

SCHEDULE 1

DEFINITIONS AND INTERPRETATION

1. DEFINITIONS

In this Agreement (including the recitals and Schedules), unless the context otherwise requires, the following expressions have the following meanings:

“Accesses and Connecting Roads” means any highways, roads and other vehicle accesses which provide ingress and/or egress to and from the Concession Highway, including the existing highways and roads listed in Part 4 of Schedule 4 [Accesses and Connecting Roads] and any highways, roads or other vehicle accesses constructed in the future which provide ingress and/or egress to and from the Concession Highway.

“Additional Permitted Borrowing” means, on any date, the amount equal to any amount of principal outstanding under the Senior Funding Agreements in excess of the amount of principal scheduled under the Senior Funding Agreements (as at the date of this Agreement) to be outstanding at that date, but only to the extent that:

- (a) this amount is less than or equal to the Additional Permitted Borrowing Limit; and
- (b) in respect of any Additional Permitted Borrowing, the Agent is not in material breach of its obligations under Section 2.6.1 of the Direct Agreement as it applies to such Additional Permitted Borrowing and provided further that any such excess amount of principal advanced as financing for any Eligible Change will not be counted as Additional Permitted Borrowing.

“Additional Permitted Borrowing Limit” means an amount equal to:

- (a) 10% of the Original Senior Commitment for any Additional Permitted Borrowing during the period from the date of this Agreement to the date on which the amount outstanding under the Senior Funding Agreements is reduced to 50% or less of the Original Senior Commitment; and thereafter
- (b) the higher of:
 - (i) 5% of the Original Senior Commitment; and
 - (ii) the amount of any Additional Permitted Borrowing outstanding on the last day of the period referred to in paragraph (a) above.

“Additional Works” means any change, improvement or addition made or proposed to be made to the design, layout or structure of the Project Facilities or any part thereof at any time after issue of the Final Completion Certificate in the case of any addition to the Works and at any time in the case of any other Additional Works (but excluding any Subsequent Scheme or Improvement) where such change, improvement or addition is estimated to require Capital Expenditures in excess of \$200,000.

“Adjacent Areas” means, subject to Section 8.8 [Boundaries of Site] and in particular Sections 8.8.2 and 8.8.3, the areas which do not form part of the Site but upon which part of the Operations are to be carried out.

“Adjusted Estimated Fair Value” means the Estimated Fair Value, adjusted as follows:

- (a) the aggregate of the following amounts will be deducted from the Estimated Fair Value:
 - (i) the Post Termination Service Amounts (if a positive number);
 - (ii) the Bid Costs; and
 - (iii) amounts that the Province is entitled to set-off or deduct in accordance with Section 33.10 [Set-Off];
- (b) the aggregate of the following amounts will be added to the Estimated Fair Value:
 - (i) all credit balances on any bank accounts held by or on behalf of the Concessionaire on the date that the Estimated Fair Value is calculated;
 - (ii) any insurance proceeds and other amounts owing to the Concessionaire (and which the Concessionaire is entitled to retain), to the extent not included in clause (b)(i); and
 - (iii) the Post Termination Service Amounts (if a negative number),to the extent that:
 - (iv) the amounts referred to in clauses (b)(i), (ii) and (iii) have not been directly taken into account in calculating the Estimated Fair Value; and
 - (v) the Province has received such amounts in accordance with this Agreement.

“Adjusted Highest Qualifying Bid Price” means the Highest Qualifying Bid Price, adjusted as follows:

- (a) the aggregate of the following amounts will be deducted from the Highest Qualifying Bid Price:
 - (i) any Post Termination Service Amounts actually paid by the Province to the Concessionaire to date;
 - (ii) the Bid Costs; and
 - (iii) amounts that the Province is entitled to set-off or deduct in accordance with Section 33.10 [Set-Off];

- (b) the aggregate of the following amounts will be added to the Highest Qualifying Bid Price:
- (i) all credit balances on any bank accounts held by or on behalf of the Concessionaire on the date that the highest priced Qualifying Bid is received;
 - (ii) any insurance proceeds and other amounts owing to the Concessionaire, to the extent not included in clause (b)(i); and
 - (iii) the Post Termination Service Amounts (if a negative number),
- to the extent that:
- (iv) the amounts referred to in clauses (b)(i), (ii) and (iii) have not been directly taken into account in that Qualifying Bid; and
 - (v) the Province has received such amounts in accordance with this Agreement.

“Affiliate” means, in respect of a relevant corporation, a person that is an “affiliate” of that corporation as that term is defined in the *Business Corporations Act*, S.B.C. 2002, c. 57 as at the date of this Agreement with the Concessionaire to be considered as a “corporation” for the purposes of that definition and, in the case of the Concessionaire, includes each of the Partners, the Shareholders, the Contractor and the Operator and any person that is an “affiliate” of a Partner, a Shareholder, the Contractor or the Operator as that term is defined in the said *Business Corporations Act* as at the date of this Agreement. Notwithstanding the provisions of Section 2.6 of this Schedule 1 [Definitions and Interpretation], this definition will not be changed in the event of an amendment to the definition of “affiliate” contained in the said *Business Corporations Act* following the date of this Agreement.

“Agent” means any bank, trustee or other financial institution appointed by the Senior Funders to act in that capacity and such substitute as may be appointed from time to time in accordance with the Direct Agreement and notified to the Province in writing.

“Allowable Capital Expenditure” means the Capital Expenditure incurred by the Concessionaire as a direct consequence of a Relevant Works Change in Law, which will be calculated taking into account, *inter alia*, Section 35.2 [Mitigation].

“Alternative Proposal” has the meaning given in paragraph 1 of Section B of Part 3 of Schedule 5 [Design and Certification Procedure].

“Alternative Proposal Certificate” means a certificate in the form set out in Appendix 1(11) to Part 3 of Schedule 5 [Design and Certification Procedure].

“Annual Reconciliation Notice” has the meaning given in Section 32.2.1.

“Annual Report” has the meaning given in Part 2 of Schedule 15 [Reports].

“APB Distribution” means, for the period during which any Additional Permitted Borrowing subsists, an amount equal to the aggregate of all Distributions made during that period up to an amount equal to the principal of the Additional Permitted Borrowing on the first day of that period.

“Approval” has the meaning given in Section 47.2 [Reasonableness].

“Assessment Certificate (Structures)” means a certificate in the form set out in Appendix 1(18) to Part 3 of Schedule 5 [Design and Certification Procedure].

“Asset Condition Retention” means the amount referred to in paragraph 1.1(b) of Part 3A of Schedule 10 [Payment Retentions].

“Asset Management Plan” has the meaning set out in Appendix 1 to Part 1 of Schedule 7 [O,M&R Output Specifications].

“Asset Preservation Performance Measures” means the Asset Preservation Performance Measures referred to in the O,M&R Output Specifications.

“Assets” means all assets and rights used by the Concessionaire to operate, maintain and rehabilitate the Project Facilities in accordance with this Agreement, including:

- (a) land and buildings;
- (b) equipment and machinery;
- (c) Design Data;
- (d) books and records (including operating and maintenance manuals, health and safety manuals and other know-how);
- (e) spare parts, tools and other assets (together with any warranties in respect of assets being transferred);
- (f) revenues and any other contractual rights; and
- (g) intellectual property rights,

but excluding any assets and rights owned by the Province or BCTFA.

“Audit Team” has the meaning given in paragraph 2.1 of Section A of Part 3 of Schedule 5 [Design and Certification Procedure].

“Availability” means the measure of the extent to which a particular part of a highway is directly affected by a Relevant Unavailability Event.

“Availability/Performance Deductions” means Unavailability Deductions and Performance / Safety Deductions.

“Availability/Performance Deductions Warning Notice” has the meaning given in Section 26.3.1.

“Base Case Financial Model” means the Financial Model attached as Part 1 of Schedule 2 [Base Case Financial Model] and certified by a suitably qualified and experienced financial model reviewer, according to Canadian Generally Accepted Assurance Standards as determined by the Canadian Institute of Chartered Accountants, as being true and correct results of the final Financial Model. The Base Case Financial Model will include the following on an annual and semi-annual basis from the date of this Agreement until the End of Term:

- (a) statement of income and retained earnings;
- (b) cash flow statements;
- (c) balance sheets;
- (d) debt schedules providing details of amortization, interest and other information as appropriate on the debt instruments; and
- (e) O&M Insurance Coverages.

“Base Senior Debt Termination Amount” means, subject to Section 2.3.4, the aggregate of:

- (a) all amounts outstanding at the Termination Date (including interest and Default Interest accrued as at that date) from the Concessionaire to the Senior Funders under the Senior Funding Agreements including in respect of Permitted Borrowing; and
- (b) all amounts (including Hedge Termination Amounts and other breakage costs) payable by the Concessionaire to the Senior Funders as a result of a prepayment under the Senior Funding Agreements including in respect of Permitted Borrowing, subject to the Concessionaire and the Senior Funders mitigating all such costs to the extent reasonably possible,

LESS, to the extent it is a positive amount, the aggregate of (without double-counting in relation to the calculation of the Base Senior Debt Termination Amount or the amounts below):

- (c) all credit balances on any bank accounts held by or on behalf of the Concessionaire on the Termination Date;
- (d) any amounts claimable on or after the Termination Date in respect of Contingent Funding Liabilities;
- (e) all amounts, including Hedge Termination Amounts and other breakage costs, payable by the Senior Funders or others to the Concessionaire as a result of prepayment of amounts outstanding under the Senior Funding Agreements including in respect of Permitted Borrowing; and
- (f) all other amounts received by the Senior Funders on or after the Termination Date and before the date on which any compensation is payable by the Province to the Concessionaire as a result of enforcing any other rights they may have.

“**BCTFA**” means the BC Transportation Financing Authority continued under the Transportation Act.

“**Best Management Practices for Highway Maintenance Activities**” means the document entitled “Best Management Practices for Highway Maintenance Activities, Final Draft” and dated July 2004, included in the Disclosed Data, as amended, supplemented or replaced from time to time.

“**Bid Costs**” means the reasonable and proper costs of the Province incurred in carrying out the Bidding Process and/or in connection with any calculation of the Estimated Fair Value.

“**Bidding Process**” means the process by which the Province requests bid proposals from any parties interested in entering into a New Agreement and evaluates the responses from those interested parties with a view to entering into a New Agreement with a New Concessionaire in accordance with Section 44.2.3 [Rebidding Election].

“**Bidding Process Monitor**” has the meaning given in Section 44.2.3.5.

“**Business Opportunities**” has the meaning given in Section 1.8 [Business Opportunities].

“**Capital Cost Increase**” has the meaning given in Part 1 of Schedule 13 [Definitions].

“**Capital Expenditure**” means capital expenditure as interpreted in accordance with Canadian generally accepted accounting principles.

“**CEAA Approval**” means the decision of Transport Canada at the conclusion of the screening review of the Project under the *Canadian Environmental Assessment Act*, S.C. 1992, c.37.

“**CEAA Screening Report**” means the report dated April 15, 2005 prepared on behalf of Transport Canada as part of the screening review of the Project under the *Canadian Environmental Assessment Act*, S.C. 1992, c. 37.

“**Certificate**” means any certificate to be issued pursuant to this Agreement and, in particular:

- (a) Alternative Proposal Certificate;
- (b) Assessment Certificate (Structures);
- (c) Concessionaire Change Certificate;
- (d) Concessionaire’s Final Completion Certificate;
- (e) Concessionaire’s Substantial Completion Certificate;
- (f) Construction Certificate;
- (g) Design Certificate (General);

- (h) Design Certificate (Geotechnical);
- (i) Design Certificate (Structures);
- (j) End of Term Certificate;
- (k) Final Completion Certificate;
- (l) Pre-Completion Performance Payment Certificate;
- (l.1) Province Change Certificate;
- (m) Road Safety Audit Certificate (Stage 1);
- (n) Road Safety Audit Certificate (Stage 2);
- (o) Road Safety Audit Certificate (Stage 3);
- (p) Road Safety Audit Certificate (Stage 4);
- (q) Road Safety Audit Certificate (Stage 5); and
- (r) Substantial Completion Certificate.

“Change in Capital Costs” has the meaning given in Part 1 of Schedule 13 [Definitions].

“Change in Law” means the coming into effect of:

- (a) any new Laws and Regulations after the date of execution of this Agreement; or
- (b) any modification (including repeal) of any Laws and Regulations existing on the date of this Agreement where such modification comes into effect after the date of execution of this Agreement,

(but excluding in each such case any lawful requirements of any Governmental Authority (unless resulting from a Change in Law) and any change in the interpretation of any legislation other than a judgment of a relevant Court which changes binding precedent in British Columbia) which is binding on the Concessionaire, provided that any such new Laws and Regulations or modification of existing Laws and Regulations:

- (c) arising from or in any way connected to or having substantially the same effect as any statute, law, regulation, by-law, rule, code, ordinance, judgment, decree, writ, administrative interpretation, guideline, policy, injunction, order or other requirement which as of May 31, 2005:
 - (i) had been introduced as a Bill in the Legislative Assembly of British Columbia or the Parliament of Canada or in a draft statutory instrument published or issued by a Governmental Authority; or
 - (ii) had been published in the Canada Gazette or in a draft bill as part of a Governmental Authority discussion or consultation paper; or

- (d) relating to the application for, coming into effect, terms, implementation, repeal, revocation or otherwise of any Order or any Permit, Licence or Approval,

will not constitute a Change in Law.

“Change in Recurrent Costs” has the meaning given in Part 1 of Schedule 13 [Definitions].

“Change in Revenues” has the meaning given in Part 1 of Schedule 13 [Definitions].

“Checking Team” has the meaning given in paragraph 2.3 of Section A of Part 3 of Schedule 5 [Design and Certification Procedure].

“Claim” means any claim, demand, liability, damage, loss, proceeding, suit, action or cause of action and all costs and expenses relating thereto, including legal fees on a full indemnity basis other than, in each case, in respect of an Indirect Loss (and “Claims” will be construed accordingly).

“Closure” means any partial or total closure, stoppage, obstruction, blockage or other restriction or interference (howsoever arising) impeding the flow of traffic on or affecting the ability of the public to pass and re-pass over a highway of whatever duration including for greater certainty:

- (a) any closure, stoppage, obstruction, blockage, restriction or interference required for any works by a Relevant Authority or for any inspection, investigation or survey (whether carried out by the Concessionaire, the Province, the Minister, any other Relevant Authority or any other person);
- (b) any closure, stoppage, obstruction, blockage, restriction or interference resulting from an accident, vehicle breakdown, illegal parking, emergency or other incident;
- (c) any closure, stoppage, obstruction, blockage, restriction or interference instigated by the Police, instigated for health and safety or emergency reasons or resulting from Protesters or Trespassers;
- (d) any mobile closure, stoppage, obstruction, blockage, restriction or interference; and
- (e) any closure, stoppage, obstruction, blockage, restriction or interference materially affecting the ability to use that highway or such part thereof in a safe manner resulting from the build up of snow or ice or from any other natural event physically affecting the highway,

provided that traffic congestion or slow moving traffic will not by itself be considered to be a Closure (including where the same results from speed restrictions properly imposed from time to time as a direct result of adverse weather conditions or seasonal restrictions for the time being affecting the highway but excluding where the standard of construction and/or condition of the highway has contributed to the need for such speed restrictions).

“Collateral Agreement” means a collateral agreement in the form set out in Schedule 22 [Collateral Agreements].

“Commencement Date” means the date of this Agreement.

“Comparable Controlled Access Highways” means “controlled access highways”, as defined in the Transportation Act, that the Province determines in the Province’s absolute and unfettered discretion to be comparable to the Concession Highway.

“Compensable Loss” has the meaning given in Part 1 of Schedule 13 [Definitions].

“Compensation Date” means either:

- (a) if Section 44.2.3 [Rebidding Election] applies, the earlier of:
 - (i) the date that the New Agreement is entered into; and
 - (ii) the date on which the Province pays the Adjusted Highest Qualifying Bid Price to the Concessionaire; or
- (b) if Section 44.2.4 [No Rebidding Procedure] applies, the date that the Adjusted Estimated Fair Value has been agreed or determined in accordance with the provisions of this Agreement.

“Compensation Event” means any of the following:

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“Completion Retention” means the amount referred to in paragraph 1.1(a) of Part 3A of Schedule 10 [Payment Retentions].

“Composite Drawing” means the composite drawing showing the Existing Highway contained on the Resource Documents DVD as “property-compilation-r4.dwg”.

“Compulsory Acquisition Laws” means all Laws and Regulations authorizing the expropriation or other compulsory acquisition of land or Rights in respect of land including the Transportation Act, the Transportation Investment Act and the Expropriation Act.

“Compulsory Acquisition Order” means any order or other process of any Court or other relevant body or authority pursuant to a Compulsory Acquisition Law effecting the expropriation or other compulsory acquisition of any land or Rights in respect of land forming part of the Site or Adjacent Areas.

“concession agreement” has the meaning given in the Transportation Investment Act.

“Concession Highway” means the Existing Highway and the Highway Improvement.

“Concession Highway Encumbrances” means any Encumbrances attached or referred to in Part 8 of Schedule 4 [Concession Highway Encumbrances].

“Concessionaire” has the meaning given on the first page of this Agreement.

“Concessionaire Change” means a variation in the design, quality or scope of the Works initiated by the Concessionaire in accordance with Section 11.4 [Concessionaire Changes] and, subject to Section 11.4.3, may include additions, deletions, substitutions, alterations in design and/or variations in or to the Design and Construction Output Specifications and/or the Concessionaire’s Design and Construction Requirements; and for purposes of Section 11.4.3 and Part 3 of Schedule 13 [Concessionaire Changes], “Concessionaire Change” will be deemed to include an Alternative Proposal.

“Concessionaire Change Certificate” means a certificate in the form set out in Appendix 1(9) to Part 3 of Schedule 5 [Design and Certification Procedure].

“Concessionaire Proposal Extracts” means the documents attached as Schedule 23 [Concessionaire Proposal Extracts].

“Concessionaire Termination Event” means any of the events set out in Section 41.1 [Concessionaire Termination Events].

“Concessionaire’s Design and Construction Requirements” means the standards, specifications, procedures and other requirements for design and construction set out or identified or referred to in Part 2 of Schedule 5 [Concessionaire’s Design and Construction Requirements], as amended from time to time by any Concessionaire Change, Alternative Proposal or Province Change.

“Concessionaire’s Environmental Obligations” means the obligations and requirements with respect to the performance of obligations under and compliance with the CEAA Screening Report and the CEAA Approval and with respect to other environmental matters set forth in Schedule 12 [Concessionaire’s Environmental Obligations], and includes the obligation to comply with, fulfill and satisfy any commitments or requirements arising out of any amendment to the CEAA Screening Report and the CEAA Approval from time to time that becomes necessary as a result of the performance of the Operations or the Concessionaire’s design for the Works or any other works carried out in the course of performing the Operations.

“Concessionaire’s Final Completion Certificate” means a certificate in the form set out in Appendix 1(15) to Part 3 of Schedule 5 [Design and Certification Procedure].

“Concessionaire’s Representative” means the person appointed by the Concessionaire pursuant to Section 22.2 [Concessionaire’s Representative] or such substitute as may be appointed by the Concessionaire pursuant to Section 22.3 [Change of Representatives].

“Concessionaire’s Substantial Completion Certificate” means a certificate in the form set out in Appendix 1(13) to Part 3 of Schedule 5 [Design and Certification Procedure].

“Confidential Information” has the meaning given in Section 50.1 [Confidential Information].

“Consequential Losses” means for the purposes of Section 30.2 [Claims Against Third Parties], Section 39.9 [Costs and Expenses] and Section 39.10 [Further Limitation on Indemnities] only, any damages which would be considered under applicable British

Columbia law to constitute indirect or consequential losses and which, for greater certainty, includes all Indirect Losses.

“Construction Certificate” means a certificate in the form set out in Appendix 1(12) to Part 3 of Schedule 5 [Design and Certification Procedure].

“Construction Insurance End Date” has the meaning given in Section 20.1.1.1.

“Construction Output Specifications” means the minimum performance specifications and requirements for design and construction set out or identified or referred to in Part 1 of Schedule 5 [Design and Construction Output Specifications], as amended from time to time by any Province Change or any Concessionaire Change to which the Province’s Representative was consented pursuant to Section 11.4.3, and all provisions of the CEEA Screening Report and the CEEA Approval relating to or prescribing standards, specifications, procedures, restrictions or other requirements in connection with the design and construction of the Works.

“Construction Plant” means plant, materials and equipment used or to be used by the Contractor in the construction of the Project Facilities, but does not include Plant.

“Construction Quality Management Plan” means the Construction Quality Management Plan referred to and described in Section 23.1.3.3.

“Contamination” means, the presence of any Hazardous Substance in the environment, except Hazardous Substances present in the environment in concentrations below permissible levels as set by applicable Laws and Regulations. If Contamination is present in soil, sediment, surface water or ground water, then the soil, sediment, surface water or groundwater, as the case may be, containing the Contamination will also be deemed for the purposes of this Agreement to be Contamination.

“Contingent Funding Liabilities” means contingent liabilities of the Shareholders, if any, in respect of financial obligations owed to the Concessionaire or the lenders under the Funding Agreements which are triggered as a result of or in relation to the termination of this Agreement, such as, for example, guarantees or letters of credit in respect of deferred equity.

“Contract Period” means the period commencing on the Commencement Date and expiring on the Expiry Date or on such other date as may be the Termination Date.

“Contract Year” means a period of twelve months starting on April 1, with the exception of the first Contract Year, which will commence on the Commencement Date and end on the March 31st first occurring thereafter (the “First Contract Year”), and the last Contract Year, which will commence on April 1 and end on the Termination Date.

“Contracting Affiliate” means any Affiliate of the Concessionaire which performs any function in connection with this Agreement or the Operations or is a party to any Project Document (including, for greater certainty, any Partner and any Shareholder).

“Contractor” means Trans-Park Highway Constructors, an unincorporated joint venture formed between Flatiron Constructors Canada Ltd. and Parsons Overseas Company of

Canada Ltd., or such substitute as may be appointed by the Concessionaire for the time being in accordance with Section 45.4.1 or 45.4.2.

“Contractor Claim Notice” has the meaning given in Section 17.6.1.

“Court” means any court of competent jurisdiction.

“CP Rail” means Canadian Pacific Railway Limited and its Affiliates.

“CP Rail Agreement” means the single grade separation agreement entered into or to be entered into between the Province and CP Rail with respect to the proposed crossing of CP Rail’s railway and the Highway Improvement.

