such longer period as the Province may in its discretion by notice permit, terminate this Agreement in its entirety by further notice given after the end of such 30 day period, such further notice having immediate effect, subject to Section 14.7 [Notice of Intention to Terminate and Dispute];

and

SOUTH FRASER PERIMETER ROAD PROJECT

- 135 -

- (f) except as otherwise expressly provided in this Agreement or any of the other Province Project Documents, and subject to Schedule 16 [Dispute Resolution Procedure], the Province may exercise any of its other rights and remedies, whether under this Agreement, any of the Collateral Agreements, the Lenders' Remedies Agreement, or any of the other Province Project Documents, or at law or in equity.

12.4 Termination for Failure to Remedy According to Program

If the Province gives notice to the Concessionaire of a Concessionaire Default pursuant to Section 12.3(c), and if the Concessionaire Default referred to in that notice is not remedied:

- (a) according to a schedule and plan that the Concessionaire submits to the Province's Representative pursuant to the Review Procedure in accordance with Section 12.3(c)(ii) and to which the Province's Representative has no objection under the Review Procedure; or
- (b) except where Section 12.4(a) applies, before the expiry of the period referred to in Section 12.3(c)(i);

then, in any such event, the Province may at its option and without prejudice to any of its other rights or remedies and to any rights of action which accrue or shall already have accrued to the Province, terminate this Agreement, by notice to the Concessionaire having immediate effect, subject to Section 14.7 [Notice of Intention to Terminate and Dispute].

12.5 Province Costs

Without limiting, but without duplicating, any other amounts the Concessionaire is obligated under this Agreement to pay to the Province or BCTFA on account of costs and expenses incurred by the Province and BCTFA, the Concessionaire shall pay to the Province and BCTFA on demand all costs and expenses incurred by the Province and BCTFA or either of them in exercising any rights and remedies as a result of a Concessionaire Default that would not have been incurred but for the Concessionaire Default, including any relevant increased administrative costs and expenses and legal and other professional advisor expenses.

12.6 Province Remedies Cumulative

Except as otherwise expressly provided in this Agreement or any of the other Province Project Documents:

- (a) all rights and remedies of the Province under this Agreement and the other Province Project Documents are cumulative and are in addition to and not in substitution for or to the exclusion of any other rights and remedies available to the Province under this Agreement or any of the other Province Project Documents or at law or in equity; and
- (b) the Province may have recourse to any one or more or all of such rights and remedies, concurrently or successively, as it shall see fit, without prejudice to any of its other available rights and remedies.

SOUTH FRASER PERIMETER ROAD PROJECT

- 136 -

12.7 Continued Effect

Notwithstanding any Concessionaire Default, the Province may continue to treat this Agreement as being in full force and effect and to enforce its rights under this Agreement, without prejudice to any other rights and remedies of the Province in relation to such Concessionaire Default including the right to terminate this Agreement as provided herein.

12.8 Compensation on Termination

- (a) In the event of an effective termination of this Agreement pursuant to Section 12.3(a) as a result of any Concessionaire Default referred to in Section 12.1(f), or pursuant to Section 12.3(e), compensation on termination shall be payable in accordance with Part 6 [Compensation on Termination for Special Circumstances] and Part 7 [General Provisions] of Schedule 13.
- (b) In the event of an effective termination of this Agreement pursuant to Section 12.3(a) (other than where Section 12.8(a) applies), or pursuant to Section 12.3(b), 12.3(d)(ii) or Section 12.4 [Termination for Failure to Remedy According to Program], compensation on termination shall be payable in accordance with Part 3 [Compensation on Termination for Concessionaire Default] and Part 7 [General Provisions] of Schedule 13.

PART 13

PROVINCE DEFAULT AND CONCESSIONAIRE REMEDIES

13.1 Province Default

Each occurrence of any one or more of the following events or circumstances shall constitute a “**Province Default**”:

- (a) a failure by the Province to pay to the Concessionaire when due and payable any amount that is due and payable by the Province to the Concessionaire under this Agreement, and such payment is not the subject of an unresolved dispute pursuant to the Dispute Resolution Procedure, and such failure is not remedied within 20 Business Days after the date notice that such payment is overdue is given by the Concessionaire to the Province;
- (b) a failure by the Province to comply with the requirements or directive of a final award (after all rights of further appeal have been exhausted or have expired) in a matter arbitrated or litigated in accordance with the Dispute Resolution Procedure and such failure to comply is not remedied within 30 Business Days after the date notice of such non-compliance is given by the Concessionaire to the Province, or within such longer period of time after the date such notice is given (if a longer period of time is reasonably required to comply) so long as the Province has commenced to comply within such 30 Business Days and proceeds with such compliance with all due diligence and continuity to completion;
- (c) any breach by the Province of the provisions of Section 16.4 [Assignment by the Province];

SOUTH FRASER PERIMETER ROAD PROJECT

- 137 -

- (d) any person to whom the interests of the Province or BCTFA under this Agreement or any of the other Province Project Documents are transferred in accordance with Section 16.4 [Assignment by the Province] ceases to be a Qualified Governmental Entity;
- (e) except where such failure constitutes a Compensation Event, a failure by the Province to perform or observe any of its material obligations under this Agreement or any of the other Province Project Documents, and such failure continues so as to substantially frustrate, or render it impossible for the Concessionaire to perform, the Concessionaire's material obligations under this Agreement for a continuous period of not less than 60 days after notice of such failure is first given by the Concessionaire to the Province, and such continuing failure is still not remedied within 30 days after further notice of such failure is given by the Concessionaire to the Province after the expiration of such 60 days;
- (f) except where such expropriation, sequestration, requisition or seizure constitutes or results in a Compensation Event referred to in subsection (b) of the definition of Compensation Event in Section 1.1 [Definitions] of Schedule 1, any expropriation, sequestration, requisition or other seizure by the Province, or any agent, crown corporation, ministry or department of the Province, of the Project Site or any material part thereof, other than in the exercise of rights or obligations set out in, or expressly contemplated by, this Agreement, and such action substantially frustrates the performance of, or renders it impossible for the Concessionaire to perform, the Concessionaire's material obligations under this Agreement for a continuous period of not less than 60 days after the date notice of such action is first given by the Concessionaire to the Province, and such matter is still not remedied within 30 days after further notice of such matter is given by the Concessionaire to the Province after the expiration of such 60 days; or
- (g) any representation or warranty made by the Province in Section 3.3 [Representations and Warranties] being incorrect in any material respect when made and the incorrectness of the fact or facts misrepresented has or might reasonably be expected to have a material adverse effect on the ability of the Concessionaire or the Province to perform their respective obligations, or the ability of the Concessionaire to exercise any of its rights, under this Agreement or any of the other Province Project Documents, except where such incorrect representation or warranty or the relevant material adverse effect is capable of being remedied and is in fact remedied within 60 Business Days after the date notice of such incorrect representation or warranty is given by the Concessionaire to the Province.

Each notice that may be given to the Province referred to in any of Sections 13.1(a), (b), (e), (f), (g) and (h) shall be given to the Province's Representative, shall specify in reasonable detail, according to the information reasonably available to the Concessionaire, the failure, breach, occurrence or other matter in respect of which the notice is given, and shall state clearly that the notice is given under this Section of this Agreement and could lead to a Province Default and to termination of this Agreement.

13.2 Notice of Default by Province

The Province shall notify the Concessionaire of the occurrence, and details, of any Province Default and of any event or circumstance that has occurred and may or would, with the passage of time or

SOUTH FRASER PERIMETER ROAD PROJECT

- 138 -

otherwise, constitute or give rise to a Province Default, in either case promptly upon the Province becoming aware of such occurrence.

13.3 Remedies of Concessionaire for Province Default

If and whenever a Province Default occurs and is continuing, the Concessionaire may, at its option and without prejudice to any of its other rights or remedies and to any rights or action which accrue or shall already have accrued to the Concessionaire, exercise any or all of the following rights and remedies as the Concessionaire, in its sole discretion, shall determine:

- (a) if the Province Default is one referred to in Section 13.1(a), and provided that the aggregate amount of:
 - (i) the sum that is the subject of that Province Default; and
 - (ii) all other sums that:
 - (A) are due and payable and remain unpaid by the Province to the Concessionaire;
 - (B) are not the subject of an unresolved dispute pursuant to the Dispute Resolution Procedure; and
 - (C) have each been outstanding and unpaid by the Province to the Concessionaire for more than 45 Business Days after the date a notice of non-payment thereof was given by the Concessionaire to the Province under Section 13.1(a);

exceeds \$250,000 (index linked), the Concessionaire may give further notice to the Province of such aggregate amount and the non-payment thereof requiring the Province to pay such aggregate amount within 20 Business Days after the date such notice is given by the Concessionaire to the Province and, if such aggregate amount is not paid by the Province within such 20 Business Days, then the Concessionaire may terminate this Agreement by notice to the Province having immediate effect, subject to Section 14.7 [Notice of Intention to Terminate and Dispute];

- (b) if the Province Default is one referred to in any of Sections 13.1(b), (c), (d), (e), (f) or (g) the Concessionaire may terminate this Agreement by notice to the Province having immediate effect, subject to Section 14.7 [Notice of Intention to Terminate and Dispute]; and
- (c) except as otherwise expressly provided in this Agreement (including in Section 9.8 [Limitation of Province Liability]) or any of the other Province Project Documents, and subject to Section 1.4 [No Fettering of Province's Rights and Authority] and Schedule 16 [Dispute Resolution Procedure], the Concessionaire may exercise any of its other rights and remedies, whether under this Agreement, any of the other Province Project Documents, or at law or in equity.

SOUTH FRASER PERIMETER ROAD PROJECT

- 139 -

13.4 Concessionaire Costs

Without limiting, but without duplicating, any other amounts the Province is obligated under this Agreement to pay to the Concessionaire on account of costs and expenses incurred by the Concessionaire, and except to the extent the Concessionaire is compensated for such costs and expenses in compensation paid or payable under Schedule 13 [Compensation on Termination] the Province shall pay to the Concessionaire on demand all costs and expenses incurred by the Concessionaire in exercising any rights and remedies as a result of a Province Default that would not have been incurred but for the Province Default, including any relevant increased administrative costs and expenses and legal and other professional advisor expenses.