“CP Rail Lands” means those lands owned by CP Rail from Highway 95 to Beaverfoot Road as shown on the Composite Drawing.

“CP Rail Works” means the Works affecting the CP Rail Lands and railway facilities and infrastructure located thereon necessary to accommodate the access to and use of those lands by the Concessionaire for purposes of carrying out the Operations.

“CP Rail Works Schedules” has the meaning given in Section 11.10 [CP Rail Works].

“CPI” means the latest available Consumer Price Index (all items) for Canada as published by Statistics Canada from time to time, or, if such Consumer Price Index ceases to be available for any reason, such other replacement index as the Province may designate, acting reasonably.

“Cumulative Allowable Capital Expenditure” means the cumulative amount of the Allowable Capital Expenditure from time to time during the Contract Period.

“Data Room” means the secure website established prior to the date of this Agreement containing or referring to materials, documents, information and data in respect of the Project; for record purposes the content of the said secure website, as at July 14, 2005, has been copied onto a computer hard drive and three identical copies of such computer hard drive have been distributed (one to the Concessionaire and two to the Province).

“Deemed New Agreement” means an agreement on the same terms and conditions as this Agreement, as at the Termination Date, but with the following amendments:

- (a) if this Agreement is terminated prior to the Final Completion Date, then each of the Substantial Completion Longstop Date (if Substantial Completion of the Works has not yet been achieved) and the Scheduled Final Completion Date will be extended by a period sufficient to allow a New Concessionaire (had one been appointed) to achieve Substantial Completion of the Works prior to such extended Substantial Completion Longstop Date and Final Completion of the Works prior to such extended Scheduled Final Completion Date;
- (b) any accrued Availability/Performance Deductions will be disregarded for purposes of Sections 26.3 [Warning Notices], 26.4 [Increased Monitoring] and 40.1.7 and any accrued Warning Notices will be cancelled; and

(c) the term of such agreement will be for a period equal to the term from the Termination Date to the Expiry Date.

“Default Interest” means any increased interest that is payable to the Senior Funders or which accrued as a result of any payment due to the Senior Funders not being made on the date on which it is due.

“Default Interest Rate” means simple interest at an annual rate equal to **DELETED** over the Interest Rate.

“Default Notice” has the meaning given in Section 26.1.2.

“Default Warning Notice” has the meaning given in Section 26.3.2.

“Defect List” means the list produced pursuant to Section 17.2 with respect to Phase 1 Section Defects.

“Defective Equipment” has the meaning given in paragraph 7.2 of Part 8 of Schedule 10 [Monitoring and Measurement].

“Defective Work” means any defective workmanship, work or materials performed or supplied by any Third Party Contractor prior to the date of execution of this Agreement giving rise to a defect in the Concession Highway referred to in Section 17.4.4.

“Delay Period” has the meaning given in Section 12.6.7.

“Delegated Obligations” means the obligations identified in Part 1 of Schedule 19 [Delegated Obligations] as they relate to the Project Facilities, the Site and the Adjacent Areas (including, for greater certainty, the Works).

“Delegated Rights, Powers and Functions” means the rights, powers and functions identified in Part 2 of Schedule 19 [Delegated Rights, Powers and Functions] as they relate to the Project Facilities, the Site and the Adjacent Areas (including, for greater certainty, the Works).

“Design and Certification Procedure” means the procedure set out in Part 3 of Schedule 5 [Design and Certification Procedure].

“Design and Construction Output Specifications” means the Design and Construction Output Specifications specified in Part 1 of Schedule 5 [Design and Construction Output Specifications].

“Design-Build Contract” means the design-build contract made on or about the date of execution of this Agreement between the Concessionaire and the Contractor in respect of, *inter alia*, the design and construction of the Works.

“Design-Build Contract Guarantee” means the joint and several guarantee of the obligations of the Contractor under the Design-Build Contract provided by Royal BAM Group N.V. and Parsons Corporation made on or about the date of execution of this Agreement.

“Design Certificate (General)” means a certificate in the form set out in Appendix 1(1) to Part 3 of Schedule 5 [Design and Certification Procedure].

“Design Certificate (Geotechnical)” means a certificate in the form set out in Appendix 1(2) to Part 3 of Schedule 5 [Design and Certification Procedure].

“Design Certificate (Structures)” means a certificate in the form set out in Appendix 1(3) to Part 3 of Schedule 5 [Design and Certification Procedure].

“Design Data” means all calculations, designs, design or construction information, standards, specifications, plans, drawings, graphs, sketches, models and other materials, including all eye readable or computer or other machine readable data and including all design submissions required under the Technical Specifications, used, prepared or to be prepared by or on behalf of the Concessionaire (and/or any of the Concessionaire’s agents, employees, contractors or sub-contractors of any tier) or the Province relating to the design or construction of the Works or any Concessionaire Change, Province Change, Additional Works, Subsequent Scheme or Improvement or the operation, maintenance, rehabilitation or improvement of the Project Facilities.

“Design Management Plan” means the Design Management Plan submitted by the Concessionaire in accordance with Section 11.2.1 to which there has been no objection by the Province’s Representative in accordance with the Review Procedure.

“Design Quality Management Plan” means the Design Quality Management Plan referred to and described in Section 23.1.3.2.

“Design Team” has the meaning given in paragraph 2.5 of Section A of Part 3 of Schedule 5 [Design and Certification Procedure].

“Designated Subcontractor” means any person with one or more Subcontracts having an aggregate value of not less than \$200,000.

“Designated Supplier” means any Supplier who has one or more Subcontracts or purchase agreements used in or incorporated into the Works having an aggregate value of not less than \$200,000 who is not a Designer or a Supplier of any of the following materials:

- (a) liquid asphalt cement products;
- (b) electrical materials;
- (c) steel other than fabrications;
- (d) manufactured Portland cement concrete, where delivered by the Supplier using its own trucks; or
- (e) plastic, steel or concrete pipe.

“Designer” means Parsons Overseas Company of Canada Ltd. or such substitute as may be appointed for the time being in accordance with Section 45.4.1 or 45.4.2, in each case being a firm employing duly qualified and experienced Professional Engineers.

“Detailed Design” means the detailed design to be developed from the preliminary design shown in the Concessionaire’s Design and Construction Requirements in respect of each part of the Works so as to allow construction of that part in accordance with the Concessionaire’s Design and Construction Requirements and so as to comply with, fulfill and satisfy the requirements of the Design and Construction Output Specifications.

“Direct Agreement” means the agreement to be entered into between the Province, the Agent (on behalf of the Senior Funders) and the Concessionaire in the form set out in Part 2 of Schedule 2 [Form of Direct Agreement].

“Disclosed Data” has the meaning given in Section 38.2.1.

“Discount Rate” means:

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“Dispute” means a difference or dispute of whatever nature between the Parties or any of them arising under, out of or in connection with this Agreement (including a dispute as to, or any question of interpretation of this Agreement or any question as to whether a Party has acted or exercised its discretion reasonably where required to do so under the terms of this Agreement).

“Disputes Resolution Procedure” means the procedure referred to in Section 52 [Disputes Resolution Procedure] and set out in Schedule 16 [Disputes Resolution Procedure] and, for greater certainty, any reference to a determination or resolution thereunder or pursuant thereto shall mean the final determination or resolution made thereunder or pursuant thereto.

“Distribution” means, whether in cash or in kind, any:

- (a) distributions in respect of Partners’ Equity;
- (b) any reorganization or variation to partnership capital;
- (c) [not used];
- (d) payment, loan, contractual arrangement or transfer of assets or rights, in each case to the extent made or entered into after the date of this Agreement and not in the ordinary course of business and on reasonable commercial terms;
- (e) the receipt of any other benefit which is not received in the ordinary course of business and on reasonable commercial terms; or
- (f) any other payment to any Relevant Person howsoever arising and whether made pursuant to the terms of an agreement or otherwise or by way of gift or in respect

of Partners' Equity if, in any such case, such payment would not have been made were it not for the occurrence of any Refinancing,

and where any such Distribution is not in cash, the equivalent cash value of such Distribution will be calculated.

"Disturbance" means any alteration to any surface conditions by the Concessionaire as a result of the performance of any construction work by it including excavating, dumping, wasting, filling, drainage, removing or affecting vegetation and other construction-related activities but excluding therefrom any work associated with the Unstable Slope Mitigation Program itself, and "Disturb" and "Disturbed" shall be construed accordingly.

"EAC Agreement" has the meaning given in Section 9.5A [Coordination and Site Overlap with Phase 1 Section Contractor].

"Eligible Change" means any of the following:

- (a) any Province Change; and
- (b) any Compensation Event.

"Eligible Costs" means those costs as defined in Appendix 1 to Schedule 10 [Payments].

"Eligible Force Majeure" means any of the following events:

DELETED

"Employee Termination Payments" means termination payments which are required under applicable Laws and Regulations to be made to employees of the Concessionaire reasonably and properly incurred by the Concessionaire arising as a direct result of termination of this Agreement (provided that the Concessionaire will take all reasonable steps to mitigate such termination payments) and provided that in calculating such amount no account will be taken of any liabilities and obligations of the Concessionaire arising out of:

- (a) contracts of employment or other agreements entered into by the Concessionaire to the extent that such contracts of employment or agreements were not entered into exclusively in connection with the Project; or
- (b) contracts of employment or other agreements entered into by the Concessionaire to the extent that such contracts of employment or agreements were not entered into in the ordinary course of business and on commercial arm's length terms.

"enactment" has the meaning given to it in the *Interpretation Act*, R.S.B.C. 1996, c. 238.

"Encumbrance" means any Rights in respect of land, including any easement, right-of-way, restrictive covenant, encroachment, lease, licence or permit to use or occupy, and any mortgage, charge, pledge, lien, assignment, option, right to acquire, right of pre-emption, security interest, trust arrangement and any other equity or preferential right or any agreement to create any of them, including claims of the

Worker's Compensation Board, Canada Revenue Agency, Employment Standards Branch and other Governmental Authorities.

"End of Term Certificate" means a certificate in the form set out in Appendix 1(17) to Part 3 of Schedule 5 [Design and Certification Procedure].

"End of Term Inspection" has the meaning given in Section 19.6.1.

"End of Term Payment" means the amount determined in accordance with Part 7 of Schedule 10 [End of Term Payment] including all applicable Taxes except GST.

"End of Term Requirements" means the requirements set out or identified or referred to in Part 4 of Schedule 7 [End of Term Requirements], as amended from time to time by any Province Change.

"Enhanced Service Period" means the period beginning on the day following the Substantial Completion Date and ending on the Termination Date.

"Environmental Laws" means all Laws and Regulations relating to the protection of the environment, environmental assessment, plant, animal or human health, including occupational health, management of waste and safety and transportation of dangerous goods.

"Environmental Management Plan" means the Environmental Management Plan referred to and described in Section 1.2 of Schedule 12 [Concessionaire's Environmental Obligations].

"Environmental Quality Management Plan" means the Environmental Quality Management Plan referred to and described in Section 23.1.3.6.

"Equity Contribution Agreement" means the agreement dated [_____] and relating to the contribution of Partners' Equity.

"Equity IRR" means the projected blended rate of return to the Relevant Persons over the full term of this Agreement, having regard to Distributions made and projected to be made.

"ESP Availability & Safety Payment" has the meaning given in paragraph 2.1 of Part 3 of Schedule 10 [ESP Performance Payment] and includes all applicable Taxes except GST.

"ESP Performance Payment" means the amount calculated in accordance with paragraph 1.2 of Part 3 of Schedule 10 [ESP Performance Payment] and includes all applicable Taxes except GST.

"Estimated Fair Value" means the amount determined in accordance with Section 44.2.4 [No Rebidding Procedure] that a third party would pay to the Province as the market value of a Deemed New Agreement.

“Event” means an occurring natural phenomenon, such as, but not limited to, fire, earthquake, rainfall, wind and snow, which has sufficient intensity to cause Landslides and/or material damage to highway assets.

“Event of Default” has the meaning given in Section 40.1 [Events of Default].

“Excepted Closure” means any of the following:

- (a) a Lane Closure that is responded to and rectified in the manner and within the time periods provided for response and rectification in the Technical Requirements;
- (b) a Scheduled Closure to the extent it does not extend beyond its scheduled duration;
- (c) a Lane Closure caused by, and for so long as required by, the Province or another Relevant Authority (including to allow access by emergency services vehicles and to allow the Province to rectify or cause to be rectified a defect pursuant to Section 17.4.1 or Section 17.4.2) for any reason not as a result of the actions or omissions of the Concessionaire or any of its agents, contractors or subcontractors of any tier or employees of any of them;
- (d) a Lane Closure resulting directly from a Compensation Event;
- (e) a Lane Closure resulting directly from a Landslide in respect of which the Province is obligated to bear some or all of the Landslide Repair Costs pursuant to Section 14.8.2 or Section 14.8.3;
- (f) a Lane Closure as a result of general public events (such as, for example, parades, marathons and similar events) specified by the Province and of the duration required by the Province;
- (g) a Lane Closure in special circumstances (to be reviewed on a case-by-case basis) that is consented to by the Province (either prospectively or retrospectively) in its absolute and unfettered discretion; and
- (h) a Lane Closure resulting from an event of Force Majeure set out in paragraph (c) in the definition of “Force Majeure” herein, which occurs outside the Project Facilities, the Site or the Adjacent Areas,

provided, however, that a Lane Closure in connection with any uninsured rectification works referred to in Section 37.4.4 or resulting from a Force Majeure event (except as provided in paragraph (h) above) will not constitute an Excepted Closure.

“Exempt Refinancing” means:

- (a) any Refinancing that was fully taken into account in the calculation of the Total Performance Payments;
- (b) a change in taxation or change in accounting treatment pursuant to changes in Laws and Regulations or Canadian generally accepted accounting principles;

- (c) the exercise of rights, waivers, consents and similar actions which relate to day to day administrative and supervisory matters that are in respect of:
 - (i) breach of representations and warranties or undertakings;
 - (ii) movement of monies between the Project Accounts in accordance with the terms of the Senior Funding Agreements as at the date of this Agreement;
 - (iii) late or non-provision of information or consents;
 - (iv) amendments to subcontracts;
 - (v) approval of revised technical and economic assumptions for financial model runs (to the extent required for forecasts under the Funding Agreements);
 - (vi) restrictions imposed by the Senior Funders on the dates at which the financing provided by the Senior Funders under the Senior Funding Agreements can be advanced to the Concessionaire under the Senior Funding Agreements and/or amounts released from the Funding Account, as defined in the Senior Funding Agreements and which are given as a result of any failure by the Concessionaire to ensure that the Works are performed in accordance with the Works Schedule and which are notified in writing by the Concessionaire or the Senior Funders to the Province prior to being given;
 - (vii) changes to timing of drawdown and/or amounts released from the Funding Account set out in the Senior Funding Agreements and which are given as a result of any failure by the Concessionaire to ensure that the Works are performed in accordance with the Works Schedule and which are notified in writing by the Concessionaire or the Senior Funders to the Province prior to being given;
 - (viii) failure by the Concessionaire to obtain any consents from Governmental Authorities required by the Senior Funding Agreements; or
 - (ix) voting by the Senior Funders and the voting arrangements between the Senior Funders in respect of the levels of approval required by them under the Senior Funding Agreements;
- (d) any amendment, variation or supplement of any agreement (other than the Third Party Subordinated Funding Agreement) approved by the Province as part of any Eligible Change under this Agreement;
- (e) any sale of interests in the Concessionaire or securitization of the existing rights and/or interests attaching to interests in the Concessionaire including any sale of the shares in the Partners;
- (f) any sale or transfer of the Third Party Subordinated Funders' existing rights and/or interests under the Third Party Subordinated Funding Agreements or

securitization of the Third Party Subordinated Funders' existing rights and/or interests under the Third Party Subordinated Funding Agreements; or

(g) any Qualifying Bank Transaction.

“Existing Contamination” means any Contamination which affects the Project Facilities, the Site or the Adjacent Areas or is situated in, on, under or over any of them at the date of this Agreement.

“Existing CP Rail Agreements” means the grade separation agreements entered into between the Province and CP Rail before the date of this Agreement with respect to the crossings of CP Rail's railway and the Existing Highway, in respect of each of the Yoho Bridge, the Park Bridge and Beaverfoot Road.

“Existing Highway” means (subject to Section 36.1.2 with respect to Additional Works, paragraph 6 of Part 1 of Schedule 14 [Procedure for Additional Works], paragraph 7 of Part 3 of Schedule 14 [Subsequent Schemes] and paragraph 3 of Part 4 of Schedule 14 [Improvements]) the existing 26 kilometre portion of the Trans-Canada Highway located within the Kicking Horse Canyon as described in Part 1 of Schedule 4 [Existing Highway] and shown on the Composite Drawing and, with effect from substantial completion of the Phase 1 Section Contract, the Phase 1 Section Contract Drawings numbered R3-208-003, R3-210-101 to R3-210-103 and R2-211-101 to R2-211-104, including without limitation, unless otherwise expressly provided, the Phase 1 Section, the Phase 2 Section, the Phase 3 Section and the Side Roads.

“Expiry Date” means October 27, 2030.

“Extraordinary Traffic” has the meaning ascribed to “extraordinary traffic” in the Transportation Act.

“Fair Value” means the amount at which an asset or liability would be exchanged in an arm's length transaction between informed and willing parties, other than in a forced or liquidation sale.

“Federal Cost Contribution Agreement” means the Canada - British Columbia Contribution Agreement for Kicking Horse Canyon Project to be entered into between the Province and Her Majesty in Right of Canada in respect of the contribution of Her Majesty the Queen towards the Project.

“Final Completion” means, with respect to any Works and with respect to any Reinstatement Works or Renewal Works, the satisfactory full and final completion of such Works, Reinstatement Works or Renewal Works in accordance with the Design and Construction Output Specifications, the Concessionaire's Design and Construction Requirements and all other applicable standards and specifications referred to or set out in this Agreement, as confirmed by the issue of all relevant Certificates (including road safety audit Certificates) and supporting documentation under the Design and Certification Procedure, including:

(a) completion of all landscaping;

(b) completion of the decommissioning, demolition and removal of the Park Bridge;
and

(c) completion of all final documentation to the satisfaction of the Province,

and “Finally Completed” or “Finally Complete” have a corresponding meaning.

“**Final Completion Certificate**” means a certificate in the form set out in Appendix 1(16) to Part 3 of Schedule 5 [Design and Certification Procedure].

“**Final Completion Date**” means the date upon which the Final Completion Certificate is issued.

“**Final Completion Longstop Date**” means the date which is 6 months following the Scheduled Final Completion Date.

“**Financial Base Case Equity IRR**” means **DELETED**

“**Financial Base Case Project IRR**” means **DELETED**

“**Financial Base Date**” means September 30, 2005.

“**Financial Model**” means the computer spreadsheet model for the Project incorporating statements of the Concessionaire’s cash flows including all expenditures, revenues, financing and taxation of the Operations together with the profit and loss accounts and balance sheets for the Concessionaire throughout the Contract Period, accompanied by details of all assumptions, calculations and methodology used in their compilation and any other documentation necessary or desirable to operate the model.

“**Financial Terms**” means the financial terms set out in the Funding Agreements.

“**First Contract Year**” has the meaning given in the definition of “Contract Year”.

“**First Nation**” means an aboriginal governing body (or any member thereof) however organized and established by aboriginal people within their traditional territory.

“**Five-Year Management Plan**” means the Five-Year Management Plan referred to in Section 14.10 [Five-Year Management Plan], as submitted and updated from time to time without objection by the Province’s Representative in accordance with the Review Procedure.

“**Force Majeure**” means any of the following events:

DELETED

“**Force Majeure Termination Sum**” has the meaning given in Section 44.3.2.

“**Forest Act**” means the *Forest Act*, R.S.B.C. 1996, c. 157.

“Forest Practices Code of British Columbia Act” means the *Forest Practices Code of British Columbia Act*, R.S.B.C. 1996, c. 159.

“Freedom of Information and Protection of Privacy Act” means the *Freedom of Information and Protection of Privacy Act*, R.S.B.C. 1996, c. 165.

“Funders” means all or any of the persons who provide financing or funding in respect of the Operations under the Funding Agreements including CIT Group Securities (Canada) Inc. as administrative agent, and each of the noteholders as defined in the Senior Funding Agreements, and, where the context so permits, prospective financiers or funders.

“Funding Agreements” means all or any of the agreements or instruments entered into or to be entered into by the Concessionaire or any of its Affiliates relating to the financing of the Operations, including:

- (a) all or any of the agreements or instruments specified in Section 2.3.1.3, including any amendments or supplements thereto, the Third Party Subordinated Funding Agreement, and any agreements or instruments entered into by the Concessionaire or any of its Affiliates to raise additional or substitute finance or financial facilities of any form or relating to the rescheduling of its indebtedness or the re-financing of the Project; and
- (b) all or any agreements or instruments entered into by the Concessionaire or any of its Affiliates for the purpose of facilitating the hedging of any exposure to interest rate fluctuations under any of the agreements or instruments referred to in (a) above, including any amendments or supplements thereto, and any agreements or instruments entered into by the Concessionaire or any of its Affiliates to effect additional or substitute interest rate hedging arrangements;

in each case provided they have been entered into in accordance with this Agreement.

“Good Industry Practice” means the exercise of that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a person, skilled and experienced in the design, construction, operation, maintenance and rehabilitation of roads similar in type to the Concession Highway, seeking in good faith to comply with all applicable Laws and Regulations and the same contractual obligations as the contractual obligations of the Concessionaire under this Agreement and under the same or similar circumstances and conditions.

“Governmental Authority” means any federal, provincial, territorial, regional, municipal or local governmental authority, quasi-governmental authority, Court, government or self-regulatory organization, commission, board, tribunal, organization, or any regulatory, administrative or other agency, or any political or other subdivision, department or branch of any of the foregoing, having jurisdiction in any way over or in respect of any aspect of the performance of this Agreement, the Project Facilities, the Site and the Adjacent Areas or any part thereof or any aspect of the Operations.

“Gravel Licences” means the gravel licences referred to in Section 8.10.2.

“Gravel Pits” means the gravel pits, stockpile sites, staging / aggregate processing areas and quarries identified in Part 7 of Schedule 4 [Gravel Pits and Gravel Licences].

“Gross End of Term Payment” is the gross end of term payment amount set out in paragraph 2 of Part 7 of Schedule 10 [End of Term Payment] and includes all applicable Taxes except GST.