13.5 Concessionaire Remedies Cumulative

Except as otherwise expressly provided in this Agreement or any of the other Province Project Documents:

- (a) all rights and remedies of the Concessionaire under this Agreement and the other Province Project Documents are cumulative and in addition to and not in substitution for or to the exclusion of any other rights and remedies available to the Concessionaire under this Agreement or any of the other Province Project Documents or at law or in equity; and
- (b) the Concessionaire may have recourse to any one or more or all of such rights and remedies, concurrently or successively, as it shall see fit, without prejudice to any of its other available rights and remedies.

13.6 Continued Effect

Notwithstanding any Province Default, the Concessionaire may continue to treat this Agreement as being in full force and effect and to enforce its rights under this Agreement, without prejudice to any other rights and remedies of the Concessionaire in relation to such Province Default including the right to terminate this Agreement as provided herein.

13.7 Compensation on Termination

In the event of an effective termination of this Agreement pursuant to Section 13.3(a) or Section 13.3(b), compensation on termination shall be payable in accordance with Part 1 [Compensation on Termination for Province Default] and Part 7 [General Provisions] of Schedule 13.

**PART 14
TERMINATION**

14.1 Termination for Failure to Obtain Lieutenant Governor in Council Approval

- (a) The Province, where required to do so in accordance with Section 12.1 [Agent's Right to Require Termination If No Lieutenant Governor in Council Approval] of the Lenders' Remedies Agreement, shall, and in such event shall be entitled to, terminate this Agreement by notice to the Concessionaire having immediate effect, and upon the giving of such notice this Agreement shall terminate.

SOUTH FRASER PERIMETER ROAD PROJECT

- 140 -

- (b) In the event of an effective termination of this Agreement pursuant to Section 14.1(a), compensation on termination shall be payable in accordance with Part 6 [Compensation on Termination for Special Circumstances] and Part 7 [General Provisions] of Schedule 13.

14.2 Termination for Convenience

- (a) The Province may in its discretion and for any reason whatsoever terminate this Agreement at any time by giving to the Concessionaire at least 90 days' prior notice of the effective date of such termination, and on such effective date this Agreement shall terminate.
- (b) In the event of notice being given by the Province in accordance with Section 14.2(a), the Province shall, at any time before the expiration of such notice, be entitled to direct the Concessionaire, where any Construction Activity or any part or parts thereof or any other Project Work or any elements of the Project Work have not been commenced, to refrain from commencing any such Construction Activity or Project Work or from allowing third parties to commence the same.
- (c) In the event of any termination pursuant to Section 14.2(a), compensation on termination shall be payable in accordance with Part 1 [Compensation on Termination for Province Default] and Part 7 [General Provisions] of Schedule 13.

14.3 Province's Rights of Termination

The Province's rights to terminate this Agreement are set forth in, and limited to those set forth in, the following Sections: 6.21(a)(i), 6.21(b)(ii), 8.4(c), 8.4(d)(iii)(B)(2)(II), 8.6(a), 8.7(a)(iii), 8.7(a)(iv), 8.7(b)(ii), 12.3(a), 12.3(b), 12.3(d)(ii), 12.3(e), 12.4 [Termination for Failure to Remedy According to Program], 14.1(a) and 14.2(a).

14.4 Concessionaire's Rights of Termination

The Concessionaire's rights to terminate this Agreement are set forth in, and limited to those set forth in, the following Sections: 8.4(d)(iii)(B)(2)(II), 8.6(a), 8.7(a)(iv), 13.3(a) and 13.3(b).

14.5 No Other Rights of Termination

Notwithstanding Sections 12.3(f), 12.6 [Province Remedies Cumulative], 13.3(c) and 13.5 [Concessionaire Remedies Cumulative], and without prejudice to their respective rights of termination referred to in Sections 14.3 [Province's Rights of Termination] and 14.4 [Concessionaire's Rights of Termination], each of the parties waives and agrees not to exercise any common law right or remedy it may have prior to the Expiry Date to terminate, repudiate, rescind or otherwise bring to an end this Agreement as a consequence of default by another party hereunder.

14.6 Continued Performance

Subject to any exercise by the Province of its rights under Part 11 [Province's Access, Monitoring and Step-In Rights], the parties shall continue to perform their respective obligations under this Agreement, notwithstanding the giving of any notice of default, Notice of Intention to Terminate or notice

SOUTH FRASER PERIMETER ROAD PROJECT

- 141 -

of termination, until the termination of this Agreement becomes effective in accordance with Part 12 [Concessionaire Default and Province Remedies], Part 13 [Province Default and Concessionaire Remedies], Section 14.1 [Termination for Failure to Obtain Lieutenant Governor in Council Approval], Section 14.2 [Termination for Convenience] and Section 14.7 [Notice of Intention to Terminate and Dispute].

14.7 Notice of Intention to Terminate and Dispute

Except in the case of a termination pursuant to Section 14.1 [Termination for Failure to Obtain Lieutenant Governor in Council Approval] or Section 14.2 [Termination for Convenience]:

- (a) if either the Province or the Concessionaire wishes to terminate this Agreement pursuant to a right of termination that it believes it is entitled to exercise under the terms of this Agreement, such party (in this Section, the “**Terminating Party**”) must by notice (a “**Notice of Intention to Terminate**”) to the other of them (in this Section, the “**Terminated Party**”) to be given before or at the time notice of termination is given, specify the right to terminate that the Terminating Party intends to exercise and the event, circumstance or default giving rise to such right or obligation to terminate;
- (b) if the Terminated Party wishes to dispute the right to terminate (or the existence or occurrence of the event, circumstance or default giving rise to such right to terminate), as set out in a Notice of Intention to Terminate, the Terminated Party must, within 20 Business Days after receiving the Notice of Intention to Terminate, either:
 - (i) refer the dispute to the Dispute Resolution Procedure, in which event the dispute shall be resolved by agreement of the parties or, failing such agreement, through the Dispute Resolution Procedure and such termination shall take effect:
 - (A) when it is agreed by the parties or finally determined by the Dispute Resolution Procedure that the exercise of the right to terminate is or would be valid in accordance with this Agreement; or
 - (B) when notice of termination pursuant to that right to terminate is actually given;whichever is later; or
 - (ii) apply to Court for declaratory relief in respect of the purported right to terminate and/or refer to the Court the question of whether or not the exercise of the right to terminate is or would be valid in accordance with this Agreement, in which event the dispute shall be resolved by agreement of the parties or, failing such agreement, by the Court, and such termination shall take effect:
 - (A) when it is agreed by the parties or finally determined by the Court (without further rights of appeal) that the exercise of the right to terminate is or would be valid in accordance with this Agreement; or
 - (B) when notice of termination pursuant to that right to terminate is actually given;

SOUTH FRASER PERIMETER ROAD PROJECT

- 142 -

whichever is later;

- (c) if, within 20 Business Days after receiving the Notice of Intention to Terminate, the Terminated Party neither refers the matter to the Dispute Resolution Procedure nor applies to Court as provided in Section 14.7(b), the Terminating Party shall have a valid right to terminate this Agreement, and the Terminated Party shall have no further right to dispute or challenge or seek recourse in respect of the validity of such right to terminate, and termination pursuant to that right to terminate shall take effect:
 - (i) on the expiration of such 20 Business Days; or
 - (ii) when notice of termination pursuant to that right to terminate is actually given;whichever is later; and
- (d) the parties agree to conduct expeditiously any proceedings under Section 14.7(b)(i) or Section 14.7(b)(ii).

14.8 Changes after Notice of Termination

If a party gives a Notice of Intention to Terminate or a notice of termination, the Concessionaire shall not, and shall cause the Principal Contractors and Subcontractors not to, without the prior written consent of the Province (which consent may not be unreasonably withheld or delayed):

- (a) materially amend or offer, promise or agree for the future materially to amend the terms and conditions of employment of any employee employed by the Concessionaire or any of the Principal Contractors and Subcontractors whose work (or any part of it) is work undertaken for the purposes of the Project; or
- (b) materially increase or make offers of employment so as materially to increase the number of employees referred to in Section 14.8(a); or
- (c) do or omit to do any other thing in relation to employees referred to in Section 14.8(a) hereof that would or might reasonably be expected to increase any Employee Termination Payments and/or Principal Contractor Breakage Costs included in any compensation on termination payable by the Province in connection with the termination of this Agreement; or
- (d) cancel or terminate, or materially amend the terms and conditions of, any agreements or arrangements for the acquisition or supply of Plant for the purposes of the Project Work; or
- (e) materially alter the volumes or quantities of Plant ordered for the purposes of the Project Work; or
- (f) enter into any new agreements or arrangements for the acquisition or supply of Plant for the purposes of the Project Work except at reasonable arm's length market rates and on reasonable arm's length market terms and conditions.

SOUTH FRASER PERIMETER ROAD PROJECT

- 143 -

14.9 Effect of Termination Generally

If for any reason this Agreement is terminated or the Term expires:

- (a) the Land License granted to the Concessionaire in Section 2.5 [Grant of Land License] shall terminate at the same time and the Concessionaire shall cease to have any further rights under Section 2.5 [Grant of Land License] and Schedule 8 [Lands] with respect to the Licensed Lands and the Project Infrastructure thereon, except to the extent necessary to enable the Concessionaire to perform any obligations of the Concessionaire under this Agreement required to be performed in consequence of or following such termination;
- (b) after the Termination Date, the Concessionaire shall not have any further right to carry out or perform any further Project Work, but this shall not relieve or release the Concessionaire from any of its obligations under this Agreement or any other Province Project Documents including, without limitation, obligations that, by their terms or by necessary implication, are intended to survive termination or to give effect to termination or to the consequences thereof, or are consequential upon termination;
- (c) the Province and the Concessionaire shall reconcile between them any amounts due or accruing due under this Agreement and the other Province Project Documents from one party to the other as at the Termination Date, including:
 - (i) any outstanding Province Payments, Performance Incentive Payments, Non-Availability Events Deductions and Non-Compliance Events Deductions that are due; and
 - (ii) all deposits and security provided by the Concessionaire under Permits assigned under Section 14.11(a)(ix), to the extent not replaced by the Province and returned to the Concessionaire,

and any net balance owing shall be adjusted in the compensation payable on termination, or paid, as provided in Section 7.3 [Adjustment for Net Balance] and Section 7.4 [Rights of Set Off] of Schedule 13;

- (d) subject to Sections 14.9(a), (b) and (c), and Section 7.5 [Full and Final Settlement] of Schedule 13, such termination shall be without prejudice to all the rights, remedies (including Direct Losses for default) and obligations of the parties under this Agreement with respect to:
 - (i) any event, occurrence or circumstance arising or existing before the effective time of termination;
 - (ii) any breach of this Agreement, Province Default or Concessionaire Default occurring prior to the effective time of termination;
 - (iii) provisions of this Agreement that are to be observed and performed under this Agreement up to the effective time of termination; and
 - (iv) provisions of this Agreement that, by their terms or by necessary implication, are intended to survive termination or to give effect to termination or to the

SOUTH FRASER PERIMETER ROAD PROJECT

- 144 -

consequences thereof, or are consequential upon termination, including the provisions of Schedule 13 [Compensation on Termination];

and such rights, remedies and obligations shall continue following termination, subject to Sections 14.9(a), (b) and (c) and subject to Section 7.5 [Full and Final Settlement] of Schedule 13; and

- (e) except as provided above in this Section, all rights and obligations of the parties under this Agreement shall cease and be of no further force or effect.

14.10 Province Discretion to Complete

If for any reason this Agreement is terminated before the Expiry Date, then notwithstanding any duty of the Province to mitigate its Losses:

- (a) whether or not the Project Work is continued by the Province or any other person;
- (b) whether or not the Concession Highway is operated or attempts to do so are made or discontinued;
- (c) what use, if any, is made of any Project Work performed prior to the Termination Date; and
- (d) whether or not any Project Work performed prior to the Termination Date is altered or removed;

shall be in the discretion of the Province, and the Concessionaire shall have no claim against the Province with respect thereto, provided that the Province shall not exercise its rights under this Section in a manner that would prejudice any Bidding Process under Part 4 [Rebidding Procedure] of Schedule 13 if and to the extent that Part 4 [Rebidding Procedure] of Schedule 13 is applicable to the calculation of compensation on such termination of this Agreement.

14.11 Transfer of Assets

If for any reason this Agreement is terminated or the Term expires:

- (a) the Concessionaire shall within 30 days after the Termination Date, at no cost to the Province and for nominal consideration only, in all cases free from Encumbrances (provided that the Province shall have the right, but shall not be obligated, to pay off any and all such Encumbrances in which event any amounts so paid shall immediately be due and owing by the Concessionaire to the Province and shall be payable by the Concessionaire to the Province forthwith on demand or, at the option of the Province, shall be adjusted as provided in Section 14.9(c):
 - (i) if and to the extent the Province so elects, confirm by bill of sale or other document requested by the Province's Representative the transfer to the Province of title to and ownership of all Plant title to which has passed or is intended to be passed to the Province or BCTFA on or before the Termination Date in accordance with Section 2.12(a);

SOUTH FRASER PERIMETER ROAD PROJECT

- 145 -

- (ii) deliver to the Province possession of all Plant referred to in Section 14.11(a)(i) to the extent it is not then affixed to and part of or incorporated into the Project Infrastructure;
 - (iii) cause the benefit of all manufacturers' and third party warranties in respect of Project Work, Project Infrastructure and any other assets, to be transferred and assigned to the Province or, at the direction of the Province, to BCTFA or a third party designated by the Province;
 - (iv) quit claim in favour of the Province, or, at the direction of the Province, in favour of BCTFA, any interest of the Concessionaire in the Project Infrastructure or any other improvements from time to time on, to or forming part of the Project Site;
 - (v) deliver to the Province, or, at the direction of the Province, to BCTFA or a third party designated by the Province, "as built drawings" showing all alterations made since the commencement of the Project Work to or for the Project Site and the Project Infrastructure, to the extent not previously delivered to the Province;
 - (vi) deliver to the Province, or, at the direction of the Province, to BCTFA or a third party designated by the Province, operation and maintenance manuals for the Project Infrastructure and any other assets transferred or to be transferred to the Province or, at the direction of the Province, to BCTFA or a third party designated by the Province, including in respect of communications, signalling and other systems in service at the Termination Date, to the extent not previously delivered to the Province;
 - (vii) deliver to the Province, or, at the direction of the Province, to BCTFA or a third party designated by the Province, the Records in accordance with Section 1.5 [Procedure on Termination] of Schedule 17 and all other Project Intellectual Property, in such electronic or other format as the Province may reasonably require;
 - (viii) transfer to the Province, or, at the direction of the Province, to BCTFA or a third party designated by the Province, title to and possession of all other documents, manuals, records and information reasonably required to enable the Province to carry out and perform, or procure the carrying out and performance of, the work that would, but for termination of this Agreement, have constituted the Project Work; and
 - (ix) if and to the extent the Province so elects, and to the extent permitted by Laws, assign or cause to be assigned all Permits to the Province or, at the direction of the Province, to BCTFA or a third party designated by the Province; and
 - (x) return to the Province all Confidential Information of the Province or BCTFA within the possession or control of the Concessionaire or any Principal Contractor or Subcontractor;
- (b) to the extent the Province so elects, the Concessionaire shall take all steps required by the Province, acting reasonably, to ensure that all Construction Plant that is being used exclusively for the purposes of any Construction Activities then in progress will remain

SOUTH FRASER PERIMETER ROAD PROJECT

- 146 -

available for the purpose of completing the relevant Construction Activities, subject to payment therefor by the Province of a reasonable rental charge;

- (c) within 30 days after the Termination Date, the Concessionaire shall, and shall cause its Principal Contractors and Subcontractors to, offer to sell to the Province or, at the direction of the Province, to BCTFA or a third party designated by the Province, which offer shall remain open for acceptance for at least 30 days after the date such offer is made, at a fair market value (determined as between a willing seller and a willing buyer with any disputes as to such fair market value being determined pursuant to the Dispute Resolution Procedure) and free from any Encumbrances, all or any part of the stocks of material, spare parts and Plant owned by the Concessionaire or any of its Principal Contractors and Subcontractors, that is being used or is intended to be used exclusively for the purposes of Project Work (other than Construction Activities) and is not otherwise transferred or to be transferred to or at the direction of the Province pursuant to any other provision of this Agreement;
- (d) the Concessionaire shall, at its own cost, remove all signs identifying the Concessionaire as the operator of the Concession Highway, within 30 days following the Termination Date; and
- (e) in order to facilitate a decision by the Province with respect to any Collateral Agreements, the Concessionaire shall within 14 Business Days after receipt of a notice from the Province requiring it to do so, give notice to the Province of:
 - (i) any dispute which exists in relation to a Principal Contract, including copies of any correspondence and other documentation relating thereto;
 - (ii) any sum that the Concessionaire is aware is due and payable by a party under the relevant Principal Contract as at the date of the notice; and
 - (iii) any material unperformed obligations and outstanding liabilities of a party under the relevant Principal Contract of which the Concessionaire is aware as at the date of the notice.

The Concessionaire shall ensure in the case of all Permits, Principal Contracts and Subcontracts to which the Concessionaire is a party, and shall use all reasonable efforts to ensure in the case of Subcontracts to which the Concessionaire is not a party, that provisions are included to ensure that the Province will be in a position to exercise its rights and the Concessionaire will be in a position to comply with its obligations under this Section without additional payment or compensation to any person except as expressly contemplated by this Section.

14.12 Handover

If for any reason this Agreement is terminated or the Term expires, the following provisions shall apply in respect of the handover of the Project Site and the Project Infrastructure:

- (a) the Concessionaire shall, for a period not exceeding one year after the Termination Date, cooperate fully with the Province and any successor contractor or operator of the Project Site and the Project Infrastructure or any part thereof in order to achieve a smooth and orderly transfer of the Project Work and any work in the nature of the Project Work as a

SOUTH FRASER PERIMETER ROAD PROJECT

- 147 -

going concern and so as to protect the integrity of the Project Infrastructure and so as to protect the safety of, and avoid undue delay or inconvenience to, members of the public;

- (b) the Concessionaire shall as soon as practicable after notice from the Province to do so remove from the Project Site and the Project Infrastructure all materials, plant, machinery, equipment, apparatus, temporary buildings, road vehicles, spare parts and other property including Plant and Construction Plant, other than that:
 - (i) title to which has passed to the Province under Section 2.12 [Transfer of Title to Tangible Personal Property]; or
 - (ii) required to be transferred, delivered, provided, sold or rented to or at the direction of the Province pursuant to Section 14.11 [Transfer of Assets];

and, if the Concessionaire has not done so within 30 days after any notice from the Province requiring it to do so, the Province may (without being responsible for any Loss) remove and sell any such property and shall hold any proceeds less all costs incurred to the credit of the Concessionaire;

- (c) the Concessionaire shall provide all information concerning the Project, the Project Infrastructure and the Project Work to the Province and any successor contractor or operator of the Project Site and/or the Project Infrastructure (or any part of either thereof) and provide any necessary training in relation to the communications, signalling and other systems and equipment in service at the Termination Date, as shall reasonably be required for the efficient transfer of responsibility for Operation;
- (d) the Concessionaire shall not later than the Termination Date, deliver to the Province:
 - (i) keys to all traffic sign housings;
 - (ii) lifting keys for all types of chamber covers;
 - (iii) keys to all buildings forming part of the Project Infrastructure;
 - (iv) codes and passwords to all computers and computerized systems, control of which is required to be transferred to the Province or its designee pursuant hereto;
- (e) the Concessionaire shall as soon as practicable vacate and hand over to the Province, and leave in a safe and orderly condition, the Project Site, the Project Infrastructure and all communications, signalling and other systems and equipment in service as at the Termination Date; and
- (f) in the case of termination of this Agreement by reason of its expiration on the Expiry Date, the Concessionaire shall hand over to the Province the Project Infrastructure and the Project Site in the state required in accordance with this Agreement.