“GST” means the tax payable and imposed pursuant to Part IX of the *Excise Tax Act* (Canada), but excludes the harmonized sales tax by deeming, for the purposes of this Agreement, that there are no participating provinces listed in Schedule VIII of that Act.

“Hazardous Substance” means any solid, liquid, gas, odour, heat, sound, vibration, radiation or other substance, material or emission the storage, manufacture, disposal, treatment, generation, transportation, remediation, use or Release of which into the environment is prohibited, controlled or regulated under any Environmental Laws, including those defined as or included in the definitions of “dangerous goods”, “deleterious substance”, “hazardous substances”, “hazardous wastes”, “hazardous materials”, “extremely hazardous wastes”, “restricted hazardous waste”, “toxic substances”, “special waste”, “waste” or words of similar import under any applicable Environmental Laws, including the *Canadian Environmental Protection Act*, S.C. 1999, c. 33, the *Fisheries Act*, R.S. 1985, c. F-14, the *Transportation of Dangerous Goods Act*, S.C. 1992, c. 34, the *Canada Water Act*, R.S. 1985, c. C-11 and the *Environmental Management Act*, R.S.B.C. 2003, c. 53.

“Heavy Vehicle” means any vehicle 12.5 metres in length or longer.

“Hedge Termination Amounts” means the net amount (if any) payable under the Hedging Agreements on termination of the interest rate hedging transaction(s) entered into under the Hedging Agreements.

“Hedging Agreements” means any agreements referred to in paragraph (b) of the definition of “Funding Agreements”.

“Highest Qualifying Bid Price” means the price offered by the Qualifying Bidder (if any) with the highest bid price.

“highway” means a highway as defined in the Transportation Investment Act.

“Highway Improvement” means (subject to Section 8.8 [Boundaries of Site], Section 36.1.2 with respect to Additional Works, paragraph 6 of Part 1 of Schedule 14 [Procedure for Additional Works], paragraph 7 of Part 3 of Schedule 14 [Subsequent Schemes] and paragraph 3 of Part 4 of Schedule 14 [Improvements]) that portion of the Trans-Canada Highway located within the Kicking Horse Canyon as described in Part 2 of Schedule 4 [Highway Improvement] located or to be located in the areas shown on the Concessionaire drawings numbered R2-NNN-101RW to R2-NNN-122RW and constructed or modified or to be constructed or modified by the Concessionaire pursuant to this Agreement.

“Improvement” means any change, improvement or addition proposed by the Concessionaire to be made to the design, layout or structure of the Project Facilities or any part thereof at any time after issue of the Final Completion Certificate which does

not involve or require any variation to any of the Technical Requirements (unless the Province's Representative, in its absolute and unfettered discretion, has consented to the variation) and which can be lawfully accomplished by the Concessionaire without obtaining planning permission or any Compulsory Acquisition Order or other New Order under the Transportation Act or otherwise.

"Independent Certifier" means the person from time to time appointed as the Independent Certifier pursuant to the Independent Certifier Contract and as may be permitted pursuant to this Agreement.

"Independent Certifier Contract" means the contract entered into among the Concessionaire, the Province and the Independent Certifier in substantially the form set out in Part 9 of Schedule 5 [Form of Independent Certifier Contract].

"Indirect Loss" means any loss which, as a matter of British Columbia law, would be too remote or unforeseeable to be recovered as damages in any action including any loss to the general economic standing of the Province as a whole or of any particular region of the Province of British Columbia.

"Initial Inspection" has the meaning given in Section 19.2.1.

"Insurance Adjustment Date" has the meaning given in Section 20.13.1.3.

"Insurance Trust Agreement" which means the agreement to be entered into between the Province, the Agent, the Insurance Trustee and the Concessionaire in the form set out in Part 2 of Schedule 11 [Insurance Trust Agreement].

"Insurance Trustee" means the trustee to be appointed under the Insurance Trust Agreement.

"Intellectual Property" means all current and future legal and/or equitable interests in registered or unregistered trade marks, service marks, patents, registered designs, utility marks, applications for any of the foregoing, copyrights, unauthorized extraction and/or re-utilization rights, unregistered designs, inventions, confidential information, know-how or other intellectual property rights arising in connection with or relating in any way to the performance of the Operations.

"Interest Rate" means a rate of interest per annum equivalent to the prime rate announced by Royal Bank of Canada which is current on the date upon which the amount bearing interest first became due (such interest to accrue daily on the basis of a 365 day year and to be compounded semi-annually). In the event of any variation in such prime rate being announced while such amount remains outstanding, the interest payable will be correspondingly varied from the date of each such variation.

"Interested Parties" means those persons who may be affected by the carrying out of the Works or Operations or who are duly authorized by a Legal Requirement to review or otherwise take an interest in the Works or any other aspect of the Operations, including the Relevant Authorities.

“Interface Agreement” means the interface agreement made among the Concessionaire, the Contractor and the Operator made on or about the date of execution of this Agreement.

“IRR” means internal rate of return.

“ISO 9001:2000 Standard” means ISO 9001:2000 International Standard for Quality Management Systems, as revised and updated from time to time, or, if such Standard ceases to be available for any reason, such other replacement standard as the Province may designate, acting reasonably.

“ITA” means the *Income Tax Act*, R.S.C. 1985 (5th Supp.), c. 1, as amended and all regulations thereto and any similar provincial or territorial statute or regulation.

“Key Performance Measures” means the Key Performance Measures referred to in the O,M&R Output Specifications.

“Landslide” means the downslope mass movement of soil, rock and organic material under the influence of gravity, and includes debris flows and other similar mobile mixtures of solid particles and water, and rockfalls, and for greater certainty excludes a Snow Avalanche.

“Landslide Repair Costs” has the meaning given in Section 14.8.2.

“Lane Closure” means any Closure affecting the use by traffic of a lane or lanes within the Concession Highway.

“Latent Defect” has the meaning given in Section 17.1.1.

“Laws and Regulations” means any and all requirements under or prescribed by the common law and the law of equity and any enactments, statutes, regulations, laws, court orders or judgments, decrees, writs, administrative interpretations, ordinances, orders-in-council, by-laws, codes (including design and construction codes), orders, injunctions, directives, guidelines, rules or policies of any Governmental Authority affecting, applicable to or otherwise relating to the Concessionaire and/or the Project or any part thereof and/or the Project Facilities, the Site and the Adjacent Areas or any part thereof or the use thereof and includes, for greater certainty, all Environmental Laws and Privacy Legislation.

“Legal Requirement” means a requirement under any Laws and Regulations or any lawful requirement or demand of any Governmental Authority which has jurisdiction with regard to the Project Facilities, the Site and Adjacent Areas or any part thereof or any of the Operations or whose systems may be affected by the conduct of any of the Operations.

“Liaison Procedures” means any of the procedures set out in Schedule 17 [Liaison Procedures] or to be developed pursuant to this Agreement in accordance with that Schedule, as the case may be.

“Liquid Market” means that there are sufficient willing parties (being at least two parties, each of whom is capable of being a Qualifying Bidder) in the market for this Agreement

or similar agreements for road projects funded by way of public private partnerships in each case for the provisions of services the same as or similar to the Operations for a price that, through the rebidding process in Section 44.2.3 [Rebidding Election], is likely to be a reliable indicator of Fair Value for the New Agreement, provided that any vehicle controlled and established by the Senior Funders specifically for the purposes of this Project and to which this Agreement may be novated will be disregarded in assessing whether there are sufficient willing bidders in the market for such purposes.

“Local Area Specifications” means the Local Area Specifications for the Kicking Horse Canyon Concession dated May 2005, a copy of which is included on the Resource Documents DVD.

“Loss” means any loss, damage, liability, cost, expense (including legal and other professional charges and expenses on a full indemnity basis), charge, fine, penalty or assessment howsoever arising whether under statute, contract, common law, equity or in connection with judgments, proceedings, internal costs or demands or otherwise whether direct, indirect or consequential (including for greater certainty those in connection with any criminal or quasi-criminal proceedings) other than an Indirect Loss (and “Losses” will be construed accordingly).

“Maintenance Works” means all works for the maintenance, repair or rehabilitation of the Project Facilities (but excluding any Routine Maintenance) that are necessary to ensure that the Project Facilities, the Site and the Adjacent Areas are maintained, repaired and rehabilitated throughout the Contract Period in accordance with the O,M&R Output Specifications and the O,M&R Requirements and that the Project Facilities are, on the Expiry Date, in the condition specified in the End of Term Requirements.

“Market Value” means the value of the consideration payable by the New Concessionaire to the Province in consideration for the entering into of the New Agreement.

“Market Value Deduction Amount” means for any Payment Period or part of a Payment Period, an amount equal to the total Availability/Performance Deductions made in the Payment Period immediately preceding the Termination Date, less an amount equal to such Availability/Performance Deductions resulting from or attributable to circumstances existing at the Termination Date but which have subsequently been rectified whether as a result of the Province incurring Rectification Costs or otherwise.

“Master Use Agreements” means:

- (a) the Master Use Agreement for Wireless Communications Sites between the Province and Microcell Connexions Inc. dated for reference October 27, 1997;
- (b) the Master Use Agreement for Wireless Communications Sites between the Province and Rogers Cantel Inc. dated for reference November 14, 1997;
- (c) the Master Use Agreement for Wireless Communications Sites between the Province and BC Tel Mobility Cellular Inc. dated for reference December 4, 1997; and

- (d) the Master Use Agreement for Wireless Communications Sites between the Province and Bell Mobility Cellular Inc. dated for reference June 11, 2001,

in each case as amended and supplemented to the date hereof.

“Maximum Total Performance Payment” means the Total Performance Payment at any time without taking into account any Availability/Performance Deductions. The Maximum Total Performance Payment for any period will be the total of the amounts payable during that period on account of components of the Total Performance Payment without taking into account any Availability/Performance Deductions.

“Measure” means, in respect of the traffic passing a Measurement Point during a period, to count the number of vehicles comprising such traffic and to determine the classification of each such vehicle in accordance with the provisions of Part 8 of Schedule 10 [Monitoring and Measurement], and “Measurement” and “Measured” will be construed accordingly.

“Measurement Limits of Accuracy” has the meaning given in paragraph 4.2 of Part 8 of Schedule 10 [Monitoring and Measurement].

“Measurement Point” means any point designated as such pursuant to paragraph 2 of Part 8 of Schedule 10 [Monitoring and Measurement].

“Measuring Equipment” has the meaning given in Section 2.3.11.4 of Appendix 1 to Part 1 of Schedule 5 [Design and Construction Output Specifications].

“Minister” means the member of the Executive Council of the Province who is charged from time to time with the administration of the Transportation Investment Act and the Transportation Act, and includes the Minister’s deputy and any person authorized to act for or on behalf of either of them with respect to any matter under or contemplated in this Agreement.

“Ministry” or **“MOT”** means the ministry of the Province headed by the Minister and known as the “Ministry of Transportation”.

“Ministry of Forests Protocol Agreement” means the Protocol Agreement between the Ministry of Forests and the Ministry of Transportation and Highways signed by the Deputy Minister of Forests on September 9, 1992 and by the Deputy Minister of Transportation and Highways on August 8, 1992, as supplemented by the unsigned draft Protocol Agreement between the Ministry of Forests and the Ministry of Transportation dated March 19, 2002, and as further amended, supplemented or replaced from time to time (including pursuant to any pending amendment, supplement or replacement disclosed in the Disclosed Data).

“Ministry’s Standards” means all standards and specifications issued by the Ministry in respect of the design, construction, operation, maintenance and/or rehabilitation of concession highways which are identified or referred to in Part 1 of Schedule 5 [Design and Construction Output Specifications] and Part 1 of Schedule 7 [O,M&R Output Specifications] or elsewhere in this Agreement, including:

- (a) the Highway Asset Preservation Performance Measures for Highway Concessions;
- (b) the Highway Maintenance Specifications for Highway Concessions;
- (c) the Highway Corridor Management Specifications for Highway Concessions; and
- (d) the Local Area Specifications.

“Monthly ESP Performance Payment” means the monthly payment to be paid on account of the ESP Performance Payment, as determined in accordance with Part 3 of Schedule 10 [ESP Performance Payment] including all applicable Taxes except GST.

“Monthly Invoice” has the meaning given in Section 33.1.2.

“Monthly OSP Availability & Safety Payment” means the monthly payment to be paid on account of the OSP Availability & Safety Payment as determined in accordance with Part 2 of Schedule 10 [OSP Performance Payment] including all applicable Taxes except GST.

“Monthly Report” has the meaning given in Part 2 of Schedule 15 [Reports].

“Monthly Retention” means the aggregate of the monthly Completion Retention and Asset Condition Retention calculated in accordance with Part 3A of Schedule 10 [Payment Retentions].

“Motor Vehicle” has the meaning ascribed to “motor vehicles” in the Motor Vehicle Act.

“Motor Vehicle Act” means the *Motor Vehicle Act*, R.S.B.C. 1996, c. 318.

“MOT’s Highway Accident System” means the highway accident system maintained by the MOT that records and maintains a data base of collisions that occur on highways.

“Net Present Value” means the aggregate of the discounted values, calculated as of the estimated date of the Refinancing, of each of the relevant projected Distributions, in each case discounted using the Threshold Equity IRR.

“New Agreement” means an agreement on the same terms and conditions as this Agreement at the Termination Date, but with the following amendments:

- (a) if this Agreement is terminated prior to the Final Completion Date, then each of the Substantial Completion Longstop Date (if Substantial Completion of the Works has not yet been achieved) and the Scheduled Final Completion Date will be extended by a period sufficient to allow a New Concessionaire to achieve Substantial Completion of the Works prior to such extended Substantial

Completion Longstop Date and Final Completion of the Works prior to such extended Scheduled Final Completion Date;

- (b) any accrued Availability/Performance Deductions will be disregarded for purposes of Sections 26.3 [Warning Notices], 26.4 [Increased Monitoring] and 40.1.7 and any accrued Warning Notices will be cancelled;
- (c) the term of such agreement will be equal to the term from the Termination Date until the Expiry Date; and
- (d) any other amendments which do not adversely affect the Concessionaire.

“New Concessionaire” means the person who has entered into or will enter into the New Agreement with the Province and BCTFA.

“New Order” means any planning permission, approval or authorization (including any permission, approval or authorization in respect of any reserved matter in any Order or other New Order), Compulsory Acquisition Order or any other order, certificate, approval, revocation, consent or variation of any existing order, statutory instrument or other subordinate legislation made in respect of the Project Facilities, the Site and the Adjacent Areas or any part thereof in accordance with the terms of this Agreement.

“No Default Interest Rate” means the non-default interest rate provided for in the Note Indenture among Trans-Park Highway Finance Inc., Computershare Trust Company of Canada the Concessionaire and the Senior Funders.

“No Federal Funding Termination Sum” has the meaning given in Section 44.5A.2.

“Nonconformity” has the meaning given in Schedule 6 [Quality Management].

“Nonconformity Report” has the meaning given in Schedule 6 [Quality Management].

“Nonconformity Report Points” has the meaning given in paragraph 3.1 of Part 6 of Schedule 10 [Performance / Safety Deductions].

“Nonconformity Report Points Rate” has the meaning given in paragraph 3.2 of Part 6 of Schedule 10 [Performance / Safety Deductions].

“Nonconformity Tracking System” has the meaning given in Schedule 6 [Quality Management].

“Non-Excusable Event”, in respect of an event of Force Majeure or Eligible Force Majeure, means:

- (a) any act, omission or default by the Party affected by the event of Force Majeure or Eligible Force Majeure or any of its employees, agents, contractors or subcontractors of any tier or the employees of any of them or any other person for whom that Party is in law or under the terms of this Agreement responsible;
- (b) lack or insufficiency of funds or failure to make payment of moneys or to provide required security on the part of the affected Party;

- (c) any strike, lock-out, go-slow, labour dispute or other labour action or protest caused by or attributable to any act (including any pricing or other practice or method of operation) or omission of the Concessionaire or any person for whom the Concessionaire is in law or under the terms of this Agreement responsible (including the Contractor and the Operator and their respective contractors and subcontractors of any tier);
- (d) except with respect to any of the events of Eligible Force Majeure referred to in paragraph (d), (e) or (g) of the definition of “Eligible Force Majeure” herein, any Legal Requirements or Laws and Regulations or the exercise of any power or discretion under any Laws and Regulations;
- (e) the diversion, restriction or Closure of the Concession Highway or any part thereof or of any Accesses and Connecting Roads or any part thereof by a Governmental Authority or the exercise of any traffic control, inspection or safety measures or the exercise of any Police, fire or other emergency powers or authority on the Concession Highway or any part thereof or on any Accesses and Connecting Roads or any part thereof; or
- (f) the economic condition or financial state of affairs of the area where the Concession Highway is located, or of any other part of Canada or any other country.

“**Notice**” has the meaning given in Section 46.1 [Requirement for Writing].

“**Notice Date**” means the later of the Termination Date and (if applicable) the date that the Adjusted Estimated Fair Value is agreed or determined pursuant to Section 44.2.4 [No Rebidding Procedure].

“**O,M&R Insurance Coverages**” has the meaning given in Section 20.13.1.

“**O,M&R Output Specifications**” means the minimum performance specifications and requirements set out or identified or referred to in Part 1 of Schedule 7 [O,M&R Output Specifications], as amended from time to time by any Province Change, and all provisions of the CEAA Screening Report and the CEAA Approval relating to or prescribing standards, specifications, procedures, restrictions or other requirements in connection with the operation, maintenance and rehabilitation of the Project Facilities, the Site and the Adjacent Areas.

“**O,M&R Requirements**” means the standards, specifications, procedures and other requirements for the operation, maintenance and rehabilitation of the Project Facilities set out or identified or referred to in Part 2 of Schedule 7 [O,M&R Requirements], as amended from time to time by any Province Change or in accordance with Section 14.2 [O,M&R Requirements].

“**OHS Regulation**” means the *Occupational Health and Safety Regulation*, B.C. Reg. 296/97 promulgated pursuant to the Workers Compensation Act.

“**Operating and Maintenance Contract**” means the contract so titled made on or about the date of this Agreement between the Concessionaire and the Operator for the operation, maintenance and rehabilitation of the Project Facilities.

“Operation, Maintenance and Rehabilitation Quality Management Plan” means the Operation, Maintenance and Rehabilitation Quality Management Plan referred to and described in Section 23.1.3.4.

“Operational Performance Measures” means the Operational Performance Measures referred to in the O,M&R Output Specifications.

“Operations” means all activities of or required of the Concessionaire (and/or any of the Concessionaire’s agents, employees, contractors or sub-contractors of any tier) in connection with the performance of any obligations of the Concessionaire under this Agreement, and the conduct of all works (including the Works) or operations of the Concessionaire (and/or any of the Concessionaire’s agents, employees, contractors or sub-contractors of any tier) on or in relation to the Project Facilities, the Site and the Adjacent Areas.

“Operator” means H M C Services Inc. or such substitute as may be appointed by the Concessionaire for the time being in accordance with Section 45.4.1 or 45.4.2.

“Orders” means the planning permissions, approvals and authorizations, Compulsory Acquisition Orders and other orders, certificates, statutory instruments, statutory right of way plans and other subordinate legislation identified in Part 5 of Schedule 4 [Orders], as the same may be amended, modified, varied or superseded by any New Order, and any New Order and, where the context so requires, means any of the individual permissions, approvals, authorizations, orders, certificates, instruments, right of way plans and subordinate legislation comprising the Orders.

“Original Senior Commitment” means the amount committed under the Senior Funding Agreements as at the date of this Agreement (as adjusted to take into account any additional financing provided by the Senior Funders for any Eligible Change).

“Original Service Period” means the period beginning on the Commencement Date and ending on the Substantial Completion Date.

“OSP Availability & Safety Payment” has the meaning given in paragraph 3.1 of Part 2 of Schedule 10 [OSP Performance Payment] including all applicable Taxes except GST.

“OSP Performance Payment” means the OSP Availability & Safety Payment including all applicable Taxes except GST.

“Other Vehicles” means any vehicle less than 12.5 metres in length.

“Park Bridge” means the bridge located at approximately kilometre 14.2 on the Existing Highway.

“Partners” means the partners of the Concessionaire, being Trans-Park Highway Investment Inc. and Trans-Park Highway Inc., each a corporation incorporated under the laws of the Province of British Columbia, and **“Partner”** means either of the Partners.

“Partners’ Equity” means all amounts each of which is an amount invested by the Partners in the Concessionaire, by way of equity or by realization of the letter of credit

granted as security for a required contribution of equity, on or before the Termination Date and which was used by the Concessionaire in carrying out the Project.

“Partnership Agreement” means the agreement or agreements between the Partners relating to the Concessionaire.

“Passenger Vehicle Equivalent” or **“PVE”** means the aggregate of:

- (a) the number of Other Vehicles; and
- (b) 3* the number of Heavy Vehicles,

counted in accordance with Part 8 of Schedule 10 [Monitoring and Measurement].

“Payment Periods” means the payment periods for payment of components of the Total Performance Payment in accordance with Schedule 10 [Payments], and “Payment Period” means any of the Payment Periods.

“Performance/Safety Deductions” has the meaning given in paragraph 3.2 of Part 6 of Schedule 10 [Performance / Safety Deductions].

“Performance Measures” means the Key Performance Measures, the Asset Preservation Performance Measures and the Operational Performance Measures.

“Performance Securities” means the labour, material and performance bonds or other securities (including letters of credit) for the performance or provision of work or supply of material obtained or required to be obtained under or in connection with or pursuant to the Design-Build Contract and/or the Operation and Maintenance Contract.

“Permanent Works” means the works having a permanent function (regardless of the length of the design life of such works) which are to be designed, constructed and completed by the Concessionaire in accordance with the Design and Construction Output Specifications and the Concessionaire’s Design and Construction Requirements.

“Permits, Licences and Approvals” means all permissions, consents, approvals, certificates, permits, licences, statutory agreements and authorizations required by Laws and Regulations, and all consents, approvals and agreements from third parties (including development approvals and consents, approvals and agreements required under Orders and Concession Highway Encumbrances), required to perform the Operations in accordance with this Agreement, and includes all statements, requirements, representations and commitments which are contained within or are part of any plans, schedules, applications or submissions provided or submitted in order to obtain such permissions, consents, approvals, certificates, permits, licences, agreements and authorizations, as applicable.

“Permitted Borrowing” means, without double-counting, any:

- (a) advance to the Concessionaire under the Senior Funding Agreements;
- (b) Additional Permitted Borrowing;

- (c) [Not Used]; and
- (d) interest and, in respect of the initial Senior Funding Agreements only (prior to any subsequent amendment), other amounts accrued or payable under the terms of the Senior Funding Agreements,

except where the amount referred to in paragraphs (a) to (d) above is or is being used to fund a payment of Default Interest on any Additional Permitted Borrowing.

“Persistent Breach” means a breach (other than a breach for which Availability / Performance Deductions could be made):

- (a) in respect of which a Default Notice has been given pursuant to Section 26.1.2 that has not been determined to have been wrongly or improperly given where more than three other such Default Notices have been given at any time within the period of three months ending on the date that such Default Notice was given in respect of the same or similar breaches;
- (b) in respect of which a Default Warning Notice has been given pursuant to Section 26.3.2 that has not been determined to have been wrongly or improperly given;
- (c) which continues beyond the applicable Remedial Period specified in the Default Notice referred to in paragraph (a) above or recurs one or more times within the period of six months after the date of the Default Warning Notice referred to in paragraph (b) above; and
- (d) which is not, to a material degree, caused or contributed to by any act or omission of the Province or BCTFA or any person for whom either of them is responsible.

“Phase” means any of the Phase 1 Section, Phase 2 Section or Phase 3 Section.

“Phase 1 Section” means that length of highway that is defined at the westerly limit by the “Limit of Construction” station (677 + 05.000) of the Peter Kiewitt Sons Company Ltd. contract drawing number R3-210-101 located in the Data Room, and at the easterly limit by the “Limit of Construction” station (711 + 00.000) of the Emil Anderson Construction (EAC) Inc. contract Value Engineering drawing number R2-211A-103 located in the Data Room, and as shown on the Composite Drawing.

“Phase 1 Section Contract” means, collectively, the contracts between the Province and each of Dawson Construction Ltd., Peter Kiewitt Sons Company Ltd. and Emil Anderson Construction (EAC) Inc. for the performance of the Phase 1 Section Works.

“Phase 1 Section Contractor” means, collectively, the contractors under the Phase 1 Section Contract.

“Phase 1 Section Defect” has the meaning given in Section 17.1.2.

“Phase 1 Section Works” means the works which have been or are to be designed, constructed and pursuant to, and as described in, the Phase 1 Section Contract.

“Phase 2 Section” means that 5.8 kilometre length of highway east of Golden, British Columbia shown on the Composite Drawing.

“Phase 3 Section” means those lengths of highway shown on the Composite Drawing.

“Plant” means plant, materials, machinery, equipment and apparatus intended to form or forming part of the Project Facilities.

“Pledge of Interest” means collectively, the pledge dated October 28, 2005 by Trans-Park Highway Investment Inc. of its partnership interest in the Concessionaire, the pledge dated October 28, 2005 by Trans-Park Highway Inc. of its partnership interest in the Concessionaire, the pledge dated October 28, 2005 by Trans-Park Highway Holding Inc. of its shares in the capital of Trans-Park Highway Investment Inc., and the pledge dated October 28, 2005 by Trans-Park Highway Investment Inc. of its shares in the capital of Trans-Park Highway Inc., each in favour of the Security Trustee.

“Police” includes a Police Constable, the RCMP and any other provincial, federal, regional or municipal police force, police department or other law enforcement officer or body and any related governing body (as the case may be).

“Police Constable” includes:

- (a) a member of a police force or police department having territorial jurisdiction over or in respect of the Project Facilities, the Site and the Adjacent Areas or any part or parts thereof from time to time; and
- (b) any other official who has the powers of a constable or peace officer while engaged in law enforcement duties when those duties are exercised in relation to a matter in connection with, or which incidentally affects the operation of, the Project Facilities, the Site and the Adjacent Areas or any part or parts thereof from time to time.

“Post Termination Service Amount” means, for the purposes of Section 44.2.3 [Rebidding Election], for the whole or any part of a Payment Period for the period from the Termination Date to the Compensation Date, an amount equal to the Maximum Total Performance Payment which would have been payable for that Payment Period or part thereof under this Agreement had this Agreement not been terminated, less an amount equal to the aggregate of:

- (a) the Market Value Deduction Amount for that Payment Period;
- (b) the Rectification Costs incurred by the Province in that Payment Period; and
- (c) (where relevant), the amount by which the Post Termination Service Amount for the previous Payment Period was negative.

“Pre-Completion Performance Payment” means the semi-annual payment to be paid to the Concessionaire pursuant to Section 32.1 and as determined in accordance with Part 3AA of Schedule 10 [Pre-Completion Performance Payment] including all applicable Taxes except GST, whether paid prior to, on or after the Substantial Completion Date,

and which payment is intended as a contribution towards Eligible Costs incurred by the Concessionaire in respect of capital works relating to the Works.

“Pre-Completion Performance Payment Certificate” means a certificate in the form set out in Appendix 3 to Schedule 10 [Payments].

“Pre-Refinancing Equity IRR” means the nominal Equity IRR calculated immediately prior to the Refinancing.

“Privacy Legislation” means any Laws and Regulations from time to time applicable in British Columbia relating to or governing the collection, storage, use or disclosure of personal information, including the Freedom of Information and Protection of Privacy Act, the Transportation Investment Act, the *Personal Information Protection Act*, S.B.C. 2003, c. 63 and (if and to the extent applicable in British Columbia) the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5.

“Professional Engineer” means a person having a licence to practice in British Columbia with the Association of Professional Engineers and Geoscientists of British Columbia.

“Prohibited Acts Termination Sum” has the meaning given in Section 44.4.2.

“Project” means the design and construction of the Works, the operation, maintenance and rehabilitation of the Project Facilities, the Site and the Adjacent Areas and the conduct of any other Operations during the Contract Period and the financing of such activities.

“Project Accounts” means accounts referred to in and required to be established under the Senior Funding Agreements.

“Project Documents” means the documents referred to in Section 2.3.1, and the Third Party Subordinated Funding Agreement, as the same may be amended or varied from time to time in accordance with Sections 2.3.2, 2.3.3 and 45.4 [Sub-Contracting] and any other document delivered pursuant to Section 2.3.7 and which complies with the provisions of Sections 2.3.2, 2.3.3 and 45.4 [Sub-Contracting].

“Project Facilities” means the Concession Highway (including the Works) and any Works not otherwise included in the Concession Highway.

“Project Schedule” means the schedule for the design and construction of the Works appearing in Schedule 3 [Project Schedule] (as amended from time to time in accordance with this Agreement).

“Proposed Substitute Concessionaire” has the meaning given in the Direct Agreement.

“Proposal” has the meaning given in paragraph 1 of Section A of Part 3 of Schedule 5 [Design and Certification Procedure].

“Protest Action” means any civil disobedience or protest action, including any action taken or threatened to be taken by any person or persons protesting or demonstrating

against the carrying out of any part of the Operations (including the construction of the Works) or against the construction and/or operation of highways in general, which directly or indirectly materially adversely affects performance of the Operations including any action or threatened action which results in increases in the cost of performing the Operations (including increased security costs) and/or delays in performing the Operations.

“Protester” means any person engaged in Protest Action.

“Provider System” has the meaning given in Section 16.5.1.

“Province” means Her Majesty the Queen in right of the Province of British Columbia.

“Province Change” means:

- (a) a variation in the design, quality or scope of the Works;
- (b) a variation in the quality or scope of the Operations (other than as referred to in paragraph (a) above);
- (c) a variation in the Technical Requirements (other than as referred to in paragraphs (a) or (b) above);
- (c.1) a variation referred to in paragraph (a) or (b) above resulting from a variation to:
 - (i) any of the codes, standards and guidelines listed or referred to in:
 - (I) Section 1.2 of Appendix 2 to Part 1 of Schedule 5 [Design and Construction Output Specifications] from the applicable code, standard and guideline that existed as of October 27, 2004 or such other applicable date set out in Part 1 of Schedule 5 [Design and Construction Output Specifications];
 - (II) Section 1.1 of Appendix 1 to Part 1 of Schedule 7 [Operation, Maintenance, Rehabilitation and End of Term Requirements] from the date of the applicable code, standard and guideline referred to in Part 1 of Schedule 7 [Operation, Maintenance, Rehabilitation and End of Term Requirements]; and
 - (III) the Local Area Specifications from the date of the applicable code, standard and guideline referred to in the Local Area Specifications; and
 - (ii) any of the provincial and federal guidelines and policies specifically listed or referred to in Section 1.4 of Schedule 12 [Concessionaire’s Environmental Obligations] from the date of the applicable provincial or federal guideline and policy referred to in Schedule 12 [Concessionaire’s Environmental Obligations];
- (d) a variation in the insurance coverages pursuant to Section 3.1(f) of Part 1 of Schedule 11 [Insurance Requirements];

- (e) an increase in the insurance coverages required by CP Rail set out in Section 2.11, 3.10 or 4.6 of Part 1 of Schedule 11 [Insurance Requirements]; or
- (f) a change, improvement or addition to the design, layout or structure of the portion of the Project Facilities where such change, improvement or addition is estimated to require Capital Expenditures of **DELETED** or less,

initiated by the Province's Representative in accordance with Part 2 of Schedule 13 [Province Changes] or in the case of a variation referred to in paragraph (c.1) above, either initiated by the Province's Representative in accordance with Part 2 of Schedule 13 [Province Changes] or required to be made or performed to comply with Laws and Regulations and in which case the Province will be deemed to have issued a Province Change Notice in accordance with Part 2 of Schedule 13 [Province Changes] and may in any such case include additions, deletions, substitutions, alterations in design and/or variations in or to any of the Technical Requirements (including adding highways or portions thereof to, or removing highways or portions thereof from, the Project Facilities, the Site and the Adjacent Areas for any purpose including in connection with or as a result of construction projects, municipal boundary adjustments, development and subdivision approvals and changes in classification of any highway or part thereof) and, for greater certainty, does not include any Additional Works.

"Province Change Certificate" means a certificate in the form set out in Appendix 1(10) to Part 3 of Schedule 5 [Design and Certification Procedure].

"Province Change Confirmation" has the meaning given in paragraph 6.1.1.2 of Part 2 of Schedule 13 [Province Changes].

"Province Default Termination Sum" has the meaning given in Section 44.1.2.

"Province Records Description" has the meaning given in Section 25.1.2.

"Province's Representative" means Jon Jensen or such substitute as may be appointed by the Province pursuant to Section 22.3 [Change of Representatives].

"Province's Share" has the meaning given in Section 35.5.3.

"PST" means the tax that is imposed pursuant to the *Social Service Tax Act* (British Columbia).

"Qualifying Bank" means a lending institution that is a bank listed in Schedule I, II or III of the *Bank Act* (Canada) or a bank, life insurance company, pension fund or fund managed by a professional fund manager that controls funds in excess of \$500,000,000, provided such institution, fund or fund manager is not a Restricted Person.

"Qualifying Bank Transaction" means:

- (a) the disposition (including by way of syndication) by a Senior Funder of any of its rights or interests in the Senior Funding Agreements to a Qualifying Bank;
- (b) the grant by a Senior Funder to a Qualifying Bank of any rights of participation in respect of the Senior Funding Agreements; or

- (c) the grant by a Senior Funder to a Qualifying Bank of any other form of benefit or interest in either the Senior Funding Agreements or the revenues or assets of the Concessionaire, whether by way of security or otherwise.

“Qualifying Bid” means a bid proposal submitted by a Qualifying Bidder that meets all of the qualification criteria notified under Section 44.2.3.3.

“Qualifying Bidder” means a bidder who, to the reasonable satisfaction of the Province:

- (a) has the legal capacity, power and authority to become a party to and perform the obligations of the Concessionaire under this Agreement; and
- (b) has the technical competence, experience and financial standing and the technical and financial resources (including employees with appropriate qualifications, experience and technical competence, committed financial resources, and contracts) sufficient to enable it to perform the obligations of the Concessionaire under this Agreement.

“Qualifying Landslides Repair Costs” has the meaning given in Section 14.8.3.

“Qualifying Refinancing” means any Refinancing that will give rise to a Refinancing Gain greater than zero that is not an Exempt Refinancing.

“Qualifying Snow Avalanche Repair Costs” has the meaning given in Section 14.8A.4.

“Quality Audit” has the meaning given in paragraph 1 of Schedule 6 [Quality Management].

“Quality Audit Plans” has the meaning given in paragraph 1 of Schedule 6 [Quality Management].

“Quality Documentation” has the meaning given in paragraph 1 of Schedule 6 [Quality Management].

“Quality Management Plan” has the meaning given in paragraph 1 of Schedule 6 [Quality Management].

“Quality Management Plan Requirements” has the meaning given in paragraph 1.4(a) of Part 3A of Schedule 10 [Payment Retentions].

“Quality Management Representative” means the person so appointed in accordance with Section 23.5 [Quality Management Representative].

“Quality Management System” has the meaning given in paragraph 1 of Schedule 6 [Quality Management].

“Quality Manual” has the meaning given in paragraph 1 of Schedule 6 [Quality Management].

“Quality Records” has the meaning given in paragraph 1 of Schedule 6 [Quality Management].

“**Quarter**” means a period of three calendar months beginning on April 1, July 1, October 1 or January 1.

“**Quarterly Schedule of Lane Closures**” means a Quarterly Schedule of Lane Closures submitted by the Concessionaire under Section 15.2B.1A indicating the period or periods during the Quarter to which the Quarterly Schedule of Lane Closures relates during which the Concessionaire plans to effect or otherwise reasonably foresees any Lane (including any Lane Closure in respect of any works by any Relevant Authority) in respect of the Concession Highway.

“**Random Minor Interruption**” has the meaning given in Part 6 of Schedule 5 [Traffic Management Output Specifications].

“**RCMP**” means the Royal Canadian Mounted Police.

“**Records Management Protocol**” means the Records Management Protocol referred to in Section 25.4.1, as submitted and updated from time to time without objection by the Province’s Representative in accordance with the Review Procedure.

“**Rectification Costs**” means an amount equal to the reasonable and proper costs incurred by the Province in a particular Payment Period or part of a Payment Period in performing or procuring the performance of the Operations including any costs incurred by the Province in rectifying or mitigating the consequences of any default by the Concessionaire under this Agreement.

“**Recurrent Cost Increase**” has the meaning given in Part 1 of Schedule 13 [Definitions].

“**Refinancing**” means:

- (a) any amendment, variation, novation, supplement or replacement of any Funding Agreement (other than the Third Party Subordinated Funding Agreement);
- (b) the exercise of any right, or the grant of any waiver or consent, under any Funding Agreement (other than the Third Party Subordinated Funding Agreement);
- (c) the disposition of any rights or interests in, or the creation of any rights of participation in respect of, the Funding Agreements (other than the Third Party Subordinated Funding Agreements) or the creation or granting of any other form of benefit or interest in either the Funding Agreements (other than the Third Party Subordinated Funding Agreements) or the contracts, revenues or assets of the Concessionaire whether by way of security or otherwise; or
- (d) any other arrangement put in place by the Concessionaire or another person which has an effect which is similar to any of (a) to (c) above or which has the effect of limiting the Concessionaire’s ability to carry out any of (a) to (c) above.

“Refinancing Gain” means an amount equal to the greater of zero and $[(A - B) - C]$, where:

A = the Net Present Value of the Distributions projected immediately prior to the Refinancing (taking into account the effect of the Refinancing and using the Base Case Financial Model as updated (including as to the performance of the Project) so as to be current immediately prior to the Refinancing) to be made to each Relevant Person over the remaining term of this Agreement following the Refinancing;

B = the Net Present Value of the Distributions projected immediately prior to the Refinancing (but without taking into account the effect of the Refinancing and using the Base Case Financial Model as updated (including as to the performance of the Project) so as to be current immediately prior to the Refinancing) to be made to each Relevant Person over the remaining term of this Agreement following the Refinancing; and

C = any adjustment required to raise the Pre-Refinancing Equity IRR to the Threshold Equity IRR.

“Reinstatement Plan” has the meaning given in Section 20.6A.2.

“Reinstatement Works” has the meaning given in Section 20.6A.1.

“Release” includes any spill, leak, deposit, pumping, pouring, emission, discharge, injection, escape, leaching, migration, disposal and dumping of a Hazardous Substance.

“Relevant Authority” means any entity whose authority is or may be required for the carrying out of all or any part of the Operations or which has any authority or right in respect of the Project Facilities, the Site and the Adjacent Areas or any part thereof under any Laws and Regulations.

“Relevant Change in Law” means any Change in Law which specifically applies to:

- (a) the Project and not to other highway projects whose design, construction, financing and operation are procured on a basis similar to the Project;
- (b) the Concessionaire and not to other persons;
- (c) persons that have contracted with the Province, a municipality or other statutory or public body to provide services similar to those contemplated under this Agreement (whether in relation to highways or other public infrastructure assets); and/or
- (d) the design, construction, finance and/or operation of highways or the holding of shares or other evidences of ownership in persons whose principal business is providing services the same as or similar to the Operations and, if compliance with such Change in Law would require a variation (as applicable) in the design, quality or scope of the Works or in the Operations (other than the Works).

“Relevant Lawful Requirement” means any notice, requirement, measure or order of any regulatory body or court (or other body to whose jurisdiction in the matter the Parties are subject) which would require or reasonably necessitate the carrying out of works upon the Project Facilities, the Site or the Adjacent Areas for the removal, treatment or other remediation of Contamination.

“Relevant Person” means the Partners, a Shareholder and any of their Affiliates.

“Relevant Property” means any property which is not within the boundary of the Site and Adjacent Areas which is affected by any Contamination in, on or under the Project Facilities, the Site or the Adjacent Areas or any migration or leaching of Contamination from the Project Facilities, the Site or the Adjacent Areas.

“Relevant Third Party” means any person having a legal interest in any Relevant Property who suffers damage, injury or other harm caused by Contamination in, on or under the Project Facilities, the Site or the Adjacent Areas or by migration or leaching of any Contamination into or onto the Relevant Property from the Project Facilities, the Site or the Adjacent Areas (including for greater certainty, where applicable, the Province and BCTFA) and/or any person who suffers damage, injury or other harm caused by any Contamination in, on or under any Relevant Property from time to time to the extent such Contamination constitutes Contamination which has migrated or leached into or onto the Relevant Property from the Project Facilities, the Site or the Adjacent Areas.

“Relevant Unavailability Event” means a Lane Closure other than an Excepted Closure.

“Relevant Works Change in Law” means a Change in Law (other than: (i) a Relevant Change in Law, or (ii) a Change in Law relating to Taxes or any change in Taxes which is not a Relevant Change in Law) which causes the Concessionaire to incur Capital Expenditure (other than increased Capital Expenditure incurred in achieving Final Completion of the Works) to perform works affecting the Project Facilities (being any work of alteration, addition, demolition or extension or variation in the quality or function of the Project Facilities) which are not Maintenance Work or work which the Concessionaire would otherwise be required to perform under this Agreement.

“Remedial Period” has the meaning given in Section 26.1.2.

“Remediation Amount” has the meaning given in Section 19.6.4.

“Renewal Amount” means the cost of carrying out the Renewal Works as agreed or determined in accordance with Section 19 [End of Term].

“Renewal Schedule” means the schedule for the carrying out of the Renewal Works over the remainder of the Contract Period following the Initial Inspection, as agreed or determined in accordance with Section 19 [End of Term], as such schedule may be revised or amended at any time in accordance with Section 19 [End of Term].

“Renewal Works” means the Maintenance Works or other works of renewal, reconstruction, repair or rehabilitation required, as agreed or determined at any time in accordance with Section 19 [End of Term], to be carried out in order to ensure that the Project Facilities will, on the Expiry Date, satisfy the End of Term Requirements.

“Report” means any report given in accordance with Section 24.1 [Required Reports].

“Required CP Rail Lands” means those portions of the CP Rail Lands shown on drawings numbered R2-NNN-0106RW and R2-NNN-0107RW subject to any alterations required as a result of or arising from the development of the detailed design of the Works in accordance with the terms of this Agreement.

“Requirements of Interested Parties” means the lawful and other requirements of Interested Parties whether established pursuant to Legal Requirements, the provisions of this Agreement or otherwise as disclosed or described in the Disclosed Data.

“Resource Documents DVD” means the digital video disc containing material, documents and data relating to the Project which has been made available to the Concessionaire and which forms part of this Agreement.

“Restricted Person” means any person who, or any member of a group of persons acting together, any one of which:

- (a) has, directly or indirectly, its principal or controlling office in a country that is subject to any economic or political sanctions imposed by Canada for reasons other than its trade or economic policies;
- (b) has as any part of its business the illegal manufacture, sale, distribution or promotion of narcotics substances or arms, or is or has been involved in terrorism;
- (c) in the case of an individual, he or she (or, in the case of a legal entity, any of the members of its board of directors or its senior executive) has been sentenced to imprisonment or otherwise given a custodial sentence, other than a suspended sentence, for any criminal offence, other than minor traffic offences, less than five years prior to the effective date of any proposed transfer of shares to such person;
- (d) has as its primary business the acquisition of distressed assets or investments in companies or organizations which are or are believed to be insolvent or in a financial standstill situation or potentially insolvent;
- (e) is subject to a claim of the Province or any other Governmental Authority under any proceedings (including regulatory proceedings) which have been concluded or are pending at the time of any proposed transfer and which (in respect of any such pending claim, if it were to be successful) would, in the view of the Province, in either case, be reasonably likely to materially adversely affect the performance by the Concessionaire of its obligations under this Agreement; or
- (f) has been convicted of an offence under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, S.C. 2000, c. 17, or has been convicted of the commission of a money laundering offence or a terrorist activity financing offence under the *Criminal Code*, R.S.C. 1985, C-46, as amended.

“Retention Account” means the deposit account to be established in the name of the Province in accordance with Section 19.7.1.

“Revenue Loss” has the meaning given in Part 1 of Schedule 13 [Definitions].

“Review Procedure” means the procedure whereby submissions are made to the Province’s Representative as set out in Part 2 of Schedule 8 [Review Procedure].