SOUTH FRASER PERIMETER ROAD PROJECT

- 148 -

14.13 Concessionaire Involvement in Competition Process

If the Province wishes to conduct a competition prior to the Expiry Date with a view to entering into an agreement for the provision of work (which may or may not be the same as, or similar to, the Project Work or any aspect thereof) following the expiration of this Agreement on the Expiry Date, the Concessionaire at its own cost shall, if requested by the Province, prior to the Expiry Date, co-operate with the Province fully in such competition process including by:

- (a) providing any information which the Province may reasonably require to conduct such competition except for information which is commercially sensitive to the Concessionaire (and, for such purpose, commercially sensitive information means the Financial Model and any other information which would, if disclosed to a competitor or potential competitor of the Concessionaire or of any Affiliate of the Concessionaire, give that competitor or potential competitor a competitive advantage over the Concessionaire or such Affiliate and thereby prejudice the business of the Concessionaire or such Affiliate); and
- (b) assisting the Province by providing any participants in such competition process with access to the Concession Highway provided such access does not materially and adversely affect the operation of the Concession Highway.

**PART 15
CONFIDENTIALITY AND INTELLECTUAL PROPERTY**

15.1 Confidentiality

- (a) Each party agrees, for itself and its respective directors, officers, employees and agents, to keep confidential and not to disclose to any person any Confidential Information received from another party, other than as expressly provided in Section 15.1(b) or as otherwise expressly provided in this Agreement.
- (b) Notwithstanding Section 15.1(a), a party may disclose the whole or any part of the Confidential Information in any of the following circumstances:
 - (i) in the case of any party:
 - (A) to its directors, officers, employees, contractors, subcontractors, agents and professional advisors, including, in the case of the Concessionaire, the Principal Contractors and Subcontractors, to the extent necessary to enable it to perform (or to cause to be performed) or to protect or enforce any of its rights or obligations under this Agreement or any of the other Project Documents, provided that the party has first obtained from such person or entity to whom the disclosure is to be made an undertaking of strict confidentiality in relation to the relevant Confidential Information;
 - (B) which is required to be provided to the Independent Certifier pursuant to the Independent Certifier Contract;
 - (C) to the extent required to do so by Laws (including FOIPPA), by or pursuant to the rules or any order having the force of law of any

SOUTH FRASER PERIMETER ROAD PROJECT

- 149 -

Governmental Authority or by or pursuant to the rules or any order of any recognized public stock exchange;

- (D) to the extent that the Confidential Information has, except as a result of any disclosure prohibited by this Agreement, become publicly available or generally known to the public at the time of such disclosure;
 - (E) to the extent that the Confidential Information is already lawfully in the possession of the recipient or lawfully known to the recipient prior to such disclosure;
 - (F) to the extent that it has acquired the Confidential Information from a third party who is not in breach of any obligation as to confidentiality to any other party to this Agreement;
 - (G) to any assignee or proposed assignee permitted under Part 16 [Assignment, Change in Control and Subcontracting];
 - (H) the disclosure of which is expressly permitted or required by this Agreement; or
 - (I) the disclosure of which is necessary for the enforcement of this Agreement;
- (ii) in the case of the Concessionaire, to any bank or financial institution from whom it is seeking or has obtained financing for the Project or any rating agency from whom it is seeking or has obtained a rating in connection with the financing for the Project, and their respective directors, officers, employees, and professional advisors, provided the Concessionaire has first obtained from such person or entity to whom the disclosure is to be made, unless such person or entity is otherwise bound by law or contract by such an obligation of strict confidentiality, an undertaking of confidentiality substantially in accordance with the Concessionaire's undertaking of confidentiality hereunder in relation to the relevant Confidential Information, and provided further that nothing in the foregoing shall prevent any lender under a Lending Agreement from disclosing any Confidential Information received from the Concessionaire in accordance with the foregoing to any person acquiring or potentially acquiring any interest of such lender under the Lending Agreements, and such person's respective directors, officers, employees, and professional advisors, provided that such lender has first obtained from such person or entity to whom the disclosure is to be made an undertaking of confidentiality substantially in accordance with this Section 15.1 in relation to the relevant Confidential Information;
- (iii) in the case of the Province and BCTFA:
- (A) to the extent required for the design, construction, completion, commissioning, testing, operation, maintenance, rehabilitation or improvement of the Project Infrastructure and the Project Site, or the carrying out of any statutory, public or other duties or functions in respect of the Project Infrastructure and the Project Site;

SOUTH FRASER PERIMETER ROAD PROJECT

- 150 -

- (B) in relation to the outcome of the procurement process for the Project as may be required to be published;
- (C) to any ministry, office or agency of the Province, including the Auditor General and the Office of the Comptroller General, and their respective directors, officers, employees, and professional advisors, where required for parliamentary, governmental, statutory or judicial purposes; and
- (D) whether or not falling within Section 15.1(b)(iii)(B) or 15.1(b)(iii)(C), to BCTFA, the Ministry, Partnerships BC or any other Governmental Authority, and their respective directors, officers, employees, and professional advisors,

provided that the Province (or any person to whom the Province discloses the Financial Model in accordance with this Section 15(b)(iii)) shall not be entitled as a result of this Section 15(b)(iii) to disclose the Financial Model to a competitor or potential competitor of the Concessionaire or of any Affiliate of the Concessionaire.

- (c) Without prejudice to any other rights and remedies that any other party may have, each of the parties agrees that damages may not be an adequate remedy for a breach of Section 15.1(a) and that the other parties shall, in such case, be entitled to the remedies of injunction, specific performance or other equitable relief for any threatened or actual breach of Section 15.1(a), subject, in the case of a claim for any such remedy against the Province, to the provisions of the *Crown Proceeding Act* (British Columbia).

15.2 Freedom of Information and Privacy Protection

- (a) The Concessionaire acknowledges that it is aware that FOIPPA applies to this Agreement and to all contractual submissions and other documents and records relating to this Agreement and to the procurement process in respect of the Project and that the Province and BCTFA are required to fully comply with such Act. No action taken or required to be taken by the Province or BCTFA for the purpose of complying with such Act shall be considered a breach of any obligation under this Agreement.
- (b) The Concessionaire, without limiting its obligation to comply with all Laws, shall comply with and cause all of its agents, Principal Contractors and Subcontractors and the employees of any of them to comply with the provisions of Schedule 23 [Privacy Protection] in connection with all Personal Information collected or created in the course of performing the Project Work.
- (c) Within 60 days following the Effective Date, the Concessionaire, in consultation with the Province's Representative, shall develop and submit a privacy code (the "**Privacy Code**") to the Province's Representative pursuant to the Consent Procedure that complies with the requirements of all Laws and incorporates the provisions of Schedule 23 [Privacy Protection]. The Concessionaire shall observe and comply with and cause all of its agents, Principal Contractors and Subcontractors and the employees of any of them to observe and comply with such Privacy Code, and, where necessary or as required by the

SOUTH FRASER PERIMETER ROAD PROJECT

- 151 -

Province's Representative from time to time, the Concessionaire shall submit updates to such Privacy Code to the Province's Representative pursuant to the Consent Procedure.

15.3 Project Intellectual Property

- (a) The Concessionaire shall, and shall cause:
 - (i) its agents and employees; and
 - (ii) to the extent any such Project Intellectual Property is in the possession or control of its Principal Contractors and Subcontractors, its Principal Contractors and Subcontractors,

to make available to the Province and BCTFA, without charge and in paper based or machine readable form as required by the Province and/or BCTFA, all Project Intellectual Property for any purpose (including the carrying out of any statutory, public or other duties or functions) in connection with this Agreement, the Project, the Project Work, the Project Site, the Project Infrastructure or any part of any of them.

- (b) In respect of each of the items required to be made available to the Province under Section 15.3(a), the Concessionaire shall covenant, represent and warrant that, as at the time such item is made available to the Province, either:
 - (i) such item is original; or
 - (ii) if such item is not original, the Concessionaire has obtained, or prior to such item being acquired or brought into existence in any manner whatsoever will have obtained, all rights necessary in order to enable:
 - (A) such item to be so acquired or brought into existence and to be used for the purposes of the Project by the Concessionaire and the Principal Contractors and Subcontractors; and
 - (B) the Concessionaire to comply with its obligations under this Agreement (including under Part 15 [Confidentiality and Intellectual Property]); and

in any event, such item does not and will not infringe any third party's Intellectual Property Rights.

15.4 Licenses to Intellectual Property

- (a) The Concessionaire hereby grants to each of the Province and BCTFA a Complete License to use, both during and after the Term, all and any Project Intellectual Property for any purpose (including the carrying out of any statutory, public or other duties or functions) in connection with this Agreement, the Project, the Project Work, the Project Site, the Project Infrastructure or any part of any of them, provided that:
 - (i) with respect to any Project Intellectual Property that is created after the Effective Date, such Complete License shall take effect immediately upon the coming into existence of such Project Intellectual Property;

SOUTH FRASER PERIMETER ROAD PROJECT

- 152 -

- (ii) to the extent that any of the Project Intellectual Property is generated by or maintained on a computer or in any other machine readable format, the Concessionaire shall obtain for the benefit of the Province and BCTFA, at no charge to the Province or BCTFA, the grant of a license or sub-license, as applicable, for and the supply of any relevant software or database (on equivalent terms to the equivalent license or sub-license granted to the Concessionaire) to enable the Province and BCTFA and their respective employees, agents, contractors, subcontractors and other nominees to access and otherwise use such Project Intellectual Property for any such purpose (whether during or after the Term);
- (iii) where any Project Intellectual Property is vested in any third party, the Concessionaire shall grant or cause the grant of a Complete License to each of the Province and BCTFA to use such Project Intellectual Property for any purpose (including the carrying out of any statutory, public or other duties or functions) in connection with this Agreement, the Project, the Project Work, the Project Site, the Project Infrastructure or any part of any of them; and
- (iv) if the Concessionaire is unable to grant or cause the grant of a Complete License in relation to any Project Intellectual Property pursuant to this Section, the Concessionaire shall indemnify and hold harmless the Province and the Province Indemnified Persons, and each of them, in respect of any and all Direct Losses and Claims which the Province and the Province Indemnified Persons, or any of them, may suffer or incur arising as a result of:
 - (A) the use or disclosure of such Project Intellectual Property; and
 - (B) allegations of or findings of infringement of Intellectual Property Rights of other persons, including breach of confidence, breach of moral rights, unauthorized use by the Province or any of the Province Indemnified Persons, or failure to obtain waivers of moral rights, in respect of such Project Intellectual Property;

in each case to the extent not caused directly by a breach in the due performance or observance by the Province or BCTFA of any of its obligations under this Agreement or any other Province Project Document.

- (b) The Province hereby grants to the Concessionaire a non-transferable, non-exclusive, royalty-free license (but with no right to grant sub-licenses except to the Principal Contractors and Subcontractors) to use, copy and create derivative works from, only during the Term and only for the purpose of carrying out the Project and the Project Work and all obligations of the Concessionaire under the Project Documents:
 - (i) all materials, documents and data of any nature relating to the Project which is or becomes vested in the Province and is required by the Concessionaire for any purpose relating to the Project (including the Disclosed Data), and all Intellectual Property Rights therein, provided that, with respect to any such material, document or data created after the Effective Date, such license shall take effect immediately upon the coming into existence of such material, document or data;

SOUTH FRASER PERIMETER ROAD PROJECT

- 153 -

- (ii) the domain name for the Website and any other domain name designated by the Province for the Project and the Project Infrastructure from time to time, and all Intellectual Property Rights therein; and
- (iii) all names, branding and logos, and all Intellectual Property Rights therein, designated by the Province for the Project and the Project Infrastructure from time to time, provided that the Concessionaire's use of such names, branding and logos shall be subject to compliance by the Concessionaire with any and all guidelines issued by the Province to the Concessionaire from time to time in respect of the use thereof.

15.5 Traffic Data

- (a) Without prejudice to any rights which the Concessionaire may have in the Traffic Data, the Province and BCTFA shall be entitled without further consent from the Concessionaire:
 - (i) to use the Traffic Data for the purposes of exercising rights or carrying out duties under this Agreement or carrying out any statutory, public or other duties or functions; and
 - (ii) to incorporate the Traffic Data in any traffic or other statistics prepared by or on behalf of the Province or BCTFA and to publish such statistics or the Traffic Data either generally or to a limited category of persons or otherwise to exploit such statistics or the Traffic Data and whether or not in return for any fee.
- (b) Without prejudice to any rights which the Province and BCTFA may have in the Traffic Data, the Concessionaire shall be entitled without further consent from the Province or BCTFA to use the Traffic Data for the purposes of exercising rights or carrying out duties under this Agreement.

15.6 Employee Information

- (a) For the purposes of this Section, "**Employee Information**" means written details of:
 - (i) the total number of employees employed by the Concessionaire or any of the Principal Contractors or Subcontractors whose work (or any part of it) is work undertaken for the purposes of the Project;
 - (ii) information relating to or connected with the employment of employees falling within the scope of Section 15.6(a)(i) hereof, including details of:
 - (A) terms and conditions of employment including terms incorporated from any collective agreement;
 - (B) each employee's salary, normal working hours, length of service, contractual period of notice, any pay settlement covering future dates which has already been agreed by the relevant employer and any redundancy entitlement;

SOUTH FRASER PERIMETER ROAD PROJECT

- 154 -

- (C) any other information that may be relevant to the calculation of Employee Termination Payments and/or Principal Contractor Breakage Costs; and
 - (D) such other information as the Province may reasonably require in relation to the Concessionaire's employees or the employees of the Principal Contractors or Subcontractors (other than the name or other details which enable any employee to be identified unless both the Concessionaire and that employee have consented in writing to the provision of such details).
- (b) In the event of the occurrence of a Concessionaire Default or circumstances giving the Province the right to terminate pursuant to Section 8.7(a)(iii), and whether or not the Province has then given notice of default or notice of termination in accordance with any provisions of this Agreement entitling it to do so, the Province may request in writing that the Concessionaire provide Employee Information to the Province and, upon receipt of such written request, the Concessionaire (subject to any relevant collective agreement and applicable Laws) shall:
- (i) provide such Employee Information to the Province within 14 days of receipt of such notice; and
 - (ii) take and cause the Principal Contractors and Subcontractors to take such steps as may be necessary to enable the Concessionaire to comply with any such request by the Province, including notifying employees that such Employee Information may be provided to the Province and obtaining appropriate consents from employees to the release of such Employee Information to the Province,
- and the Concessionaire shall, after the provision of such Employee Information to the Province and until the completion of any bidding process in connection with the Project described in Section 15.6(c), within 14 days of any such change, discovery of new information or receipt of such request:
- (iii) inform the Province of any change to the information provided or provide any new Employee Information not previously provided;
 - (iv) use all reasonable efforts to clarify any matter upon which clarification is requested by the Province; and
 - (v) use all reasonable efforts to co-operate with any other reasonable request made by the Province concerning the Employee Information.
- (c) Unless required by Law to do so, the Province shall not disclose Employee Information (or any part thereof) received from the Concessionaire pursuant to Section 15.6(b) to any other person except only that, subject to any applicable Laws relating to the collection, storage, use or disclosure of personal information, the Province may disclose Employee Information to any person (a "**Prospective Bidder**") who has been or is to be invited to submit a bid in relation to the provision of works or services of a similar type to any of the Project Work in connection with the Project, provided that, if requested in writing by the Concessionaire to do so, the Province shall ensure that prior to such disclosure the

SOUTH FRASER PERIMETER ROAD PROJECT

- 155 -

Prospective Bidder undertakes in writing not to disclose (unless required by Law to do so) the information to any other person other than a person who:

- (i) is an employee or agent (including legal or other professional advisor) of or potential financier (or any employee or agent, including legal or other professional advisor thereof) to the Prospective Bidder; and
- (ii) has undertaken in writing not to disclose that information unless required by Law to do so.

15.7 Survival

Notwithstanding any other provision of this Agreement, the provisions of this Part will survive the expiry or any earlier termination of this Agreement.

**PART 16
ASSIGNMENT, CHANGE IN CONTROL AND SUBCONTRACTING**

16.1 Province Consent Required to Assignment by Concessionaire

Subject to Sections 16.2 [Where Province Consent to Assignment Not Required] and 16.3 [Other Requirements for Assignment by Concessionaire], the Concessionaire shall not, and shall ensure that no Contracting Affiliate of the Concessionaire shall, in any such case without the prior consent of the Province's Representative in accordance with the Consent Procedure, which may be withheld in the Province's discretion, assign, transfer, mortgage, pledge, charge, or create any trust, security interest or other interest in, any interest of the Concessionaire or any such Contracting Affiliate in and under any of the following:

- (a) this Agreement;
- (b) the Lenders' Remedies Agreement;
- (c) any of the Collateral Agreements;
- (d) any of the other Province Project Documents;
- (e) any of the Principal Contracts (or any of the performance securities or guarantees provided thereunder); or
- (f) the Retention Account, if any;

or any part thereof, or any benefit therein or thereunder.

16.2 Where Province Consent to Assignment Not Required

The provisions of Section 16.1 [Province Consent Required to Assignment by Concessionaire] do not apply:

- (a) to the grant by the Concessionaire or the Initial Partners of a security interest in, including an assignment by way of security of, all (and not less than all) of the benefit

SOUTH FRASER PERIMETER ROAD PROJECT

- 156 -

and interest of the Concessionaire or the Initial Partners in and under this Agreement, the Lenders' Remedies Agreement, the Collateral Agreements (and the performance securities or guaranties provided thereunder), the other Province Project Documents, the Principal Contracts then in effect (and the performance securities and guarantees provided thereunder), and the Retention Account, if any, as security to the Senior Lenders in accordance with the Initial Senior Lending Agreements or to the Senior Lenders under the terms of a permitted Refinancing, provided that the Senior Lenders (or the Agent and any security trustee or agent of the Senior Lenders, on behalf of the Senior Lenders and so as to legally bind them) shall have executed and delivered to the Province the Lenders' Remedies Agreement; or

- (b) to an assignment or transfer of all (and not less than all) of the interest of the Concessionaire or the Initial Partners in and under this Agreement, the Lenders' Remedies Agreement, the Collateral Agreements, the other Province Project Documents, the Principal Contracts then in effect (and the performance securities and guarantees provided thereunder), and the Retention Account, if any, to a Suitable Substitute Concessionaire pursuant to the bona fide enforcement by the Senior Lenders of their security in accordance with the Lenders' Remedies Agreement.

16.3 Other Requirements for Assignment by Concessionaire

Notwithstanding Sections 16.1 [Province Consent Required to Assignment by Concessionaire] and 16.2 [Where Province Consent to Assignment Not Required]:

- (a) neither the Concessionaire nor the Initial Partners shall assign, transfer, mortgage, pledge, charge, or create any trust, security interest or other interest in, any of their respective interests in and under any of the following:
 - (i) this Agreement;
 - (ii) the Lenders' Remedies Agreement;
 - (iii) any of the Collateral Agreements;
 - (iv) any of the other Province Project Documents;
 - (v) any of the Principal Contracts (or any of the performance securities or guarantees provided thereunder); or
 - (vi) the Retention Account, if any;

or any part thereof, or any benefit therein or thereunder, whether under Section 16.1 [Province Consent Required to Assignment by Concessionaire] or Section 16.2 [Where Province Consent to Assignment Not Required] or otherwise, unless at the same time, in the same transaction, to the same person and to the same extent, the Concessionaire or the Initial Partners assign, transfer, mortgage, pledge, charge, or create a trust, security interest or other interest in their respective interests in and under each of this Agreement, the Lenders' Remedies Agreement, the Collateral Agreements, the other Province Project Documents, all of the Principal Contracts then in effect (and the performance securities

SOUTH FRASER PERIMETER ROAD PROJECT

- 157 -

and guarantees provided thereunder), and the Retention Account, if any, together, and none of them separately; and

- (b) neither the Concessionaire nor the Initial Partners shall assign, transfer or create any trust or other interest in (other than by way of security) any of their respective interests in and under any of the following:
 - (i) this Agreement;
 - (ii) the Lenders' Remedies Agreement;
 - (iii) any of the Collateral Agreements;
 - (iv) any of the other Province Project Documents;
 - (v) any of the Principal Contracts (or any of the performance securities or guarantees provided thereunder); or
 - (vi) the Retention Account, if any;

or any part thereof, or any benefit or interest therein or thereunder, unless the assignee, transferee or other person taking an interest executes and delivers to the Province an agreement in form and substance satisfactory to the Province acting reasonably whereby such assignee, transferee or other person assumes and agrees with the Province to observe, perform and be bound by, all of the obligations of the Concessionaire under this Agreement, the Lenders' Remedies Agreement, the Collateral Agreements, the other Province Project Documents, all the Principal Contracts then in effect (and the performance securities and guarantees provided thereunder), and the other Project Documents to which the Concessionaire is a party.