“Revised Senior Debt Termination Amount” means, subject to Section 2.3.4, the aggregate of:

- (a) all amounts outstanding at the Termination Date (including interest and Default Interest accrued as at that date) from the Concessionaire to the Senior Funders under the Senior Funding Agreements including in respect of Permitted Borrowing, other than any such amounts that are in respect of Additional Permitted Borrowing;
- (b) all amounts of Additional Permitted Borrowing (including interest but excluding Default Interest) outstanding at the Termination Date, including such Additional Permitted Borrowing accrued to that date; and
- (c) all amounts (including Hedge Termination Amounts and other breakage costs) payable by the Concessionaire to the Senior Funders as a result of a prepayment under the Senior Funding Agreements including in respect of Permitted Borrowing, subject to the Concessionaire and the Senior Funders mitigating all such costs to the extent reasonably possible,

LESS, to the extent it is a positive amount, the aggregate of (without double-counting in relation to the calculation of the Revised Senior Debt Termination Amount or the amounts below):

- (d) all credit balances on any bank accounts held by or on behalf of the Concessionaire on the Termination Date;
- (e) any amounts claimable on or after the Termination Date in respect of Contingent Funding Liabilities;
- (f) all amounts, including Hedge Termination Amounts and other breakage costs, payable by the Senior Funders or others to the Concessionaire as a result of prepayment of amounts outstanding under the Senior Funding Agreements including in respect of Permitted Borrowing;
- (g) all other amounts received by the Senior Funders on or after the Termination Date and before the date on which any compensation is payable by the Province to the Concessionaire as a result of enforcing any other rights they may have; and
- (h) all APB Distributions.

“RFP” means the Request for Proposals issued in respect of the Project on October 27, 2004, as amended, including all volumes, appendices and addenda.

“RFQ” means the Request for Qualifications issued in respect of the Project on July 21, 2004, and includes all addenda and appendices thereto.

“Rights in respect of land” means any right over or in respect of or otherwise relating in any way to land (including foreshore and land covered with water), whether temporary, revocable, legal, contractual, equitable or otherwise of whatever nature.

“Road Safety Audit Certificate (Stage 1)” means a certificate in the form set out in Appendix 1(4) to Part 3 of Schedule 5 [Design and Certification Procedure].

“Road Safety Audit Certificate (Stage 2)” means a certificate in the form set out in Appendix 1(5) to Part 3 of Schedule 5 [Design and Certification Procedure].

“Road Safety Audit Certificate (Stage 3)” means a certificate in the form set out in Appendix 1(6) to Part 3 of Schedule 5 [Design and Certification Procedure].

“Road Safety Audit Certificate (Stage 4)” means a certificate in the form set out in Appendix 1(7) to Part 3 of Schedule 5 [Design and Certification Procedure].

“Road Safety Audit Certificate (Stage 5)” means a certificate in the form set out in Appendix 1(8) to Part 3 of Schedule 5 [Design and Certification Procedure].

“Routine Maintenance” means work which is short term or cyclical in nature and necessary to keep the Project Facilities, the Site and the Adjacent Areas in good and safe working order and state of repair and maintenance, including minor repairs and maintenance to all elements of the Project Facilities, the Site and the Adjacent Areas, cleaning, median, shoulder and horticultural maintenance and Winter Maintenance and inspections and surveys associated with any of the foregoing.

“Schedule of Lane Closures” means a Weekly Schedule of Lane Closures or a Quarterly Schedule of Lane Closures.

“Scheduled Closure” means a Lane Closure provided for in a Schedule of Lane Closures to which there has been no objection in accordance with the Review Procedure.

“Scheduled Final Completion Date” means the date which is 12 months after the Scheduled Substantial Completion Date.

“Scheduled Stoppage” has the meaning given in Part 6 of Schedule 5 [Traffic Management Output Specifications].

“Scheduled Substantial Completion Date” means November 15, 2007 or such other date as may be determined in accordance with Section 12.6.

“Second Inspection” has the meaning given in Section 19.4.1.

“Security Trustee” means any bank, trustee, indenture trustee or other financial institution appointed by the Senior Funders to act in that capacity and such substitute as may be appointed from time to time in accordance with the Direct Agreement and the Senior Funding Agreements and notified to the Province in writing.

“Semi-Annual Invoice” has the meaning given in Section 33.2.2.

“Semi-Annual Period” means a period of six calendar months beginning on April 1 and October 1 in each calendar year provided that the first Semi-Annual Period shall cover the period from the date the Concessionaire commenced incurring Eligible Costs in respect of the Works (even if incurred prior to the Commencement Date) until and including March 31, 2006.

“Semi-Annual Report” means a Report for the previous Semi-Annual Period.

“Senior Debt” means the financing provided by the Senior Funders to Trans-Park Highway Finance Inc., as guaranteed by the Concessionaire, pursuant to and in accordance with the Senior Funding Agreements.

“Senior Funders” means all or any of the persons who provide financing or funding in respect of the Project under the Senior Funding Agreements.

“Senior Funding Agreements” has the meaning given in Part 2 of Schedule 2 [Form of Direct Agreement].

“Shareholder” means any person from time to time holding share capital in a Partner.

“Shareholders Agreement” means the agreement or agreements between the Shareholders relating to a Partner, including any agreement or agreements relating to the subscription of equity (or other shareholder funding) by the Shareholders in the Concessionaire, referred to in Section 2.3.1.1.

“Side Roads” means the three side roads to the Trans-Canada Highway located in the Kicking Horse Canyon known as Wapta Road, Beaverfoot Road and Kicking Horse Road described as such in Part 1 of Schedule 4 [Existing Highway] and shown on the Composite Drawing.

“Significant Appointment” means the appointment of a contractor or subcontractor which could reasonably be considered significant whether as a consequence of the value of the appointment, the materiality of the part of the Operations being contracted or subcontracted or because of the level of importance of the appointment to the carrying out of the Operations in accordance with this Agreement (including for greater certainty any appointment the termination of which without replacement could reasonably be expected to materially adversely affect the performance by the Concessionaire, the Contractor and/or the Operator, as the case may be, of its respective obligations under this Agreement, the Design-Build Contract or the Operating and Maintenance Contract, respectively), or where the appointment (including for this purpose a failure to appoint) would have the potential to materially prejudice the Province’s rights and entitlements under this Agreement (including for greater certainty the effectiveness of enforcing such rights and entitlements).

“Site” means, subject to Section 8.8 [Boundaries of Site], Section 36.1.2 with respect to Additional Works, paragraph 7 of Part 3 of Schedule 14 [Subsequent Schemes] and paragraph 3 of Part 4 of Schedule 14 [Improvements], the land (including foreshore and land covered with water), spaces, waterways and other areas comprising the Concession Highway site as reflected on the Composite Drawing, the Concessionaire drawings numbered R2-NNN-101RW to R2-NNN-122RW (contained on the Resource Documents DVD), and the Phase 1 Section Contract drawings numbered R3-208-003,

R3-210-101 to R3-210-103, and R2-211-101 to R2-211-104, including without limitation, unless otherwise expressly provided, the Phase 1 Section, the Phase 2 Section, the Phase 3 Section and the Side Roads.

“Site Materials” means all materials, including soil, aggregates, gravel, rocks, coal, minerals or other deposits, excavated, arising or produced in connection with the carrying out of the Operations on the Site and the Adjacent Areas.

“Snow Avalanche” means the downslope mass movement of snow and/or ice under the influence of gravity, including associated debris.

“Snow Avalanche Program” means the Snow Avalanche Program described in Section 2.3 of the Local Area Specifications.

“Snow Avalanche Repair Costs” has the meaning given in Section 14.8A.3.

“Statutory Decision Maker” means a person to whom a power or right has been conferred by an enactment to make a decision deciding or prescribing:

- (a) the legal rights, powers, privileges, immunities, duties or liabilities of a person; or
- (b) the eligibility of a person to receive or to continue to receive a benefit or licence, whether or not the person is legally entitled to it.

“Step-In Period” has the meaning given in the Direct Agreement.

“Structure” means any (temporary or permanent):

- (a) bridge, tunnel or culvert having an individual span of 3 metres or more or (in respect of a multi-span structure) a cumulative span of 5 metres or more;
- (b) bridge, tunnel or culvert (other than of corrugated metal) having a span of 1.8 metres or more and where the cover to the road surface is less than 1 metre;
- (c) corrugated metal bridge or culvert having a span of 0.9 metres or more (irrespective of cover to the road surface);
- (d) pedestrian or cycle underpass (irrespective of span and cover to the road surface);
- (e) retaining wall, including reinforced earth, anchored earth and cribwall systems with slope between 70° and 90° to the horizontal, where the level of the fill at the back of the wall is greater than 1.5 metre above the finished ground level in front of the wall;
- (f) environmental or torrent debris barrier; and
- (g) sign/signal gantry or high mast for lighting, television cameras and catenary lighting systems.

“Subcontract” means a contract to perform any portion of the Works, including but not limited to supply of any materials or resources, to which the Province is not a party.

“Subcontractor Breakage Costs” means amounts reasonably and properly payable by the Concessionaire to the Contractor under the terms of the Design-Build Contract and to the Operator under the terms of the Operating and Maintenance Contract to compensate them for Losses sustained as a direct result of the termination of this Agreement, but only to the extent that:

- (a) the Losses are incurred in connection with the Project and in respect of the performance of the Operations, including:
 - (i) costs of materials or goods ordered or subcontracts placed that cannot be cancelled without such Losses being incurred;
 - (ii) expenditures reasonably incurred in anticipation of the performance of the Operations in the future;
 - (iii) demobilization costs, including the cost of any relocation of equipment used in connection with the Project; and
 - (iv) employee termination payments;
- (b) the Losses are incurred under arrangements and/or agreements that are consistent with terms that have been entered into in the ordinary course of business and on reasonable commercial terms; and
- (c) the Concessionaire and the Contractor or Operator (as the case may be) has each used its reasonable efforts to mitigate the Losses.

“Subsequent Scheme” means any change, improvement or addition proposed by the Concessionaire to be made to the design, layout or structure of the Project Facilities or any part thereof at any time after issue of the Final Completion Certificate which cannot be lawfully accomplished by the Concessionaire without obtaining planning permission or any Compulsory Acquisition Order or other New Order under the Transportation Act or otherwise.

“Subsequent Scheme Notice” has the meaning given in paragraph 1.1 of Part 3 of Schedule 14 [Subsequent Schemes].

“Substantial Completion” means the satisfactory completion, as confirmed by the issue of all relevant Certificates (including road safety audit Certificates) and supporting documentation under the Design and Certification Procedure, of all of the Works excluding the work in items (j) and (k) in this definition in accordance with the Design and Construction Output Specifications, the Concessionaire’s Design and Construction Requirements and all other applicable standards and specifications referred to or set out in this Agreement and permits the safe, uninterrupted and unobstructed public use of the entire Concession Highway, including the new brake check and new rest area, in accordance with the design criteria without any restriction, including any restriction that consists of a planned Closure of the Concession Highway necessary to complete any of the Works to the standard required for Final Completion, including but not limited to:

- (a) paving of all road surfaces with their intended final running surface;

- (b) completion of all Structures and drainage systems;
- (c) full operation of all traffic lighting and signalization;
- (d) all permanent pavement markings at all intersections and on all major roads;
- (e) installation of all regulatory and guide signing;
- (f) installation of all median and roadside barrier and other safety devices;
- (g) completion of all Utility Works;
- (h) all works are in their intended final state including but not necessarily limited to: slopes, drainage systems, environmental mitigation (but not including landscaping) and related improvements; and
- (i) all debris, superfluous materials and equipment have been removed from within the clear zone,

but specifically excluding:

- (j) decommissioning, demolition and removal of the Park Bridge together with the removal of the pavement on the abandoned section of the Existing Highway;
- (k) landscaping, but only limited to re-vegetation in accordance with the first paragraph of Section 2.3.14 of Appendix 1 to Part 1 of Schedule 5 [Design and Construction Output Specifications]; and
- (l) minor grading work which is outside the “clear zone” for the Highway Improvement as defined in BC Supplement to TAC Geometric Design Guide referenced in Appendix 2 to Part 1 of Schedule 5 [Design and Construction Output Specifications],

and “Substantially Completed” or “Substantially Complete” have a corresponding meaning.

“Substantial Completion Certificate” means a certificate in the form set out in Appendix 1(14) to Part 3 of Schedule 5 [Design and Certification Procedure].

“Substantial Completion Date” means the date on which the Substantial Completion Certificate is issued.

“Substantial Completion Longstop Date” means the date which is 12 months after the Scheduled Substantial Completion Date.

“Suitable Substitute Concessionaire” has the meaning given in the Direct Agreement.

“Supplier” means any person supplying materials that are used in or incorporated into the Work.

“TAF” has the meaning given in paragraph 2.9 of Section A of Part 3 of Schedule 5 [Design and Certification Procedure].

“Taxes” means any and all taxes, levies, imposts, duties, fees, withholdings, assessments, deductions or charges whatsoever, imposed, assessed, levied or collected by any Governmental Authority, together with interest thereon and penalties with respect thereto, and includes all PST and GST except where stated to the contrary.

“Technical Appraisal Authority” has the meaning given in paragraph 2.10 of Section A of Part 3 of Schedule 5 [Design and Certification Procedure].

“Technical Requirements” means the Design and Construction Output Specifications, the Concessionaire’s Design and Construction Requirements, the Design Management Plan, the O,M&R Output Specifications, the O,M&R Requirements, the Concessionaire Proposal Extracts, the Unstable Slope Mitigation Program, the Five-Year Management Plan, the Traffic Management Output Specifications, the Traffic Management Requirements, the Traffic Management Plan, the Records Management Protocol, the privacy code referred to in Section 14.11 [Privacy Code], the Concessionaire’s Environmental Obligations, the End of Term Requirements, the requirements set out in Section 23.1.2 in respect of the Concessionaire’s Quality Management System, the Ministry’s Standards, the Best Management Practices for Highway Maintenance Activities, the Utility Policy Manual and any other standard, specification or technical requirement referred to or set out in this Agreement, in each case as updated, modified or varied from time to time in accordance with the provisions of this Agreement.

“Temporary Construction Area” means, at any time, any area within which any of the Works or any other work in connection with the Operations is actively being carried out at such time.

“Temporary Works” means all works and things (of a temporary nature) of every kind required in or about the execution and completion of the Permanent Works or of capital works in connection with the operation, maintenance, rehabilitation or improvement of the Project Facilities.

“Termination Date” means the date upon which this Agreement terminates.

“Termination Sum” means any compensation payable by the Province to the Concessionaire on an early termination of this Agreement under Section 44 [Compensation on Termination] (excluding the Adjusted Highest Qualifying Bid Price).

“Third Party Contractor” means any contractor (including the Phase 1 Section Contractor) which, under a contract with the Province or BCTFA to which neither the Concessionaire nor any of its contractors, subcontractors or Affiliates is a party, has prior to the date of execution of this Agreement or, in the case of the Phase 1 Section, prior to completion of the Phase 1 Section Works, carried out work in respect of the Concession Highway.

“Third Party Facilities” means bus shelters, telephone facilities, Utilities and other public facilities and associated equipment, plant, materials and apparatus installed and operated or to be installed and operated on the Site or Adjacent Areas by any transit authority, communications provider, Utility Supplier or other third party.

“Third Party Junior Debt” means any or all of the debt of the Concessionaire to the extent properly incurred by the Concessionaire pursuant to the Third Party Subordinated Funding Agreement and which is subordinated to the Senior Debt.

“Third Party Subordinated Funders” means all or any of those persons who provide financing or funding in respect of the Project under the Subordinated Funding Agreement.

“Third Party Subordinated Funding Agreement” means the agreement between the Concessionaire and the Third Party Subordinated Funders to provide Third Party Junior Debt for the purpose of providing interim financing for the required contribution of equity as set out in the Base Case Financial Model and which has been approved by the Province in accordance with Section 2.3.10 or as may be amended in accordance with Section 2.3 [Project Documents].

“Threshold Equity IRR” means Financial Base Case Equity IRR.

“Total Performance Payment” means:

- (a) for a Contract Year falling within the Original Service Period, the OSP Performance Payment and any Pre-Completion Performance Payments including all applicable Taxes except GST; and
- (b) for a Contract Year falling within the Enhanced Service Period, the ESP Performance Payment and any Pre-Completion Performance Payments including all applicable Taxes except GST.

“Traffic Bands” has the meaning given in paragraph 3.2 of Part 3 of Schedule 10 [ESP Performance Payment].

“Traffic Data” means the information relating to traffic in the reports submitted pursuant to Part 2 of Schedule 15 [Reports] and any information relating to traffic obtained by the Province by direct interrogation of any Measuring Equipment.

“Traffic Disruption Charge” has the meaning given in Part 4 of Schedule 10 [Traffic Disruption Charges].

“Traffic Engineer” has the meaning given in the Traffic Management Output Specifications (Original Service Period).

“Traffic Management Output Specifications” means, collectively, the Traffic Management Output Specifications (Original Service Period) and the Traffic Management Output Specifications (Enhanced Service Period).

“Traffic Management Output Specifications (Enhanced Service Period)” means the minimum performance specifications and requirements for the management of traffic on the Concession Highway during the Enhanced Service Period as set out or identified or referred to in Part 5 of Schedule 7 [Traffic Management Output Specifications (Enhanced Service Period)], as amended from time to time by any Province Change.

“Traffic Management Output Specifications (Original Service Period)” means the minimum performance specifications and requirements for the management of traffic on the Concession Highway during the Original Service Period as set out or identified or referred to in Part 6 of Schedule 5 [Traffic Management Output Specifications (Original Service Period)], as amended from time to time by any Province Change.

“Traffic Management Plan” means the Traffic Management Plan referred to in Section 15.2A.1, including all related sub-plans as described in the Traffic Management Output Specifications, as submitted and modified from time to time without objection by the Province’s Representative in accordance with the Review Procedure.

“Traffic Management Requirements” means, collectively, the Traffic Management Requirements (Original Service Period) and the Traffic Management Requirements (Enhanced Service Period).

“Traffic Management Requirements (Enhanced Service Period)” means the procedures and other requirements for the management of traffic on the Concession Highway set out or identified or referred to in Part 6 of Schedule 7 [Traffic Management Requirements (Enhanced Service Period)], as revised from time to time in accordance with Section 15.1.2.

“Traffic Management Requirements (Original Service Period)” means the procedures and other requirements for the management of traffic on the Concession Highway set out or identified or referred to in Part 7 of Schedule 5 [Traffic Management Requirements (Original Service Period)], as revised from time to time in accordance with Section 15.1.2.

“Traffic Quality Management Plan” means the Traffic Quality Management Plan referred to and described in Section 23.1.3.5.

“Traffic Volume Payment” has the meaning given in paragraph 3 of Part 3 of Schedule 10 [ESP Performance Payment].

“Transportation Act” means the *Transportation Act*, S.B.C. 2004, c. 44.

“Transportation Investment Act” means the *Transportation Investment Act*, S.B.C. 2002, c. 65.

“Trespasser” means any person (other than a Protester) not entitled to be on the Site or Adjacent Areas.

“Unavailability Deduction” has the meaning given in paragraph 2 of Part 5 of Schedule 10 [Unavailability Deductions].

“Uninsurable” means, in relation to a risk, either that:

- (a) insurance is not available despite all due diligence after the Final Completion Date to insurers licenced in British Columbia or otherwise in the Canadian and international insurance markets in respect of that risk as it may occur in British Columbia from insurers of good repute and substance; or

- (b) the insurance premium payable or terms and conditions for insuring that risk with insurers of good repute and substance in the Canadian and international insurance markets after the Final Completion Date from time to time are such that the risk as it may occur in British Columbia is not generally being insured against in the international and Canadian insurance markets.

“Unstable Slope Mitigation Program” means the Unstable Slope Mitigation Program referred to in Section 14.7.2, as submitted and updated and extended from time to time without objection by the Province’s Representative in accordance with the Review Procedure.

“Unstable Slope Mitigation Work Compliance Certificate” has the meaning given in Section 14.7.6.

“Users” means users of the Concession Highway.

“Utilities” means privately, publicly or cooperatively owned lines, facilities or systems for transmitting or distributing electricity, data, communications, gas, oil and petroleum products, water and sewage or other similar commodity which serve the public directly or indirectly, including underground, surface and overhead facilities as well as facilities which use common poles, ducts or conduits on a shared basis, and all related equipment, apparatus and infrastructure.

“Utility Agreements” means the Utility Protocol Agreements and the Master Use Agreements and any new agreement entered into by the Province or BCTFA after the Commencement Date with a Utility Supplier in connection with the construction, installation, operation, repair, preservation, relocation and/or maintenance of Utilities in, on, under, over or adjacent to any property within the jurisdiction of the Province as highway authority (including the Project Facilities, the Site and the Adjacent Areas), and includes any site or other permits issued thereunder or pursuant thereto.

“Utility Policy Manual” means the Ministry Utility Policy Manual included in the Disclosed Data, as the same may be updated, supplemented or amended from time to time.

“Utility Protocol Agreements” means the agreement entitled “Protocol Agreement Ministry of Transportation and Highways / BC Hydro (1995)” made September 19, 1995 between the Ministry and BC Hydro and the agreement entitled “Protocol Agreement Ministry of Transportation and Highways / BC Tel (1996)” made January 26, 1996 between the Ministry and BC Tel, in each case as amended and supplemented to the date hereof.

“Utility Supplier” means the owner of any Utilities.

“Utility Works” means temporary and permanent installation, protection, removal and relocation works relating to Utilities carried out in connection with or as part of the Works or any other works carried out in the course of the Operations, including installation, protection, removal and relocation of poles, pole lines, conduits, gas pipes, oil pipes, sewers and tile lines, and related and ancillary works.

“**Verification**” means the process of testing the calibration of any of the Measuring Equipment for the purpose of assessing any error in Measurement, and “Verify” shall be construed accordingly.

“**Warning Notice**” means either an Availability/Performance Deductions Warning Notice or a Default Warning Notice.

“**Weekly Schedule of Lane Closures**” means a Weekly Schedule of Lane Closures submitted by the Concessionaire under Section 15.2B.1 indicating the period or periods during the week to which such Weekly Schedule of Lane Closures relates during which the Concessionaire plans to effect or otherwise reasonably foresees any Lane Closure (including any Lane Closure in respect of any works by any Relevant Authority) in respect of the Concession Highway.

“**Winter Maintenance**” means works in relation to the inhibition of the formation of ice and the removal of snow and ice as set out or described in the O,M&R Output Specifications and the O,M&R Requirements and all maintenance works and functions relating thereto in addition to the usual repairs and maintenance of barriers, signs and roadside appurtenances.

“**Working Day**” means a day (other than a Saturday or Sunday) on which banks are open for business in the City of Vancouver.

“**Workers Compensation Act**” means the *Workers Compensation Act*, R.S.B.C. 1996, c. 492.

“**Works**” means the Permanent Works (including Plant) and the Temporary Works required in accordance with the Design and Construction Output Specifications and the Concessionaire’s Design and Construction Requirements for the design, construction, testing, completion and commissioning of the Highway Improvement.