16.4 Assignment by the Province

- (a) Subject to Section 16.4(c), the Province and BCTFA may, without the consent of the Concessionaire, assign or transfer any of their respective interests in and under this Agreement and the other Province Project Documents to a Qualified Governmental Entity that executes and delivers to the Concessionaire an agreement in form and substance satisfactory to the Concessionaire acting reasonably whereby such assignee or transferee assumes and agrees to observe, perform and be bound by, all the obligations and liabilities of the Province or BCTFA, as the case may be, under this Agreement and the other Province Project Documents.
- (b) Except as provided in Section 16.4(a), neither the Province nor BCTFA shall, without the prior consent of the Concessionaire, which may be withheld in the Concessionaire's sole, absolute and unfettered discretion, assign or otherwise transfer any of its interest in or under this Agreement or any of the other Province Project Documents.
- (c) Any assignment or transfer to the Federal Government pursuant to Section 16.4(a) shall be conditional upon appropriate steps under the *Financial Administration Act* (Canada) being taken to preserve the then existing security of lenders under the Senior Lending Agreements and the Junior Lending Agreements.

SOUTH FRASER PERIMETER ROAD PROJECT

- 158 -

16.5 Release of the Province on Assignment

Upon any assignment or transfer in accordance with Section 16.4(a) of all of the interest of the Province or all of the interest of BCTFA in and under this Agreement and the other Province Project Documents to a single Qualified Governmental Entity, and the assumption by the assignee or transferee of all the obligations and liabilities of the assignor or transferor in accordance with Section 16.4(a), the assignor or transferor shall be released from all of its obligations and liabilities under this Agreement and the other Province Project Documents.

16.6 Change in Control of Concessionaire Before One Year After Substantial Completion

- (a) Subject to Sections 16.6(b), 16.6(c) and 16.8 [Consent to Change in Control Not Required in Certain Cases], until after the expiration of one year after the Western Segment Substantial Completion Date:
- (i) no Change in Control of the Concessionaire or any of the Partners or any of the Parent Partners or any of Ledcor Investments Inc., Ledcor Industries Inc. or Iridium Concesiones de Infraestructuras, S.A. shall be permitted; and
 - (ii) no reduction of the ownership interest of South Fraser Construction Limited Partnership in the Concessionaire to less than 25% of all the Units issued and outstanding shall be permitted;

without the prior written consent of the Province's Representative in accordance with the Consent Procedure, which consent may be withheld in the Province's discretion.

- (b) Notwithstanding Section 16.6(a), on or before the expiration of one year after the Western Segment Substantial Completion Date, if the Concessionaire has requested the consent of the Province's Representative in accordance with the Consent Procedure to a proposed Change in Control of the Concessionaire or any of the Partners or any of the Parent Partners or any of Ledcor Investments Inc., Ledcor Industries Inc. or Iridium Concesiones de Infraestructuras, S.A. or a reduction of the ownership interest of South Fraser Construction Limited Partnership in the Concessionaire to less than 25% of all the Units issued and outstanding that is pursuant to the bona fide enforcement by the Senior Lenders of a security interest in accordance with the Senior Lending Agreements and where the person acquiring Control or the ownership interest of South Fraser Construction Limited Partnership in the Concessionaire is:
- (i) a person:
 - (A) of financial standing (as determined by the Province acting reasonably) at least equivalent to the financial standing at the Effective Date of the ultimate Controlling persons of the Concessionaire;
 - (B) that is not a person or entity to which the Province has previously refused to give its consent;
 - (C) that is not a Restricted Person; and

SOUTH FRASER PERIMETER ROAD PROJECT

- 159 -

(D) none of whose Affiliates is, to the knowledge of the Senior Lenders (after due and reasonable enquiry), a Restricted Person for any reason other than by reason of subsection (d) of the definition of Restricted Person in Section 1.1 [Definitions] of Schedule 1;

or

(ii) a person who is an Appointed Representative (as defined in the Lenders' Remedies Agreement), but only:

(A) if such Appointed Representative is not a Restricted Person; and

(B) if none of the Affiliates of the Appointed Representative is, to the knowledge of the Senior Lenders (after due and reasonable enquiry), a Restricted Person for any reason other than by reason of subsection (d) of the definition of Restricted Person in Section 1.1 [Definitions] of Schedule 1; and

(C) for so long as such person is and continues to be an Appointed Representative as so defined (and if such person ceases to be an Appointed Representative such cessation shall constitute a Change of Control of the Concessionaire for the purposes of this Section);

then the Province shall not unreasonably withhold such consent.

(c) Section 16.6(a) does not apply to a Change in Control of the Concessionaire or any of the Partners or any of the Parent Partners or any of Ledcor Investments Inc., Ledcor Industries Inc. or Iridium Concesiones de Infraestructuras, S.A. or to a reduction of the ownership interest of South Fraser Construction Limited Partnership in the Concessionaire to less than 25% of all the Units issued and outstanding caused by the appointment of a Suitable Substitute Concessionaire in accordance with the Lenders' Remedies Agreement.

16.7 Change In Control of Concessionaire After One Year After Substantial Completion

Subject to Section 16.8 [Consent to Change in Control Not Required in Certain Cases], following the expiration of one year after the Western Segment Substantial Completion Date, no Change in Control of the Concessionaire shall be permitted if the person acquiring Control of the Concessionaire is either:

(a) a person who is a Restricted Person; or

(b) a person any of whose Affiliates is, to the knowledge of the Concessionaire (after due and reasonable enquiry), a Restricted Person for any reason other than by reason of subsection (d) of the definition of Restricted Person in Section 1.1 [Definitions] of Schedule 1.

16.8 Consent to Change in Control Not Required in Certain Cases

A Change in Control of the Concessionaire or any of the Partners or any of the Parent Partners or any of Ledcor Investments Inc., Ledcor Industries Inc. or Iridium Concesiones de Infraestructuras, S.A.

SOUTH FRASER PERIMETER ROAD PROJECT

- 160 -

arising from any bona fide open market transaction effected on a recognized public stock exchange shall not require the Province's consent.

16.9 Use of Contractors by Concessionaire

Except as otherwise provided in this Agreement, the Province acknowledges that the Concessionaire may perform all or part of the Project Work through one or more Principal Contractors and Subcontractors. Notwithstanding any such contracting and subcontracting:

- (a) the Concessionaire shall not be relieved or excused from any of its obligations and liabilities under this Agreement; and
- (b) the Concessionaire shall be and remain principally liable to the Province for the due observance and performance of all the covenants, agreements, conditions and provisos contained in this Agreement that are by the terms of this Agreement to be observed and performed by the Concessionaire.

16.10 Restrictions on Changes to Principal Contracts

Subject to Section 16.17 [Exempt Principal Contractor Matter], the Concessionaire shall not:

- (a) terminate or permit the termination of any Principal Contract (or any of the performance securities or guarantees provided thereunder), unless:
 - (i) the goods, services or rights that were the subject matter of such Principal Contract are no longer reasonably required for the Project or the Project Work or are to be provided directly by the Concessionaire; or
 - (ii) there is an event of default under the Principal Contract and the Concessionaire terminates it in order to prevent or cure a Concessionaire Default (and the Concessionaire shall provide to the Province's Representative full particulars of such termination within 10 Business Days after such termination);
- (b) permit the assignment of any Principal Contract (or any of the performance securities or guarantees provided thereunder) by any party thereto other than the Concessionaire (and, in the case of the Concessionaire, subject always to Sections 16.1 [Province Consent Required to Assignment by Concessionaire], 16.2 [Where Province Consent to Assignment Not Required] and 16.3 [Other Requirements for Assignment by Concessionaire]);
- (c) make or agree to or permit the making of any material amendment to or material variation of any Principal Contract (or any of the performance securities or guarantees provided thereunder);
- (d) make or agree to any material departure from, or waive or fail to enforce any material rights it may have under, or allow others to depart in any material respect from their material obligations under, any Principal Contract (or any of the performance securities or guarantees provided thereunder);
- (e) enter into any agreement or document that would materially affect the interpretation or

SOUTH FRASER PERIMETER ROAD PROJECT

- 161 -

application of any Principal Contract (or any of the performance securities or guarantees provided thereunder);

- (f) enter into any contract or agreement in replacement of a Principal Contract (or any of the performance securities or guarantees provided thereunder); or
- (g) enter into any new Principal Contract or a Principal Contract not entered into on or before the date of this Agreement;

unless full particulars of the relevant document or proposed course of action have been submitted to the Province's Representative and there has been no objection by the Province's Representative in accordance with the Review Procedure.

16.11 Non-Arm's Length Contracts

The Concessionaire shall:

- (a) notify the Province's Representative of any Subcontract that the Concessionaire enters into with an Affiliate of the Concessionaire or another person with whom the Concessionaire is not dealing at arm's length, and of any material amendment of any such contract, within 10 Business Days after entering into such contract or material amendment, and in each case shall provide to the Province's Representative full particulars of the Subcontract or amendment and the parties thereto; and
- (b) notify the Province's Representative of any Subcontract that an Affiliate of the Concessionaire enters into of which the Concessionaire is aware, within 10 Business Days after the Province becomes aware of such Subcontract.