“**Works Schedule**” means the detailed schedule for design, investigations, construction, testing, commissioning and related works, based upon the Project Schedule, to be submitted by the Concessionaire in accordance with Section 12.3.1 and any amended or varied version thereof submitted by the Concessionaire in accordance with Section 12.3.2.

2. INTERPRETATION

This Agreement will be interpreted according to the following provisions, save to the extent that the context or the express provisions of this Agreement otherwise require:

- 2.1 the table of contents, headings and sub-headings, marginal notes and references to them in this Agreement are for convenience of reference only, do not constitute a part of this Agreement, and shall not be taken into consideration in the interpretation or construction of, or affect the meaning of, this Agreement;
- 2.2 this Agreement, together with the Direct Agreement and such other related agreements as may from time to time be specified as forming part of the concession agreement, constitute the concession agreement between the

- Province and the Concessionaire for the purposes of and as contemplated in the Transportation Investment Act;
- 2.3 all references to Sections and Schedules are references to Sections of and Schedules to this Agreement and all references to Parts, paragraphs or Appendices are references to Parts and paragraphs contained in Appendices to the Schedules;
- 2.4 the Schedules to this Agreement (including any Appendices thereto) are an integral part of this Agreement and reference to this Agreement includes reference thereto and reference to any Schedule includes reference to any Appendix thereto;
- 2.5 all references to any agreement, document, standard, principle or other instrument include (subject to all relevant approvals and any other provision of this Agreement expressly concerning such agreement, document, standard, principle or other instrument) a reference to that agreement, document, standard, principle or instrument as amended, supplemented, substituted, novated or assigned;
- 2.6 all references to any statute or statutory provision (including any subordinate legislation) include any statute or statutory provision which amends, extends, consolidates or replaces the same or which has been amended, extended, consolidated or replaced by the same and include any orders, regulations, by-laws, ordinances, orders, codes of practice, instruments or other subordinate legislation made under the relevant statute;
- 2.7 all references to time of day are references to Pacific Standard time or Pacific Daylight Saving time, as the case may be;
- 2.8 the words “herein”, “hereto”, “hereof” and “hereunder” and other words of like import refer to this Agreement as a whole and not to the particular Section, Schedule, Part, paragraph or Appendix in which such word may be used;
- 2.9 words importing the singular include the plural and vice versa;
- 2.10 words importing a particular gender include all genders;
- 2.11 “person” includes an individual, corporation, partnership, joint venture, association, trust, pension fund, union, government, governmental body, governmental agency, authority, board, tribunal, commission or department and the heirs, beneficiaries, executors, personal or other legal representatives or administrators of an individual, and the receivers and administrators of a corporation;
- 2.12 any reference to a public organization shall be deemed to include a reference to any successor(s) to such public organization or any organization or entity or organizations or entities which has or have taken over the functions or responsibilities of such public organization;

- 2.13 references to “Parties” mean the parties to this Agreement and references to a “Party” mean any one of the parties to this Agreement;
- 2.14 references to drawings are references to drawings appearing in the Schedules hereto;
- 2.15 all monetary amounts are expressed in Canadian Dollars;
- 2.16 references to amounts or sums being “indexed” or “index linked” are references to amounts or sums which have been or are to be adjusted to reflect the effects of inflation as measured by changes in the CPI from the value applicable as at the Financial Base Date. Such adjustment will be calculated by applying the following formula to the amounts or sums to be adjusted:
- $$\text{Adjusted amount or sum} = \text{amount or sum} \times \frac{\text{CPI}_m}{\text{CPI}_{bd}}$$
- where CPI_m is the most recent published monthly CPI value, and CPI_{bd} is the CPI value for the month and year in which the Financial Base Date occurs;
- 2.17 wherever this Agreement obliges the Province to pay any amount to the Concessionaire (including pursuant to Schedule 13 [Changes]) in respect of any costs, expenses, fees, charges, liabilities, Losses, Claims or other sums incurred by the Concessionaire:
- 2.17.1 such obligation will be construed as applying only to so much of such sums as have been properly incurred on an arm’s length commercial basis or, where not incurred on an arm’s length commercial basis (including where the payment is made to an Affiliate of the Concessionaire), so much of them as are proper and reasonable; and
- 2.17.2 the Concessionaire will, where requested by the Province, provide supporting evidence of such costs, expenses, fees, charges, liabilities, Losses, Claims or other sums;
- 2.18 the Province will not be imputed with knowledge of any fact, matter or thing unless that fact, matter or thing is within the actual knowledge of those of its employees or agents (including the Province’s Representative and the Province’s Agent) who have responsibilities in connection with the conduct of the Operations or the Project;
- 2.19 without limiting the extent of its actual knowledge, the Concessionaire will for all purposes of this Agreement be deemed to have such knowledge in respect of the Operations as is held (or ought reasonably to be held) by all persons involved in carrying out the Operations including the Contractor, the Operator and any other contractor or subcontractor of any tier and the agents, employees or workers of any of them;
- 2.20 any references to statutory duties or functions are references to such duties or functions (including powers and discretions) from time to time and include any common law duties and functions (including powers and discretions);

- 2.21 any requirement for any thing or action to be “in accordance with” or “in compliance with” any standard, code or specification or other requirement or stipulation means that such thing or action is to exceed or at least equal that standard, code, specification or other requirement or stipulation;
- 2.22 any reference to anything being “in”, “on”, “under” or “over” any other thing shall, where the context permits, include the others;
- 2.23 any reference in this Agreement or any Schedule to any proprietary name in relation to any goods or materials shall be deemed to include the words “or suitable (in the opinion of the Province’s Representative) equivalent”;
- 2.24 “lane” means any delineated traffic lane the design of which complies with the requirements of the Transportation Association of Canada Geometric Design Guide and is suitable for the passage of a unidirectional stream of traffic in accordance with Good Industry Practice, but in any event, for greater certainty, excluding any hard shoulder, bus lane or median;
- 2.25 whenever the terms “will” or “shall” are used in this Agreement they are to be construed and interpreted as synonymous and are to be read as “shall”;
- 2.26 the words “includes” or “including” are to be construed as meaning “includes without limitation” or “including without limitation”, respectively;
- 2.27 general words are not given a restrictive meaning:
- 2.27.1 if they are introduced by the word “other”, by reason of the fact that they are preceded by words indicating a particular class of act, matter or thing;
or
- 2.27.2 by reason of the fact that they are followed by particular examples intended to be embraced by those general words;
- 2.28 words or abbreviations which have well-known trade meanings are used in accordance with those meanings;
- 2.29 the expression “all reasonable efforts” and expression of like import, when used in connection with an obligation of a Party, means taking in good faith and with due diligence all reasonable steps to achieve the objective and to perform the obligation, including doing all that can reasonably be done in the circumstances taking into account the Party’s obligations hereunder to mitigate delays and additional costs to the other Party, and in any event taking no less steps and efforts than those that would be taken by a reasonable and prudent person in comparable circumstances but where the whole of the benefit of the obligation and where all the results of taking such steps and efforts accrued solely to that person’s own benefit;
- 2.30 the expressions “by the Concessionaire” and “by or through the Concessionaire” and expressions of like import are synonymous and mean by the Concessionaire or by anyone employed by or through the Concessionaire, including the

- Concessionaire and all contractors, subcontractors and suppliers of any tier and their respective officers, employees, consultants and agents;
- 2.31 the terms “deficiency”, “deficiencies”, “defect” and “defects” include errors, omissions, defects, deficiencies, incomplete parts of Operations and all other failures to fully conform to, meet and satisfy all requirements of this Agreement;
- 2.32 whenever the terms “submit”, “submitted”, “provide”, “deliver” or words of similar import are used in this Agreement to describe or indicate an obligation of the Concessionaire or a requirement to be satisfied or met by the Concessionaire, and whether capitalized or not, Part 2 of Schedule 8 [Review Procedure] will apply;
- 2.33 all capitalized terms used in a Schedule have the meanings given to such terms in this Schedule 1, unless stated otherwise in a particular Schedule in which case such term will have the meaning given to it in that Schedule solely for the purposes of that Schedule;
- 2.34 the language in the Design and Construction Output Specifications, O,M&R Output Specifications, Traffic Management Output Specifications and other documents comprising this Agreement may in some cases be written in the imperative for brevity. Clauses containing instructions, directions or obligations are directed to the Concessionaire, and are to be construed and interpreted as if the words “the Concessionaire shall without additional compensation” immediately preceded the instructions, directions or obligations;
- 2.35 all accounting and financial terms used herein are, unless otherwise indicated, to be interpreted and applied in accordance with Canadian generally accepted accounting principles, consistently applied;
- 2.36 all of the obligations of a Party are to be construed as separate obligations owed to the other Party and, except and to the extent otherwise expressly provided in this Agreement, are to be performed at the Party’s own cost and expense;
- 2.37 the words of this Agreement are to be given their natural meaning. The Parties have had the opportunity to take legal advice on this Agreement and no term is, therefore, to be construed *contra proferentem*;
- 2.38 a reference to any right, power, obligation or responsibility of any department, ministry, agency, board, commission, corporation or other entity of any Governmental Authority is to the department, ministry, agency, board, commission, corporation or other entity of the Governmental Authority which, pursuant to Laws and Regulations, has such right, power, obligation or responsibility at the relevant time;
- 2.39 a reference to persons for whom a Party is in law responsible includes that Party’s employees, agents, contractors and subcontractors of any tier, advisors and any other persons for whom that Party is in law responsible or over whom that Party could reasonably be expected to exercise control;

- 2.40 if the time for doing an act falls or expires on a day that is not a Working Day, the time for doing such act will be extended to the next Working Day;
- 2.41 each provision of this Agreement will be valid and enforceable to the fullest extent permitted by law. If any provision of this Agreement is held to be invalid, unenforceable or illegal to any extent, such provision may be severed and such invalidity, unenforceability or illegality will not prejudice or affect the validity, enforceability and legality of the remaining provisions of this Agreement. If any such provision of this Agreement is held to be invalid, unenforceable or illegal, the Parties will promptly endeavour in good faith to negotiate new provisions to eliminate such invalidity, unenforceability or illegality and to restore this Agreement as nearly as possible to its original intent and effect;
- 2.42 any reference to a road or highway will include in each case all roadways, hard shoulders, slip roads, side roads, access roads, pavement, bridges and other highway structures whether over or under such road or highway, together with all related supporting infrastructure and amenities, including all fences and barriers, curbs, drainage systems including outfalls and balancing ponds, grassed areas, hedges and trees, planted areas, footways, road markings, road traffic signs, road traffic signals, road lighting, communications installations, washrooms and rest areas, picnic sites, pullouts, embankments and cuttings, and including in the case of the Concession Highway all land and structures and improvements thereon within the Site and Adjacent Areas;
- 2.43 all releases, waivers of liability and indemnities in this Agreement expressed to be given in favour of a Party are and shall be interpreted as having been given in favour of and may be enforced by that Party and its employees, directors, officers, deputies, delegates, representatives and agents and, without limiting the foregoing, the Party in whose favour any such release, waiver of liability or indemnity is expressed to be given may, at its option and without any obligation to do so, enforce the same as trustee for and on behalf of any of its employees, directors, officers, deputies, delegates, representatives or agents;
- 2.44 wherever a consent or approval of a Party is provided for herein or required hereunder, the Party giving the consent or approval may impose conditions to the consent or approval which conditions may, in the case of a consent or approval which may be granted or withheld in the absolute and unfettered discretion of such Party, be arbitrary or unreasonable but otherwise will be reasonable having regard to the relevant circumstances;
- 2.45 no provision of this Agreement is intended to derogate from or be inconsistent with or in conflict with any Laws and Regulations and should not be interpreted in a manner as to result in any derogation, inconsistency or conflict and if any such provision is found by a court of competent jurisdiction to be inconsistent with or in conflict with any Laws and Regulations, the applicable Laws and Regulations will prevail and such provision will be read down or rendered inoperative (either, generally or in such particular situation, as appropriate), to the extent of such conflict or inconsistency, as the case may be, and if any such provision is found by a court of competent jurisdiction to derogate from any Laws and Regulations, then such provision will be read down or rendered inoperative (either, generally or in such particular situation, as appropriate) to the extent of the derogation and

for purposes of this Section 2.45, the following will be excluded from the definition of the defined phrase “Laws and Regulations”: “and the law of equity”, “ordinances”, “codes (including design and construction codes)”, “directives”, “guidelines”, and “rules or policies of any Governmental Authority”, and the word “or” will be added between the word “orders,” and the word “injunctions”; and

2.46 each and every representation, warranty, covenant and undertaking of the Concessionaire set forth in this Agreement shall be interpreted and construed as a representation, warranty, covenant and undertaking binding upon each of the Partners, on a joint and several basis.

3. BASIS FOR IRR AND TAXES CALCULATIONS

In this Agreement any IRR or any amount calculated by reference to or in respect of or connected to any IRR, shall be calculated on the following bases, unless the express provisions of this Agreement otherwise require:

- (a) [not used];
- (b) the date of any payment shall be taken into account;
- (c) the Concessionaire shall be deemed to be a separate taxable Canadian corporation (within the meaning of the ITA) carrying out the Project;
- (d) the assumptions relating to the amount of Taxes the Partners will pay as a result of carrying on the Project set out in the Base Case Financial Model apply to the deemed corporation at all times; and
- (e) there is no change to any law relating to Taxes at any time after the date of execution hereof except for proposed changes publicly announced as of the Commencement Date.

SCHEDULE 2

FINANCIAL MATTERS

Part 1

BASE CASE FINANCIAL MODEL

Schedule 2 Part 1 Severed in its Entirety

SCHEDULE 2**FINANCIAL MATTERS****Part 1****BASE CASE FINANCIAL MODEL**

The Parties agree that the Financial Base Case to be incorporated as this Part 1 is to be substantially in the form of the Financial Model contained in the financial model submitted by Trans-Park Highway Group to the Province with its proposal submission in respect of the Project along with the Model User Guide, finalized at Financial Close in accordance with the letter dated October 16, 2005 from Steve Hollett to Steve Small (the "Closing Letter Agreement").

SCHEDULE 2

FINANCIAL MATTERS

Part 2

FORM OF DIRECT AGREEMENT

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

and

BC TRANSPORTATION FINANCING AUTHORITY

and

CIT GROUP SECURITIES (CANADA) INC.

and

TRANS-PARK HIGHWAY GENERAL PARTNERSHIP

and

TRANS-PARK HIGHWAY FINANCE INC.

**Direct Agreement
for the
Kicking Horse Canyon Project
Concession Agreement**

THIS DIRECT AGREEMENT is made as of the 28th day of October, 2005

BETWEEN:

- (1) **HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA**, as represented by the **MINISTER OF TRANSPORTATION** (the "**Province**")

AND

- (2) **BC TRANSPORTATION FINANCING AUTHORITY**, a corporation continued under the *Transportation Act*, S.B.C. 2004, c. 44 (the "**BCTFA**")

AND

- (3) **CIT GROUP SECURITIES (CANADA) INC.**, a corporation incorporated under the laws of the Province of Ontario, for itself and as agent and trustee for and on behalf of the Senior Funders (the "**Agent**")

AND

- (4) **TRANS-PARK HIGHWAY GENERAL PARTNERSHIP**, a general partnership established under the laws of the Province of British Columbia (the "**Concessionaire**")

AND

- (5) **TRANS-PARK HIGHWAY FINANCE INC.**, a corporation incorporated under the laws of British Columbia (the "**Issuer**")

WHEREAS:

- (A) The Province, BCTFA and the Concessionaire have entered into the Concession Agreement.
- (B) By the Senior Funding Agreements, the Senior Funders have agreed to make available certain credit facilities to the Issuer and the Concessionaire.
- (C) It is a requirement of the Concession Agreement and of the Senior Funding Agreements that this Agreement will be entered into by the Parties hereto.

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

1. **DEFINITIONS AND INTERPRETATION**

1.1 **Definitions**

In this Agreement (including the recitals), unless the context otherwise requires, the following expressions have the following meanings:

“Agent’s Election” has the meaning given in Section 27.3.

“Appointed Representative” means a Representative that has assumed the Concessionaire’s rights under the Concession Agreement pursuant to Section 4.1.2.

“Appointed Representative Notice” has the meaning given in Section 4.1.1.

“Associate” means, in respect of a relevant person, a person that is an “associate” as that term is defined in the *Canada Business Corporations Act* as at the date of this Agreement. For greater certainty, this definition will not be changed in the event of an amendment to the definition of “associate” contained in the said *Canada Business Corporations Act* following the date of this Agreement.

“Availability/Performance Deductions” has the meaning given in the Concession Agreement.

“Collateral Agreement” has the meaning given in the Concession Agreement.

“Concession Agreement” means the agreement titled “Kicking Horse Canyon Project Phase 2 Concession Agreement” among the Province, BCTFA and the Concessionaire dated as of the 28th day of October, 2005 pursuant to which the Concessionaire has been engaged to carry out the Project, as the same may be amended, modified, supplemented or replaced from time to time.

“Court” means any court of competent jurisdiction.

“Default Interest Rate” means **DELETED** per annum above the Interest Rate.

“Design-Build Contract” has the meaning given in the Concession Agreement.

“Enforcement Action” means any acceleration of amounts due and owing under any of the Senior Funding Agreements and/or any enforcement procedure or enforcement action commenced or taken under any of the Security (including, for greater certainty, the exercise of any step-in rights under any direct or collateral agreement with the Contractor or the Operator).

“Enforcement Event” means an event of default under any of the Senior Funding Agreements or the Security Documents or any other event which permits Enforcement Action.

“Event of Default” has the meaning given in the Concession Agreement.

“Exercise Date” has the meaning given in Section 3.5.2.

“Indebtedness Notice” has the meaning given in Section 3.1.1.2.

“Interest Rate” has the meaning given in the Concession Agreement.

“Liquid Market” has the meaning given in the Concession Agreement.

“Net No Federal Funding Amount” has the meaning given in Section 3A.1.

“No Federal Funding Account” means a bank account established at a bank in British Columbia by the Agent on behalf of the Senior Funders.

“No Liquid Market Notice” has the meaning given in Section 3.6.1.

“Novation Effective Date” means the later of:

- (a) the Proposed Novation Date (unless an approval of the Lieutenant Governor in Council is required to be obtained pursuant to subsection 2(1) of the Transportation Investment Act in connection with the proposed novation and is not obtained by such date); and
- (b) the date which is 7 days after the date on which: (a) the Province has consented in accordance with this Agreement, and (b) any required approval of the Lieutenant Governor in Council has been obtained, in respect of the proposed novation.

“Operating and Maintenance Contract” has the meaning given in the Concession Agreement.

“Operations” has the meaning given in the Concession Agreement.

“Project” has the meaning given in the Concession Agreement.

“Project Documents” has the meaning given in the Concession Agreement.

“Project Facilities” has the meaning given in the Concession Agreement.

“Proposed Novation Date” means the date on which it is proposed by the Agent under Section 5.1 [Proposed Substitute Concessionaire] that a novation will become effective.

“Proposed Novation Notice” has the meaning given in Section 5.1 [Proposed Substitute Concessionaire].

“Proposed Substitute Concessionaire” has the meaning given in Section 5.1 [Proposed Substitute Concessionaire].

“Province Collateral Agreement Notice” has the meaning given in Section 3.5.1.1.

“Province’s Representative” has the meaning given in the Concession Agreement.

“Representative” means:

- (a) the Agent, any Senior Funder and/or any of their Affiliates;

- (b) an administrative receiver, receiver or receiver and manager of the Concessionaire appointed under the Security Documents or by an order of the Court;
- (c) an administrator of the Concessionaire;
- (d) a person directly or indirectly owned or controlled by the Agent and/or any Senior Funder(s); or
- (e) any other person approved by the Province (such approval not to be unreasonably withheld or delayed).

“Required Period” means, subject to Section 3.6 [No Liquid Market], the period starting on the date of a Termination Notice and ending 90 days later.

“Restricted Person” has the meaning given in the Concession Agreement.

“Security” means the security interests in the Project Documents, the Concession Agreement and any other assets which the Province has the right to acquire or obtain pursuant to the Concession Agreement, which security interests are granted by the Concessionaire to the Agent pursuant to the Security Documents and such other security documents as may be required by the Senior Funders and granted in conformity with the requirements of the Concession Agreement.

“Security Documents” means:

- (a) General Security Agreement granted by the Issuer in favour of CIT Group Securities (Canada) Inc., indenture trustee and noteholders;
- (b) General Security Agreement granted by the Concessionaire in favour of CIT Group Securities (Canada) Inc., indenture trustee and noteholders;
- (c) Design-Builder - Funders Direct Agreement granted by Flatiron Constructors Canada Limited and Parsons Overseas Company of Canada Ltd. in favour of CIT Group Securities (Canada) Inc., indenture trustee and noteholders;
- (d) Operator-Funders Direct Agreement granted by the Operator in favour of CIT Group Securities (Canada) Inc., indenture trustee and noteholders;
- (e) Pledge by Trans-Park Highway Investment Inc. of its partnership interest in the Concessionaire, and of its shares in Trans-Park Highway Inc., in favour of CIT Group Securities (Canada) Inc., indenture trustee and noteholders;
- (f) Pledge by Trans-Park Highway Inc. of its partnership interest in the Concessionaire in favour of CIT Group Securities (Canada) Inc., indenture trustee and noteholders;
- (g) Pledge by Trans-Park Highway Holding Inc. of its shares in Trans-Park Highway Investment Inc. and Trans-Park Finance Inc., and any related limited recourse guarantee, in favour of CIT Group Securities (Canada) Inc., indenture trustee and noteholders;

- (h) Assignment by way of security of all the Issuer / Concessionaire rights in Accounts and Insurance in favour of CIT Group Securities (Canada) Inc., indenture trustee and noteholders;
- (i) Blocked Accounts Agreement (Proceeds) between the Issuer, the Concessionaire, Citibank, CIT Group Securities (Canada) Inc. and indenture trustee;
- (j) Blocked Accounts Agreement (General) between the Issuer, the Concessionaire, Citibank, CIT Group Securities (Canada) Inc. and indenture trustee; and
- (k) Assignment by way of security of all Concessionaire rights in Material Agreements in favour of CIT Group Securities (Canada) Inc., indenture trustee and noteholders; and
- (l) Permitted Investment Agreement between the Issuer, the Concessionaire, Royal Bank of Canada, CIT Group Securities (Canada) Inc. and indenture trustee,

each in the form delivered to the Province by the Concessionaire on the Commencement Date as the same may be amended, modified, supplemented and/or replaced from time to time to the extent permitted under Section 2.3.3 of the Concession Agreement.

“Senior Funders” has the meaning given in the Concession Agreement.

“Senior Funding Agreements” means:

- (a) Note Indenture among the Issuer as issuer, the Concessionaire as guarantor, Computershare Trust Company of Canada as indenture trustee, and CIT Group Securities (Canada) Inc. as the administrative agent;
- (b) [Not Used]; and
- (c) the documents described in the definition of Security Documents,

each in the form delivered to the Province by the Concessionaire on the Commencement Date as the same may be amended, modified, supplemented and/or replaced from time to time to the extent permitted under Section 2.3 [Project Documents] of the Concession Agreement.

“Shareholders” has the meaning given in the Concession Agreement.

“Step-In Date” means the later of:

- (a) the date on which the Province receives a Step-In Notice from the Agent; and
- (b) the date on which any required approval of the Lieutenant Governor in Council has been obtained in respect of the proposed step-in.

“Step-In Date” means the date on which the Province receives a Step-In Notice from the Agent.

“Step-In Expiry Date” means the date which is 24 months after the Step-In Date.

“Step-In Notice” has the meaning given in Section 4.1.2.

“Step-In Period” means the period commencing on the Step-In Date and ending on the earlier of:

- (a) the Step-In Expiry Date;
- (b) the Step-Out Date; and
- (c) the Novation Effective Date.

“Step-Out Date” has the meaning given in Section 4.2.1.

“Subcontracts” has the meaning given in Section 3.5.1.

“Subsequent Indebtedness Notice” has the meaning given in Section 3.1.2.

“Substitute” has the meaning given in the Collateral Agreements.

“Substitute Designation Notice” has the meaning given in the Collateral Agreements.

“Suitable Substitute Concessionaire” has the meaning given in Section 5.5.1.

“Termination Notice” has the meaning given in Section 3.1.1.1.

“Warning Notice” has the meaning given in the Concession Agreement.

“Working Day” has the meaning given in the Concession Agreement.

“Works” has the meaning given in the Concession Agreement.

1.2 **Interpretation**

Except to the extent that the context or the express provisions of this Agreement otherwise require:

- 1.2.1 headings and sub-headings are for ease of reference only and shall not be taken into consideration in the interpretation or construction of this Agreement;
- 1.2.2 all capitalized terms used in this Agreement which are not otherwise defined will have the respective meanings given to such terms in the Concession Agreement;
- 1.2.3 all references to Sections are references to Sections of this Agreement;
- 1.2.4 all references to any agreement, document, standard, principle or other instrument include (subject to all relevant approvals and any other provision of this Agreement and the Concession Agreement expressly concerning such agreement, document, standard, principle or other instrument) a reference to that agreement, document,

- standard, principle or instrument as amended, supplemented, substituted, novated or assigned;
- 1.2.5 all references to time of day are references to Pacific Standard time or Pacific Daylight Saving time, as the case may be;
- 1.2.6 all monetary amounts are expressed in Canadian Dollars;
- 1.2.7 words importing the singular include the plural and vice versa;
- 1.2.8 words importing a particular gender include all genders;
- 1.2.9 “person” includes an individual, corporation, partnership, joint venture, association, trust, pension fund, union, government, governmental body, governmental agency, authority, board, tribunal, commission or department and the heirs, beneficiaries, executors, personal or other legal representatives or administrators of an individual, and the receivers and administrators of a corporation;
- 1.2.10 any reference to a public organization shall be deemed to include a reference to any successor to such public organization or any organization or entity which has taken over the functions or responsibilities of such public organization;
- 1.2.11 references to “Parties” mean the parties to this Agreement (including, in the case of references to the Agent, the Senior Funders) and references to a “Party” mean any one of the parties to this Agreement;
- 1.2.12 whenever the terms “will” or “shall” are used in this Agreement they are to be construed and interpreted as synonymous and are to be read as “shall”;
- 1.2.13 all accounting and financial terms used herein are, unless otherwise indicated, to be interpreted and applied in accordance with Canadian generally accepted accounting principles, consistently applied;
- 1.2.14 the words of this Agreement are to be given their natural meaning. The Parties have had the opportunity to take legal advice on this Agreement and no term is, therefore, to be construed *contra proferentem*;
- 1.2.15 the words “includes” or “including” are to be construed as being without limitation;
- 1.2.16 general words are not given a restrictive meaning:
- 1.2.16.1 if they are introduced by the word “other”, by reason of the fact that they are preceded by words indicating a particular class of act, matter or thing; or
- 1.2.16.2 by reason of the fact that they are followed by particular examples intended to be embraced by those general words;
- 1.2.17 if the time for doing an act falls or expires on a day that is not a Working Day, the time for doing such act will be extended to the next Working Day;

- 1.2.18 the Province will not be imputed with knowledge of any fact, matter or thing unless that fact, matter or thing is within the actual knowledge of those of its employees or agents (including the Province's Representative) who have responsibilities in connection with the conduct of the Operations or the Project;
- 1.2.19 no provision of this Agreement is intended to derogate from or be inconsistent with or in conflict with any Laws and Regulations and should not be interpreted in a manner as to result in any derogation, inconsistency or conflict and if any such provision is found by a court of competent jurisdiction to be inconsistent with or in conflict with any Laws and Regulations, the applicable Laws and Regulations will prevail and such provision will be read down or rendered inoperative (either, generally or in such particular situation, as appropriate), to the extent of such conflict or inconsistency, as the case may be, and if any such provision is found by a court of competent jurisdiction to derogate from any Laws and Regulations, then such provision will be read down or rendered inoperative (either, generally or in such particular situation, as appropriate) to the extent of the derogation and for purposes of this Section 1.2.19, the following will be excluded from the definition of the defined phrase "Laws and Regulations": "and the law of equity", "ordinances", "codes (including design and construction codes)", "directives", "guidelines", and "rules or policies of any Governmental Authority", and the word "or" will be added between the word "orders," and the word "injunctions"; and
- 1.2.20 each and every representation, warranty, covenant and undertaking of the Concessionaire set forth in this Agreement shall be interpreted and construed as a representation, warranty, covenant and undertaking binding upon each of the Partners, on a joint and several basis.

2. NOTICE AND ACKNOWLEDGMENTS

2.1 Notice of Security Interests

Without prejudice and subject to Section 6 [Rights of the Province], the Agent on behalf of the Senior Funders hereby gives notice to the Province that the Concessionaire has, concurrently with the execution and delivery of this Agreement, assigned, pledged, charged and granted a security interest under the Security Documents of the right, title, benefit and interest of the Concessionaire in and to the Concession Agreement and the Project Documents.

2.2 Acknowledgment of Security Assignment

Without prejudice and subject to Section 6 [Rights of the Province], the Province acknowledges that it has received notice of and to the extent necessary consents to the assignment, pledge, charge and grant referred to in Section 2.1 [Notice of Security Interests]. The Province confirms that it has not received notice of any other assignment or security interest granted over the Concessionaire's rights under the Concession Agreement and the Project Documents.

2.3 Concession Agreement Dealings

Notwithstanding the assignment referred to in Section 2.1 [Notice of Security Interests] or the granting of any other Encumbrance in or over the Concession Agreement by or pursuant to

the Senior Funding Agreements, and without prejudice to Section 6 [Rights of the Province], until the Province is notified by the Agent to the contrary the Province will be entitled (save to the extent expressly provided otherwise in this Agreement) to exercise or enforce all rights, discretions and remedies under or in respect of the Concession Agreement and to perform or discharge its obligations under the Concession Agreement to the Concessionaire as if the Concessionaire was at all times the absolute and beneficial owner of all right, title, benefit and interest in and to the Concession Agreement. Without limiting the generality of the foregoing, the Province may make all payments under the Concession Agreement to the account of the Concessionaire specified in the relevant invoice issued by the Concessionaire, until otherwise notified by the Agent at least 7 Working Days prior to the payment date (whereupon any such payment will be made to or to the order of the Agent).

2.4 Agreements and Security Documents

- 2.4.1 The Concessionaire, the Agent and the Senior Funders will not amend or modify the Senior Funding Agreements, or any of them, except where the Concessionaire is permitted to do so pursuant to the Concession Agreement.
- 2.4.2 The Agent acknowledges having received a copy of the Concession Agreement and a copy of the Collateral Agreements with each of the Contractor and the Operator.
- 2.4.3 The Province acknowledges having received copies of the Senior Funding Agreements.
- 2.4.4 The Agent confirms to the Province that the copies of the Senior Funding Agreements provided to the Province for acknowledgement under Section 2.4.3 constitute all of the Senior Funding Agreements.

2.5 Assignment of Security Documents, Project Documents and Concession Agreement

- 2.5.1 Except for a transfer to a successor Agent to whom the rights and obligations of the Agent under this Agreement have been assigned or transferred in accordance with Section 8.2, the Agent will not exercise any right it may have pursuant to the Security Documents to assign, transfer or otherwise dispose of any right, title or interest it may have in, or obligations it may have pursuant to, the Security Documents in respect of the Concession Agreement or the Project Documents without the prior written consent of the Province.
- 2.5.2 Except as provided for in this Agreement, the Agent will not exercise any right it may have pursuant to the Security Documents to assign, transfer or otherwise dispose of the Project Documents or the Concession Agreement or any of them or any interest therein without the prior written consent of the Province.

2.6 Notification re Additional Permitted Borrowing

The Agent, in respect of Section 2.6.1 below, and the Concessionaire, in respect of Section 2.6.2 below, will promptly notify the Province of:

- 2.6.1 the details and amount of any proposed Additional Permitted Borrowing, including:
 - 2.6.1.1 the circumstances giving rise to the Additional Permitted Borrowing and reasons for the Additional Permitted Borrowing; and
 - 2.6.1.2 the terms on which the Additional Permitted Borrowing will be borrowed;
- 2.6.2 on the first Working Day of each calendar month during which any Additional Permitted Borrowing is, or may be, subsisting, the amount outstanding under the Senior Funding Agreements, and, to the extent it is aware (having made reasonable and proper enquiry):
 - 2.6.2.1 the amount of any Distribution made by the Concessionaire; and
 - 2.6.2.2 the amount of any credit balance on any account of the Concessionaire.

3. NOTICES OF TERMINATION AND ENFORCEMENT

3.1 Termination Notice

- 3.1.1 The Province will not terminate or give a notice terminating the Concession Agreement as a result of an Event of Default (other than in accordance with this Agreement) unless:
 - 3.1.1.1 the Province gives the Agent at least the Required Period of prior written notice (a "**Termination Notice**") specifying the Event of Default in reasonable detail;
 - 3.1.1.2 within 30 days of delivering a Termination Notice the Province gives notice (an "**Indebtedness Notice**") to the Agent setting out:
 - 3.1.1.2.1 all amounts of which the Province is aware which are due and payable by the Concessionaire under the Concession Agreement as at the date on which the Province delivered the Termination Notice; and
 - 3.1.1.2.2 all amounts of which the Province is aware which will become due and payable by the Concessionaire under the Concession Agreement on or before the end of the Required Period; and
 - 3.1.1.3 within the Required Period the Province has not received a Step-In Notice from the Agent.

- 3.1.2 At any time after the Province delivers an Indebtedness Notice but before the Province receives a Step-In Notice, if the Province discovers amounts that have become owing by the Concessionaire to the Province but which were not included in the Indebtedness Notice, the Province may deliver a further notice (a “**Subsequent Indebtedness Notice**”) to the Agent setting out those amounts.

3.2 Revocation of Notice

A Termination Notice can be revoked (by notice to the Agent) by the Province prior to the expiry of the Required Period. Upon any such revocation, the rights and obligations of the Parties will be construed as if the relevant Termination Notice had not been given.

3.3 Notice of Exercise of Other Remedies

The Province will notify the Agent promptly, and in any event within 7 days, of a notice given by or on behalf of the Province to the Concessionaire under Section 26 [Monitoring of Performance] or Section 40 [Default] of the Concession Agreement.

3.4 Notice of Enforcement or Intention to Enforce by Agent

The Agent undertakes to give notice to the Province:

- 3.4.1 of the occurrence of any Enforcement Event, specifying particulars of the Enforcement Event in reasonable detail; and
- 3.4.2 at the same time as it requests the agreement or authority of any of the Senior Funders, or gives notice to any of the Senior Funders of its intention, to take any Enforcement Action, specifying particulars of the Enforcement Action in respect of which the request is made or the notice is given in reasonable detail.

The notice referred to in Section 3.4.1 will be given promptly and in any event not less than 7 days before any Enforcement Action is taken in respect of the Concession Agreement or any of the Project Documents.

3.5 Priorities of Step-In Rights under Collateral Agreements

- 3.5.1 Notwithstanding any provision in the Collateral Agreements, neither the Province nor BCTFA will, prior to the Exercise Date, exercise any right it may have to step-in and assume (or cause a third party designated by the Province or BCTFA to step-in and assume) the Concessionaire’s rights and obligations under the Design-Build Contract or the Operating and Maintenance Contract (collectively, the “**Subcontracts**”) (including, without limitation, the issuance of a step-in notice by the Province or BCTFA pursuant to any Collateral Agreement), or to transfer, novate or assign such Subcontract, unless:

- 3.5.1.1 the Province or BCTFA delivers notice (a “**Province Collateral Agreement Notice**”) to the Agent of the Province’s or BCTFA’s intention to step-in and assume (or cause a third party designated by the Province or BCTFA to step-in and assume) the Concessionaire’s rights and obligations under any such Subcontract, or to transfer, novate or assign any such Subcontract; and

- 3.5.1.2 within 30 days of sending the Province Collateral Agreement Notice the Province has not received a copy of a notice sent by the Agent and received by the Concessionaire exercising the Senior Funders' rights to step-in and assume any of the Concessionaire's rights or obligations under such contract, or to transfer, novate or assign such contract (and, if the Agent on behalf of the Senior Funders completes such step-in and assumption of the Concessionaire's rights and obligations under such contract or such transfer, novation or assignment of such contract subsequent to the expiry of the aforesaid 30 day period and within 90 days of delivery of the Province Collateral Agreement Notice then the Province Collateral Agreement Notice will cease to have effect provided the relevant contract has not been transferred, novated or assigned by the Province).
- 3.5.2 From the date of termination of the Concession Agreement (the "**Exercise Date**"), provided always that the Province has complied with Sections 6.2 and 6.3 of this Agreement, the Province or BCTFA will be entitled to exercise its rights under the Collateral Agreements to step-in and assume (or cause a third party designated by the Province or BCTFA to step-in and assume) the Concessionaire's rights and obligations under, or to transfer, novate or assign the Subcontracts (or any thereof) in accordance with the Collateral Agreements.
- 3.5.3 The Agent will release and discharge at no cost to the Province all Security in respect of the Design-Build Contract and/or the Operating and Maintenance Contract if such contract is assumed, transferred, novated or assigned by the Province (or by a third party designated by the Province or BCTFA) pursuant to a Collateral Agreement; provided, however, that where any such contract is assumed, transferred, novated or assigned by the Province following termination of the Concession Agreement pursuant to Section 40 [Default] of the Concession Agreement and the termination sum paid by the Province pursuant to Section 44.2 [Compensation on Termination for Concessionaire Default] of the Concession Agreement is less than the Revised Senior Debt Termination Sum, the Agent will not (to the extent only of the difference between the Revised Senior Debt Termination Sum and the termination sum paid by the Province as aforesaid) be required to release its security in respect of any claims which the Concessionaire may have against the Contractor or the Operator (as the case may be) which arose prior to the date of the aforesaid assumption, transfer, novation or assignment.
- 3.5.4 Without prejudice to Section 3.5.3 of this Agreement, the Agent will release and discharge all Security as soon as reasonably possible after the Exercise Date and the payment of any termination sum payable under Section 44 [Compensation on Termination] of the Concession Agreement (provided, however, that notwithstanding such release and discharge of the Security the Agent will retain the benefit of the Security in respect of claims which the Concessionaire may have against the Province or BCTFA under the Concession Agreement which arose prior to the Exercise Date if and to the extent only that the termination sum payable by the Province pursuant to Section 44.2 [Compensation on Termination for Concessionaire Default] of the Concession Agreement is less than the Revised Senior Debt Termination Sum).

- 3.5.5 Neither the Senior Funders nor the Agent or any Representative will transfer, novate or assign any Project Documents referred to in Sections 2.3.1.5 to 2.3.1.7 (inclusive) of the Concession Agreement except to a Suitable Substitute Concessionaire in conjunction with a permitted transfer, novation or assignment of the Concession Agreement to that Suitable Substitute Concessionaire.

3.6 No Liquid Market

- 3.6.1 At any time during the Required Period the Agent may issue a written notice (the “**No Liquid Market Notice**”) to the Province setting out the reasons why the Agent does not believe that a Liquid Market exists.
- 3.6.2 On or before the date falling 14 days after the date on which a No Liquid Market Notice is received by the Province, the Province will notify the Agent of its opinion as to whether or not a Liquid Market exists. Where the Province believes that a Liquid Market does exist, such notice will set out the reasons for the Province’s belief. If the parties do not agree whether or not a Liquid Market exists, then either the Province or the Agent may refer the dispute to be determined in accordance with Section 52 [Disputes Resolution Procedure] of the Concession Agreement.
- 3.6.3 If the parties agree or it is determined in accordance with Section 52 [Disputes Resolution Procedure] of the Concession Agreement that no Liquid Market exists, the Concession Agreement will automatically terminate and the provisions of Section 44.2.4 [No Rebidding Procedure] of the Concession Agreement will apply.
- 3.6.4 If any dispute relating to this Section 3.6 is determined under Section 52 [Disputes Resolution Procedure] of the Concession Agreement, the Required Period will be extended by the period of time spent determining such dispute under Section 52 [Disputes Resolution Procedure].

3A. TERMINATION FOR FAILURE TO OBTAIN FEDERAL FUNDING

- 3A.1 In the event the Province terminates the Concession Agreement under Section 42.6 [Termination for Failure to Obtain Federal Funding] of the Concession Agreement, the Province will pay the amount payable in respect of the No Federal Funding Termination Sum less the Employee Termination Payments and any Subcontractor Breakage Costs components of the No Federal Funding Termination Sum (the “Net No Federal Funding Amount”) at the time and in the manner the Province is required to pay the No Federal Funding Termination Sum under the Concession Agreement to the Concessionaire to the credit of the Agent on behalf of the Senior Funders in the No Federal Funding Account in full satisfaction of the Province’s obligations to pay the Net No Federal Funding Amount to the Concessionaire under the Concession Agreement.
- 3A.2 On or before the date falling 14 days prior to the date the Province is obligated to make the Net No Federal Funding Amount under Section 3A.1, the Agent will notify the Province and the Concessionaire of the No Federal Funding Account particulars.
- 3A.3 On payment by the Province of the Net No Federal Funding Amount into the No Federal Funding Account as required by Section 3A.1, each of the Concessionaire and the Agent on behalf of the Senior Funders acknowledge and confirm that such payment shall be deemed absolutely and irrevocably to relieve the Province from making the Net No Federal Funding

Amount component of the No Federal Funding Termination Sum payment to the Concessionaire under the terms of the Concession Agreement.

4. **STEP-IN AND STEP-OUT**

4.1 **Step-In**

4.1.1 At least 10 days before the Agent delivers a Step-In Notice, the Agent will deliver notice (an “**Appointed Representative Notice**”) to the Province of:

4.1.1.1 its intention to deliver a Step-In Notice; and

4.1.1.2 the identity of its proposed Appointed Representative.

4.1.2 If, at any time:

4.1.2.1 during the Required Period, or

4.1.2.2 during which an Enforcement Event is subsisting (whether or not a Termination Notice has been given by the Province),

the Agent gives notice (a “**Step-In Notice**”) to the Province electing to appoint the Appointed Representative identified in an Appointed Representative Notice delivered pursuant to Section 4.1.1, together with a written consent from the Appointed Representative confirming its consent to act in such capacity, then during the Step-In Period the Appointed Representative will assume, jointly with the Concessionaire, all of the Concessionaire’s rights under the Concession Agreement.

4.1.3 During the Step-In Period, the Province will deal with the Appointed Representative instead of the Concessionaire in connection with all matters related to the Concession Agreement, and the Concessionaire agrees to be bound by all such dealings between the Province and the Appointed Representative to the same extent as if they had been between the Province and the Concessionaire. The Appointed Representative will at all times during the Step-In Period grant to the Province and its authorized representatives timely, full, complete and unrestricted access to all of the Concessionaire’s and the Appointed Representative’s books, records and information in order to enable the Province to monitor the performance of the obligations under the Concession Agreement.

4.2 **Step-Out**

4.2.1 The Agent or the Appointed Representative (where an Appointed Representative has been appointed) may at any time during the Step-In Period give the Province at least 60 days notice to terminate the Step-In Period on a date (to be specified in the notice) (the “**Step-Out Date**”) prior to the Step-In Expiry Date.

4.2.2 On the Step-Out Date the Appointed Representative will be released from all of its obligations and liabilities to the Province under the Concession Agreement arising prior to the Step-Out Date and all rights of the Appointed Representative against the Province and BCTFA under the Concession Agreement will be cancelled.

- 4.2.3 The Concessionaire will continue to be bound by the terms of the Concession Agreement, notwithstanding the occurrence of the Step-Out Date.

5. **NOVATION**

5.1 **Proposed Substitute Concessionaire**

At any time:

- 5.1.1 after an Enforcement Event has occurred; or
- 5.1.2 prior to the expiry of a Termination Notice; or
- 5.1.3 during the Step-In Period,

the Agent may give notice on behalf of the Senior Funders (a “**Proposed Novation Notice**”) to the Province that it wishes to novate the Concessionaire’s rights and obligations under the Concession Agreement to another person (a “**Proposed Substitute Concessionaire**”) in accordance with the provisions of Section 5.5 [Implementation of Novation]. The Proposed Novation Notice will specify a Working Day, falling not later than 60 days after the date of the Proposed Novation Notice, on which such novation is to be effective. Subject to Sections 5.3.3 and 6.2.4, if a Proposed Novation Notice is given pursuant to Section 5.1.2 and no Step-In Notice has been given, the Province will not be entitled to give a notice terminating the Concession Agreement as a result of the occurrence of an Event of Default prior to the expiry of the 60-day period referred to above; provided, however, that the Province’s right to terminate the Concession Agreement due solely to the expiry of the aforesaid 60-day period or to the fact that a Novation Effective Date has not occurred within such period will be suspended in the circumstances described in Section 5.3.3 pending resolution of any dispute referred to therein.

5.2 **Information for Consent to Novation**

Without limiting any other provisions of this Agreement, a novation in accordance with a Proposed Novation Notice will only be effective if the Province consents to that novation in writing in accordance with Section 5.3 [Grant of Consent]. The Agent will (as soon as practicable) supply the Province with such information as the Province reasonably requires to enable the Province to decide whether to grant such consent, including without limitation in relation to the Proposed Substitute Concessionaire:

- 5.2.1 its name and registered address;
- 5.2.2 the names of its shareholders and the share capital held by each of them;
- 5.2.3 the names of its directors and officers;
- 5.2.4 the manner in which it is proposed to finance the Proposed Substitute Concessionaire and the extent to which such financing is committed; and
- 5.2.5 the resources (including employees with appropriate qualifications, experience and technical competence, and contracts) which are available to the Proposed

Substitute Concessionaire to enable it (as relevant) to construct, complete, maintain, operate and rehabilitate the Project Facilities, the Site and the Adjacent Areas and otherwise perform the obligations of the Concessionaire under the Concession Agreement.

5.3 **Grant of Consent**

5.3.1 The Province will not unreasonably withhold its consent to a proposed novation, but it will, without limitation, be reasonable for the Province to withhold its consent if the Agent has failed to show to the Province's reasonable satisfaction:

5.3.1.1 the legal capacity, power and authority of the Proposed Substitute Concessionaire to become a party to and perform the obligations of the Concessionaire under the Concession Agreement;

5.3.1.2 that the technical competence, experience and financial standing of the Proposed Substitute Concessionaire and the technical and financial resources available to the Proposed Substitute Concessionaire (including committed financing referred to in Section 5.2.4 and contracts referred to in Section 5.2.5) are sufficient to perform the obligations of the Concessionaire under the Concession Agreement;

5.3.1.3 that:

5.3.1.3.1 all of the shares in the Proposed Substitute Concessionaire; and

5.3.1.3.2 all rights to control and/or influence the activities of the Proposed Substitute Concessionaire,

are held or exercisable by entities which have been at all times wholly independent of and unconnected with the Concessionaire and any Associate of the Concessionaire and are not held or exercisable by any Restricted Person;

5.3.1.4 (if, in the case of a Proposed Novation Notice given pursuant to Section 5.1.2, the Termination Notice was given following the occurrence of the Event of Default referred to in Section 40.1.2 of the Concession Agreement) that the Proposed Substitute Concessionaire and each of the entities referred to in Section 5.3.1.3 is wholly independent of and unconnected with any person who acquired an interest in the Concessionaire, a Partner or Shareholder (as the case may be) giving rise to that Event of Default; and

5.3.1.5 that neither the Proposed Substitute Concessionaire nor any of its shareholders nor any Affiliates of the Proposed Substitute Concessionaire or any of its shareholders is a Restricted Person.

5.3.2 The Province will notify the Agent within 30 days of the later of receipt of a Proposed Novation Notice and receipt of all information required under Section 5.2

[Information for Consent to Novation] whether or not the Province has decided to grant such consent to the proposed novation.

- 5.3.3 If the Province notifies the Agent under Section 5.3.2 that the Province has decided not to consent to the proposed novation, then the Agent on behalf of the Senior Funders may by issuing and serving proceedings on the Province within 15 days of such notification refer any dispute concerning such matter to the Court and, where a Step-In Notice has been given, the Step-In Period will continue and the Province's right to terminate due solely to expiry of the Required Period will be suspended pending resolution of any dispute referred to in this Section 5.3.3 until it is finally agreed or determined by the Court or otherwise resolved between the parties whether the Province was reasonable in withholding its consent. If the Agent does not issue and serve such proceedings on the Province within such period of 15 days, it will be conclusively deemed to have accepted the Province's decision and neither the Agent, the Concessionaire nor any of the Senior Funders will be entitled to challenge the same.

5.4 Subsequent Proposed Novations

If the Province exercises its right under Section 5.3 [Grant of Consent] to withhold its consent to a proposed novation, this will not prejudice the ability of the Agent to give one or more subsequent Proposed Novation Notices pursuant to the provisions of Section 5.1 [Proposed Substitute Concessionaire] containing changed particulars relating to the same Proposed Substitute Concessionaire or particulars relating to another Proposed Substitute Concessionaire which the Agent has good cause to believe would fulfil the requirements of Section 5.3.1, provided that only one Proposed Novation Notice may be outstanding at any one time.

5.5 Implementation of Novation

If the Province consents to a novation pursuant to a Proposed Novation Notice, then on the Novation Effective Date:

- 5.5.1 the Proposed Substitute Concessionaire will become a party to the Concession Agreement (in such capacity, the "**Suitable Substitute Concessionaire**") in place of the Concessionaire and thereafter will be treated as if it was named as a party thereto in place of the Concessionaire;
- 5.5.2 subject to Section 43 [Effect of Termination] of the Concession Agreement, the Province and BCTFA will be released from all of their obligations to the Concessionaire under the Concession Agreement and all rights of the Concessionaire against the Province and BCTFA under the Concession Agreement will be cancelled and terminate;
- 5.5.3 the Province, BCTFA, the Concessionaire and the Suitable Substitute Concessionaire will enter into a novation agreement and any other requisite agreements in form and substance satisfactory to the Province, acting reasonably, pursuant to which the Suitable Substitute Concessionaire will be granted all of the rights and assume all of the obligations and liabilities of the Concessionaire under the Concession Agreement (whether actual, accrued, contingent or otherwise and whether arising on, before or after the Novation Effective Date) and the

Concessionaire will be released from any obligations under or in connection with the Concession Agreement which arise from and after the date of the novation agreement, provided that the Province and BCTFA will not be in breach of any of their obligations hereunder if the Suitable Substitute Concessionaire or the Concessionaire fails to enter into such agreements;

- 5.5.4 the Province and BCTFA will owe their respective obligations under the Concession Agreement arising on and after the Novation Effective Date to the Suitable Substitute Concessionaire and the receipt, acknowledgement or acquiescence of the Suitable Substitute Concessionaire will be a good discharge;
- 5.5.5 the Province and BCTFA will enter into a direct agreement with the Senior Funders lending to the Suitable Substitute Concessionaire on substantially the same terms as this Agreement;
- 5.5.6 any Availability/Performance Deductions and Warning Notices that arose or were given prior to the Proposed Novation Date will be cancelled; and
- 5.5.7 any then subsisting grounds for termination of the Concession Agreement by the Province will be deemed to have no effect and any subsisting Termination Notice will be automatically revoked.

5.6 Continuation of Step-in Period

For greater certainty, if a Proposed Novation Notice is served during the Step-In Period and the Province does not consent to the proposed novation or any required approval of the Lieutenant Governor in Council is not obtained, the Step-In Period will continue (subject to the terms of this Agreement).

6. RIGHTS OF THE PROVINCE

6.1 Rights Not Prejudiced

The Parties hereby acknowledge that nothing in the Senior Funding Agreements, the Security Documents, this Agreement or any other agreement between any of them and the Concessionaire or the Province (including in particular but without limitation the service by the Agent of a Step-In Notice) will, except as expressly set out in this Agreement, affect in any way the rights of the Province under the Concession Agreement (but an exercise by the Province of those rights will not preclude a proper exercise by the Agent of its rights under this Agreement).

6.2 Rights of Termination

If:

- 6.2.1 a Termination Notice expires and no Step-In Notice or Proposed Novation Notice has been given (or any Proposed Novation Notice given has been withdrawn) prior to such expiry; or
- 6.2.2 the Step-In Period is terminated in accordance with Section 4.2 [Step-Out]; or

- 6.2.3 the Step-In Period ends and no Novation Effective Date has occurred; or
- 6.2.4 no Novation Effective Date has occurred within the period referred to in the second last sentence of Section 5.1 [Proposed Substitute Concessionaire], where applicable, unless: (a) in the case of a proposed novation to which the Province has consented pursuant to Section 5 [Novation], the Novation Effective Date has not occurred within the aforesaid period solely by reason of the approval of the Lieutenant Governor in Council being required to be obtained, pursuant to subsection 2(1) of the Transportation Investment Act, in relation to the proposed novation and such approval not having been obtained on or before that date which is 60 days after the Proposed Novation Date; and (b) an Agent's Election has been given to the Province within 15 days after the Agent first became entitled to give such election under Section 27.3,

then the Province will be entitled to act upon any grounds for termination available to it under the Concession Agreement whenever occurring and to terminate the Concession Agreement without further notice to the Agent.

6.3 Termination of Concession Agreement During Step-In Period

During the Step-In Period the Province will not exercise any right it may have to terminate the Concession Agreement:

- 6.3.1 solely on the grounds that the Agent has delivered a Step-In Notice or Proposed Novation Notice or (subject to compliance with the requirements of this Agreement) taken any Enforcement Action;
- 6.3.2 for an Event of Default that occurred before the Step-In Date that was not continuing at the Step-In Date;
- 6.3.3 for an Event of Default that occurred before the Step-In Date and was continuing at the Step-In Date, unless:
 - 6.3.3.1 the Event of Default relates to amounts referred to in Section 3.1.1.2.1 and the Province has not received full payment by the Step-In Date;
 - 6.3.3.2 the Event of Default relates to amounts referred to in Section 3.1.1.2.2 and the Province has not received full payment by the last day of the Required Period;
 - 6.3.3.3 the Event of Default relates to amounts set out in a Subsequent Indebtedness Notice and the Province has not received full payment by the date which is 30 days after the date on which the Province sent the Subsequent Indebtedness Notice to the Agent or the Step-In Date, whichever is later;
 - 6.3.3.4 the Event of Default relates to amounts, of which the Province was not aware at the time the Termination Notice was given, which subsequently become payable and are not discharged on or before the date falling 30 days after the date upon which the liability for the amounts is notified to the Agent;

- 6.3.3.5 the Event of Default relates to the Works, and the Appointed Representative is failing to use all reasonable efforts (including without limitation the implementation of any remedial program pursuant to Section 40.3.1.4(b) of the Concession Agreement) to remedy the Event of Default, or the Substantial Completion Date or the Final Completion Date does not occur on or before the date which is 6 months (or longer period, if agreed to in writing by the Province) after the Substantial Completion Longstop Date or the Final Completion Longstop Date, as applicable; or
- 6.3.3.6 the Event of Default relates to any aspect of the Operations other than the Works, and the Appointed Representative is failing to use all reasonable efforts (including without limitation implementation of any remedial program pursuant to Section 40.3.1.4.(b) of the Concession Agreement) to remedy the Event of Default, or the Event of Default remains unremedied on the date which is 60 days after the Step-In Date or such longer period of time, as may be agreed to by the Province and the Agent, each in its sole discretion, if the Event of Default is capable of being remedied but is not capable of being remedied by the Appointed Representative using all reasonable efforts during the initial 60 day period of time; or
- 6.3.4 on the basis of any Availability/Performance Deductions made or Warning Notices given to the Concessionaire before the Step-In Date, provided that all such Availability/Performance Deductions and Warning Notices will continue to have effect for all other purposes.

For greater certainty, the Province will be entitled to terminate the Concession Agreement by written notice to the Concessionaire and the Appointed Representative for an Event of Default that occurs during the Step-In Period in accordance with the terms of the Concession Agreement, provided that for the purposes of termination under the Concession Agreement, Availability/Performance Deductions made or Warning Notices given to the Concessionaire before the Step-In Date will not be taken into account during the Step-In Period but will be taken into account after the Step-In Period and for all other purposes.

6.4 Province's Step-In Rights

- 6.4.1 For greater certainty and without limiting the generality of Section 6.1 [Rights Not Prejudiced], the Province will be entitled at all times to exercise its rights under Sections 26.5 [Province's Remedial Rights], 40.3.1.3 and 43.1 [Step-In Rights] of the Concession Agreement respectively.
- 6.4.2 Without prejudice to the Province's rights under Sections 26.5 [Province's Remedial Rights] and 40.3.1.3 of the Concession Agreement, the Province's rights under Section 43.1 [Step-In Rights] and Section 26.5.1 of the Concession Agreement will continue until such time as the Appointed Representative or the Suitable Substitute Concessionaire has demonstrated to the reasonable satisfaction of the Province that it will ensure the performance and is capable of ensuring the performance of the obligations of the Concessionaire under the Concession Agreement, whereupon the Appointed Representative during the

Step-In Period or the Suitable Substitute Concessionaire (as the case may be) will be entitled to have access to the Site and the Adjacent Areas for the purpose of ensuring the performance of such obligations.

6.5 Set-off and Withholding of Payment

For greater certainty and without limiting the generality of Section 6.1 [Rights Not Prejudiced], the Parties acknowledge that the Province is entitled in priority to any competing claims:

- 6.5.1 to set-off, withhold, suspend or retain payments due to the Concessionaire under the Concession Agreement in accordance with the provisions of the Concession Agreement;
- 6.5.2 to require the application of insurance proceeds in accordance with the provisions of Section 20.7 [Application of Proceeds] of the Concession Agreement; and
- 6.5.3 without prejudice to Section 3.5.3 or Section 3.5.4 of this Agreement, to exercise rights in respect of the transfer of assets under the Concession Agreement including pursuant to Sections 43.4, 44.1.3, 44.2.1.2, 44.3.7, 44.4.3 and 44.5.2 of the Concession Agreement,

and the Parties (other than the Province and BCTFA) further acknowledge and undertake that any right, title or interest in the Concession Agreement or any rights arising thereunder acquired by the Agent or any of the Senior Funders under or pursuant to any of the Senior Funding Agreements, the Security Documents, this Agreement or any other agreement or instrument will at all times be subject to such entitlement to set-off, withhold, suspend or retain payments or contractual requirement or any other right or equity of or in favour of the Province in respect of the Concession Agreement. If and to the extent any of the Parties (other than the Province and BCTFA but including any of the Senior Funders) receives any proceeds of any insurance policy which have not been applied as they were required to be applied in accordance with the Concession Agreement, that Party will cause such proceeds to be so applied. If the Province exercises its rights to transfer assets under the Concession Agreement including pursuant to Sections 43.4, 44.1.3, 44.2.1.2, 44.3.7, 44.4.3 and 44.5.2 of the Concession Agreement such transfer will (subject to compliance with the Province's obligations under Section 43.4 of the Concession Agreement and without prejudice to Section 3.5.3 and Section 3.5.4 of this Agreement,) be made free of any rights of the Agent or any of the Senior Funders under or pursuant to any of the Senior Funding Agreements, the Security Documents or this Agreement and the Agent, at no cost to the Province, will release and discharge any such rights.

6.6 Retention Account

For greater certainty and without limiting the generality of Section 6.1 [Rights Not Prejudiced], and Section 6.5 [Set-off and Withholding of Payment], the Parties acknowledge the rights of the Province in the Concession Agreement in relation to the creation and operation of, and the application of sums standing to the credit of, the Retention Account, and the Agent on behalf of the Senior Funders agrees to execute such documents and take such action as may be reasonably required from time to time to give effect to such provisions of the Concession Agreement.

6.7 [Not Used]**6.8 Concessionaire's Obligations to Continue**

Subject to the terms of the novation and other agreements referred to in Section 5.5.3, the Concessionaire will continue to be liable for all of its obligations and liabilities, whenever occurring, under or arising from the Concession Agreement notwithstanding:

- 6.8.1 the giving of a Step-In Notice or the expiry of the Step-In Period; or
- 6.8.2 the giving of a Proposed Novation Notice; or
- 6.8.3 any other provision of this Agreement.

7. NATURE OF OBLIGATIONS**7.1 Province's and BCTFA's Obligations, etc.**

All of the obligations, undertakings and liabilities given, undertaken or arising on the part of the Province and BCTFA under this Agreement are given or owed solely to the Agent on behalf of the Senior Funders and (except as expressly provided herein) do not confer any rights on or in favour of the Concessionaire or any Associate of the Concessionaire, the Issuer or any other person.

7.2 Concessionaire Acknowledgment

The Concessionaire joins in this Agreement to acknowledge for itself the arrangements effected hereby and agrees with each of the other Parties to observe the provisions of this Agreement at all times and not in any way to prejudice or affect the enforcement hereof or to do or permit to be done anything which would be a breach hereof.

7.3 Issuer Jointly and Severally Liable

The Issuer shall be jointly and severally liable to observe and perform each of the obligations and liabilities of the Concessionaire hereunder.

8. ASSIGNMENT

8.1 The Concessionaire and the Issuer will not, without the prior written consent of the Province, assign, transfer, charge or otherwise dispose of any interest in this Agreement except to the extent permitted by the Concession Agreement and only if made concurrent with a permitted assignment, transfer, charge or other disposition of any of its interest in the Concession Agreement.

8.2 The Agent will not, without the prior written consent of the Province, assign, transfer, charge or otherwise dispose of any interest in this Agreement, provided that the Agent may (subject to the successor Agent entering into an agreement satisfactory to the Province ensuring that the successor Agent is bound by the terms of this Agreement and that the Agent will have assigned or transferred to the successor Agent all right, title and interest of the Agent in and to the Concession Agreement and the Project Documents held by the Agent pursuant to the Security Documents) assign or transfer its rights and obligations to a bank or financial

institution as a successor Agent under the Senior Funding Agreements without the consent of the Province provided that:

- 8.2.1 the Province's prior written consent to any such assignment or transfer will be required if and for so long as any Party (other than the Province or BCTFA) is in default of any of its obligations or liabilities under this Agreement; and
- 8.2.2 any such assignment or transfer will be without prejudice to the rights and remedies of the Province against the relevant Agent in respect of any liability or obligation of such Agent under this Agreement which is outstanding or undischarged at or prior to the date of such assignment or transfer.
- 8.3 The Province and BCTFA may novate, assign or otherwise transfer the benefit of the whole or part of this Agreement to any person who is a permitted novatee, assignee or transferee under Section 45.6 of the Concession Agreement and will notify the Concessionaire and the Agent in writing upon completion of such novation, assignment or transfer. If and to the extent that such novatee, assignee or transferee has assumed the obligations and liabilities of the Province under the Concession Agreement in connection with any novation, assignment or transfer effected pursuant to Section 45.6 of the Concession Agreement, the Province will cause the aforesaid novatee, assignee or transferee to assume the obligations and liabilities of the Province under this Agreement, whereupon the Province will be released from all of its obligations and liabilities hereunder. The Concessionaire and the Agent will do all things and execute all further documents as may be necessary in connection therewith.
- 8.4 Nothing in this Section 8 [Assignment] will prevent any Senior Funder from assigning or transferring its rights under the Senior Funding Agreements and the Security Documents in accordance with the terms of the Senior Funding Agreements and the Security Documents.

9. COUNTERPARTS

This Agreement may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all the Parties will constitute a full, original and binding agreement for all purposes. Counterparts may be executed either in original or faxed form provided that any Party providing its signature in faxed form will, upon any other Party's request, promptly forward to such Party an original signed copy of this Agreement which was so faxed.

10. PAYMENT

10.1 Payments

Any payment required to be made by any Party pursuant to this Agreement will be made in Canadian Dollars for value on the due date to such bank account of the recipient (located in the City of Victoria or the City of Vancouver, British Columbia) as the recipient may have specified for this purpose.

10.2 GST

All payments required to be made by any Party pursuant to this Agreement will be deemed to be exclusive of GST.

11. DEFAULT INTEREST

Each Party will be entitled, without prejudice to any other right or remedy, to receive interest on any payment under this Agreement not made on the due date calculated at the Default Interest Rate on a daily basis and on the basis of a 365 day year from the due date up to but excluding the date of payment.

12. WAIVER**12.1 Direct Agreement**

Failure by the Province at any time to enforce any provision of this Agreement or to require performance by the Agent or the Concessionaire of any of the provisions of this Agreement will not be construed as a waiver of any such provision and will not affect the validity of this Agreement or any part thereof or the right of the Province to enforce any provision in accordance with its terms.

12.2 Concession Agreement

Without prejudice to Section 6.1 [Rights Not Prejudiced], no failure to exercise or delay in exercising any rights of the Province under or in relation to the Concession Agreement (whether or not arising out of or in connection with or as a consequence of the discharge of the Province's rights under this Agreement) will be construed as a waiver of any such right nor will it affect the validity of the Concession Agreement or any part thereof or the right of the Province to enforce any provision of the Concession Agreement in accordance with its terms.

13. PARTIAL INVALIDITY

If at any time any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions of this Agreement nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired thereby.

14. CONFIDENTIALITY**14.1 Confidentiality**

Each Party agrees, for itself and its respective directors, officers, employees and agents, to keep confidential and not to disclose to any person (save as hereinafter provided) any of the terms of this Agreement or any information provided to or arising or acquired by it pursuant to the terms or performance of this Agreement or otherwise in relation to the Project (including without limitation all documents and information supplied in the course of legal proceedings) (together the "**Confidential Information**").

14.2 Exceptions

Notwithstanding Section 14.1 [Confidentiality], a Party will be entitled to disclose the whole or any part of the Confidential Information:

- 14.2.1 to its directors, officers, employees, sub-contractors, agents or professional advisors 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
- 14.2.2 when required to do so by Laws and Regulations or by or pursuant to the rules or any order having the force of law of any Court, association or agency of competent jurisdiction or any governmental agency; or
- 14.2.3 to the extent that the Confidential Information has, except as a result of breach of confidentiality, become publicly available or generally known to the public at the time of such disclosure; or
- 14.2.4 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; or
- 14.2.5 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; or
- 14.2.6 in the case of the Agent, to the Senior Funders and prospective permitted assignees and participants under the Senior Funding Agreements to the extent reasonably required by the Senior Funders in connection with their position as Senior Funders to the Project and to a prospective novatee of this Agreement; or
- 14.2.7 in the case of the Province and BCTFA:
 - 14.2.7.1 to the extent required for the purpose of the design, construction, completion, commissioning and testing of the Works, the operation, maintenance, rehabilitation or improvement of the Project Facilities or the carrying out by the Province, BCTFA or the Minister of any statutory or other duties or functions in respect of the Project Facilities in the event of termination of the Concession Agreement;
 - 14.2.7.2 (without limiting Section 14.2.2) in relation to the outcome of the procurement process for the Project as may be required to be published;
 - 14.2.7.3 to any department, office or agency of or constituting any Governmental Authority (including for greater certainty the Auditor General and the Office of the Comptroller General) where required for parliamentary, governmental, statutory or judicial purposes;
 - 14.2.7.4 whether or not falling within Section 14.2.7.2, to the Ministry, Partnerships BC and any other Governmental Authority; or

- 14.2.7.5 as required pursuant to the Freedom of