16.12 Restricted Persons Prohibited

Notwithstanding any other provision of this Agreement, the Concessionaire shall not carry out or permit any action contemplated by any of Sections 16.10(a) to (g) inclusive or Section 16.13 [Replacement Principal Contracts], and no such action shall be carried out or permitted, if it would, or might reasonably be expected to, involve a person who is either:

- (a) a Restricted Person; or
- (b) a person any of whose Affiliates is, to the knowledge of the Concessionaire (after due and reasonable enquiry), a Restricted Person for any reason other than by reason of subsection (d) of the definition of Restricted Person in Section 1.1 [Definitions] of Schedule 1.

16.13 Replacement Principal Contracts

If any Principal Contract at any time lapses, terminates, or otherwise ceases to be in full force and effect (whether by reason of expiry or otherwise), unless the goods, services or rights that were the subject matter of such Principal Contract are no longer reasonably required for the Project or the Project Work or are to be provided directly by the Concessionaire, then subject to Sections 16.10 [Restrictions on Changes to Principal Contracts] and 16.12 [Restricted Persons Prohibited], the Concessionaire:

SOUTH FRASER PERIMETER ROAD PROJECT

- 162 -

- (a) shall as soon as reasonably possible enter into one or more contracts in replacement of such Principal Contract, with one or more persons who will be Principal Contractors; and
- (b) shall, and shall cause each replacement Principal Contractor to, forthwith enter into a Collateral Agreement with the Province.

16.14 New Principal Contracts

If after the Effective Date the Concessionaire enters into a new or additional Principal Contract, the Concessionaire shall, and shall cause the Principal Contractor thereunder to, forthwith execute and deliver a Collateral Agreement with the Province.

16.15 Copies of Documents

If at any time any act or matter referred to in any of Sections 16.10(a) to (g) inclusive occurs, the Concessionaire shall deliver to the Province's Representative a conformed copy of each document or, if not in writing, a true and complete record thereof in writing, within 10 Business Days after the date of its execution or creation or occurrence, certified as a true copy or accurate and complete record (as the case may be) by a senior officer or director of the general partner of each of the Partners.

16.16 Payment of Province's Costs

- (a) If particulars of any proposed documents or course of action are submitted to the Province's Representative pursuant to any provision of this Part, or if the Concessionaire requests any consent pursuant to any provision of this Part, or if any action, transaction, event or circumstance occurs or is proposed that requires the consent of the Province's Representative under any provision of this Part or to which the Province's Representative has a right of review or objection under this Part, the Concessionaire shall pay to the Province, in accordance with the remaining provisions of this Section 16.16 [Payment of Province's Costs], all reasonable and proper costs and expenses incurred by the Province in connection with reviewing any such submission, request, action, transaction, event or circumstance or making a determination as to the making of an objection or the giving or withholding of consent or any other matter required in connection therewith or related thereto, whether or not any objection is made or any consent is given or any other action is taken by the Province and whether or not the proposed course of action takes place, such costs and expenses to include professional and legal costs and expenses, advisor fees and other out of pocket expenses, fees, costs and expenses charged by Partnerships BC to the Province, and the Province's reasonable internal administrative and personnel costs.
- (b) At the time of the Concessionaire's submission pursuant to any of Sections 16.1 [Province Consent Required to Assignment by Concessionaire], 16.6 [Change in Control of Concessionaire Before One Year After Substantial Completion] or 16.10 [Restrictions on Changes to Principal Contracts], or pursuant to any other Section in this Part where the Province or the Province's Representative has a right of review, objection, consent, verification or other action, and as a condition precedent to the commencement of any time period specified for the Province or the Province's Representative to object, consent or otherwise respond to such submission and to any obligation of the Province to review or consider any matter in respect of which any such submission is made, the Concessionaire shall pay to the Province the sum of \$35,000 (index linked) to be held by

SOUTH FRASER PERIMETER ROAD PROJECT

- 163 -

the Province on account of the Concessionaire's obligations to pay under this Section in respect of such submission.

- (c) The Province may from time to time invoice the Concessionaire for amounts to be paid by the Concessionaire under this Section. For each particular matter submitted to the Province's Representative, such invoices shall be paid first out of any funds provided by the Concessionaire under Section 16.16(b) with respect to the matter, to the extent such funds have not been applied to previous invoices. When the aggregate of amounts invoiced in respect a matter exceeds the amount of any funds provided by the Concessionaire under Section 16.16(b) with respect to the matter, the Concessionaire shall pay to the Province within 10 Business Days after invoicing the amount of the excess and the amount of any subsequent invoices in respect of the matter. After any relevant decision of the Province is rendered or any action contemplated by the submission or request has been taken, the Province shall invoice the Concessionaire for all amounts to be paid by the Concessionaire under this Section not previously invoiced by the Province, and the Province shall refund any overpayment by the Concessionaire on account of amounts to be paid by the Concessionaire under this Section, and the Concessionaire shall pay any amount owing by it under this Section, in either case within 10 Business Days after receipt of such invoice.

16.17 Exempt Principal Contractor Matter

In the case of any action under or transaction with respect to any Principal Contract that consists solely of an Exempt Principal Contractor Matter:

- (a) the Province's Representative shall not have a right of objection or consent, and Section 16.10 [Restrictions on Changes to Principal Contracts] shall not apply; and
- (b) the Concessionaire shall, forthwith after the occurrence of such Exempt Principal Contractor Matter and in any event no later than 10 Business Days thereafter, submit to the Province full particulars of the relevant documents and course of action comprising the Exempt Principal Contractor Matter including:
- (i) particulars of any action contemplated by any of Sections 16.10(a) to (g) inclusive; and
- (ii) particulars of why the action or transaction constitutes an Exempt Principal Contractor Matter including information with respect to the matters referred to in Sections 16.12 [Restricted Persons Prohibited] and 16.18 [Principal Contract Changes Not to Increase Province's Liability].

16.18 Principal Contract Changes Not to Increase Province's Liability

Notwithstanding any other provision of this Agreement, and without prejudice to the rights of the Province under the other provisions of this Part, no action referred to in any of Sections 16.10(a) to (g) inclusive, whether or not consented to or permitted under Section 16.10 [Restrictions on Changes to Principal Contracts] or Section 16.17 [Exempt Principal Contractor Matter], and no amendment, waiver or exercise of a right under any Principal Contract, shall have the effect of increasing any liability of the Province or BCTFA arising from early termination of this Agreement, unless the Concessionaire has

SOUTH FRASER PERIMETER ROAD PROJECT

- 164 -

obtained, in addition to any other consent and any other requirements under this Part, the prior written consent of the Province under the Consent Procedure expressly consenting for the purposes of this Section to the increase in the liability that would arise from any early termination of this Agreement, which consent the Province may withhold or grant in its discretion.

**PART 17
DEFECTS****17.1 Reporting of Latent Defects**

Without prejudice to any other reporting requirement under this Agreement, in the event that a Latent Defect becomes apparent at any time during the Term, the Concessionaire shall promptly and in any event within 10 days of becoming aware of such Latent Defect give notice to the Province's Representative identifying the Latent Defect in reasonable detail.

17.2 Joint Inspection of Third Party Segments

- (a) A joint inspection of each component of the Third Party Segments and the Third Party Segment Work shall be carried out, in accordance with the Third Party Segment Inspection Plan, by the Province's Representative and the Concessionaire's Representative in advance of both the expected substantial completion and the total completion of each component of the Third Party Segments and the Third Party Segment Work in accordance with the relevant agreements for each such component.
- (b) Within 15 days following the completion of each joint inspection prior to the expected total completion of a component of the Third Party Segments pursuant to Section 17.2(a), a list (a "**Third Party Segment Defect List**") will be produced and initialled by both the Province's Representative and the Concessionaire's Representative identifying in reasonable detail any Third Party Segment Defects in connection with such component that were identified during such inspection and describing the remedial or other works required to rectify such Third Party Segment Defects.
- (c) Any dispute between the Province's Representative and the Concessionaire's Representative as to the existence or nature of any Third Party Segment Defect or the remedial or other works required to rectify any Third Party Segment Defect shall be referred for determination to the Dispute Resolution Procedure.
- (d) Each Third Party Segment Defect List produced and initialled by the Province's Representative and the Concessionaire's Representative pursuant to Section 17.2(b), or determined by the Dispute Resolution Procedure pursuant to Section 17.2(c), shall be conclusive and binding on the Province and the Concessionaire as to the existence and nature of any Third Party Segment Defects for the component of the Third Party Segments to which it relates and the remedial or other works required to rectify such Third Party Segment Defects for all purposes of this Agreement.

17.3 Rectification of Latent Defects and Third Party Segment Defects

Upon the occurrence of any of the following:

- (a) the Concessionaire notifying the Province of a Latent Defect;

SOUTH FRASER PERIMETER ROAD PROJECT

- 165 -

- (b) the Province becoming aware of a Latent Defect and notifying the Concessionaire thereof; and
- (c) the identification of a Third Party Segment Defect in a Third Party Segment Defect List in accordance with Section 17.2 [Joint Inspection of Third Party Segments],

the Province shall as soon as reasonably practicable do one of the following in its discretion for each Latent Defect or Third Party Segment Defect, as the case may be:

- (d) retain the Concessionaire to complete the rectification of such Latent Defect or Third Party Segment Defect, as the case may be, by initiating a Province Change in respect of such rectification work under Section 7.1 [Province Changes], with the compensation and relief to which the Concessionaire is entitled being determined in accordance with Schedule 11 [Changes], provided that any entitlement which the Concessionaire would have had under Part 8 [Supervening Events] if such Latent Defect or Third Party Component Defect, as the case may be, had constituted a Compensation Event under Section 17.3(e), including relief from delays and Direct Losses resulting from the Concessionaire's compliance with its obligations under Section 17.5 [Traffic Management and Public Safety with Defects] in respect of such Latent Defect or Third Party Segment Defect, as the case may be, shall be dealt with as part of such Province Change; or
- (e) have such rectification work carried out by its own labour forces (including day labour retained by the Province) or by a Third Party Contractor, in which event the existence of such Latent Defect or Third Party Segment Defect, as the case may be, as well as the acts and omissions of the Province or such Third Party Contractor, as the case may be, in carrying out such rectification work shall constitute a Compensation Event and the provisions of Part 8 [Supervening Events] shall apply, except only that, for the purposes of Section 8.1(b)(v) in the case of any Latent Defect, the time period referred to therein shall not apply in respect of any such Compensation Event in respect of such Latent Defect.

17.4 Risks of Defects

- (a) The Concessionaire shall carry out, as part of the Project Work, any remedial or other works required as a result of any defect in the Project Infrastructure other than:
 - (i) any Latent Defect; or
 - (ii) any Third Party Segment Defect,

which Latent Defects and Third Party Segment Defects shall be remedied in accordance with Section 17.3 [Rectification of Latent Defects and Third Party Segment Defects].

- (b) Except as expressly provided in Section 17.3 [Rectification of Latent Defects and Third Party Segment Defects] or as otherwise expressly provided elsewhere in this Agreement, in respect of any defect in the Project Infrastructure:

SOUTH FRASER PERIMETER ROAD PROJECT

- 166 -

- (i) any such defect comprising a Nonconformity shall be addressed by the Concessionaire in accordance with Part 6 [Nonconformities] of Schedule 7;
- (ii) all costs of and associated with such defect and any remedial or other works required as a result of such defect shall be borne by the Concessionaire; and
- (iii) neither the Province nor BCTFA shall have any liability to the Concessionaire or any of its Principal Contractors or Subcontractors (whether in contract, tort, by statute or otherwise howsoever and whether or not arising out of any negligent act or negligent omission on the part of the Province or BCTFA or any of their respective employees, agents, contractors or subcontractors of any tier or employees of any of them) in respect of any Loss or Claim arising out of or in connection with the existence of any such defect or any remedial or other works required as a result of any such defect.

17.5 Traffic Management and Public Safety with Defects

For greater certainty, the Concessionaire shall be responsible in accordance with this Agreement for all Traffic Management and other procedures and arrangements for the safety of the public using the Project Infrastructure for which it is otherwise responsible under the terms of this Agreement irrespective of any defect in the Project Infrastructure, including any Latent Defect or Third Party Segment Defect.

**PART 18
GENERAL**

18.1 Disputes

- (a) Except as otherwise expressly provided in this Agreement:
 - (i) any dispute between the parties hereto with respect to any of the subject matters of this Agreement, whether or not the provisions of this Agreement specifically refer the dispute to the Dispute Resolution Procedure;
 - (ii) any matter or dispute between the parties to this Agreement that, by the express terms of this Agreement, is to be resolved or determined by the Dispute Resolution Procedure; and
 - (iii) any disagreement between the parties hereto with respect to any matter that, by the express terms of this Agreement, is to be agreed upon by the parties;

shall be resolved in accordance with, and the parties shall comply with, the Dispute Resolution Procedure.

- (b) Any and all issues or disputes between or among the Province, BCTFA and the Concessionaire, whether or not subject to the Dispute Resolution Procedure, shall constitute Confidential Information.

SOUTH FRASER PERIMETER ROAD PROJECT

- 167 -

18.2 Public Communications

- (a) The roles and responsibilities of the Province and the Concessionaire as they relate to all communications and consultation for the Project with Stakeholders and the public will be as set out in Schedule 9 [Communication and Consultation].
- (b) The Concessionaire, in consultation with the Province's Representative and the ombudsman appointed under the *Ombudsman Act* (British Columbia) (the "**Provincial Ombudsman**"), will establish a protocol (the "**Complaints Protocol**") for dealing with complaints received from the public in connection with the Project and the Project Site, that complies with the TIA, is accepted by the Province's Representative in accordance with the Consent Procedure, and is satisfactory to the Provincial Ombudsman, and will deal with any complaints received (whether orally or in writing, and whether from a user of the Concession Highway or others) in a prompt, courteous and efficient manner in accordance with the Complaints Protocol. The Concessionaire will, where necessary or as required by the Province's Representative, submit updates to the Complaints Protocol from time to time in accordance with the Consent Procedure to ensure that the Complaints Protocol continues to meet the requirements of the TIA, the Provincial Ombudsman and Good Industry Practice, and the reasonable requirements of the Province.
- (c) Unless expressly provided in this Agreement or otherwise required by any Law (but only to that extent), no party shall make or permit to be made any public announcement or disclosure whether for publication in the press, radio, television or any other medium of any Confidential Information or any matters relating thereto, without the prior written consent of the other parties (which shall not be unreasonably withheld or delayed).

18.3 Entire Agreement

This Agreement (including the Schedules) constitutes the entire agreement between the parties hereto with respect to all matters contained herein, expressly superseding all prior agreements and communications (both oral and written) between any of the parties hereto with respect to all matters contained herein and superseding as well the Request for Qualifications and the Request for Proposals.

18.4 Amendment

No amendment to this Agreement shall be binding unless it is in writing and signed by each of the parties hereto.

18.5 Notices

Any notice, demand, request, consent, approval, objection, agreement or other communication required or permitted to be given, made or issued under this Agreement must, unless otherwise specifically provided in this Agreement, be in writing signed by the providing party and delivered by hand, sent by a recognized courier service (with delivery receipt requested), or transmitted by facsimile transmission to the address or facsimile transmission number of each party set out below:

SOUTH FRASER PERIMETER ROAD PROJECT

- 168 -

- (a) if to the Province:

Ministry of Transportation and Infrastructure
5B – 940 Blanshard Street
Victoria, British Columbia
V8W 3E6
Attention: The Deputy Minister
Facsimile: 250-387-6431

- (b) if to BCTFA:

BC Transportation Financing Authority
c/o Ministry of Transportation and Infrastructure
5B – 940 Blanshard Street
Victoria, British Columbia
V8W 3E6
Attention: The Chief Executive Officer
Facsimile: 250-387-6431

- (c) if to the Province's Representative:

Suite 2400, 4710 Kingsway
Burnaby, British Columbia
V5H 4M2
Attention: Geoff Freer
Facsimile: 604-775-0348

- (d) if to the Concessionaire or the Concessionaire's Representative:

FTG Fraser Transportation Group Partnership
c/o McCarthy Tétrault LLP
1300 – 777 Dunsmuir Street
Vancouver, British Columbia
V7Y 1K2
Attention: Byran Gibson
Facsimile: 604-643-7900

or to such other address in British Columbia or facsimile transmission number as any party or its representative may, from time to time, designate to the other parties and their representatives in the manner set out above. Any such notice or communication shall be considered to have been received:

- (e) if delivered by hand or by courier during business hours on a Business Day, when delivered and, if not delivered during business hours, upon the commencement of business hours on the next Business Day; and
- (f) if sent by facsimile transmission during business hours on a Business Day, upon the sender receiving confirmation of the successful transmission and, if not transmitted during business hours, upon the commencement of business hours on the next Business Day following confirmation of the transmission.

SOUTH FRASER PERIMETER ROAD PROJECT

- 169 -

18.6 Waiver

Except as expressly provided otherwise in this Agreement, any waiver of any provision of this Agreement shall only be effective if in writing signed by the waiving party, and no failure by any party at any time to exercise a right or remedy under or to enforce any provision of this Agreement or to require performance by any other party of any of the provisions of this Agreement shall be construed as a waiver of any such provision and shall not affect the validity of this Agreement or any part thereof or the right of any party to enforce any provision in accordance with its terms. Any waiver shall only apply to the specific matter waived and only in the specific instance and for the specific purpose for which it is given.

18.7 Further Assurances

The parties shall do, execute and deliver, or shall cause to be done, executed and delivered, all such further acts, documents (including certificates, declarations, affidavits, reports and opinions) and things as the other may reasonably request for the purpose of giving effect to this Agreement or for the purpose of establishing compliance with the parties' respective obligations under this Agreement.

18.8 Relationship of the Parties

- (a) Nothing contained in this Agreement or in the other Province Project Documents nor any action taken pursuant hereto or thereto shall be deemed to constitute the Province and the Concessionaire, or BCTFA and the Concessionaire, or all of them, a partnership, joint venture or any other similar such entity.
- (b) Nothing contained in this Agreement or in the Federal Cost Contribution Agreement shall be construed as authorizing the Concessionaire to contract for or to incur any obligation on behalf of the Federal Government or to act as agent for the Federal Government, and the duties assumed by the Concessionaire hereunder are undertaken on the strength of this Agreement, and not as agent or in any way representative of, or subordinate to, the Federal Government.

18.9 Binding Effect

Subject to the provisions of Part 16 [Assignment, Change in Control and Subcontracting], this Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective permitted successors and assigns.

18.10 Counterparts

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and this has the same effect as if the signatures on the counterparts were on a single copy of this Agreement so that it shall not be necessary in making proof of this Agreement to produce or account for more than one such counterpart.

SOUTH FRASER PERIMETER ROAD PROJECT

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of day and year first above written.

SIGNED on behalf of **HER MAJESTY**)
THE QUEEN IN RIGHT OF THE)
PROVINCE OF BRITISH COLUMBIA)
by a duly authorized representative of)
the **MINISTER OF TRANSPORTATION**)
AND INFRASTRUCTURE in the)
presence of:)
_____)

(Witness)

Peter Milburn
Peter Milburn, Ministry of Transportation and
Infrastructure

BC TRANSPORTATION FINANCING AUTHORITY

by its authorized signatory:

Per:

Peter Milburn
Chief Executive Officer

SOUTH FRASER PERIMETER ROAD PROJECT

- 171 -

**FTG FRASER TRANSPORTATION GROUP
PARTNERSHIP**

by its partners:

FTG HOLDINGS LIMITED PARTNERSHIP

by its general partner

FTG FRASER TRANSPORTATION GROUP INC.

by its authorized signatories:

Per:

Name:
Title:

Per:

Name:
Title:

SOUTH FRASER CONSTRUCTION LIMITED

PARTNERSHIP by its general partner

SOUTH FRASER CONSTRUCTION INC.

by its authorized signatories:

Per:

Name:
Title:

Per:

Name:
Title: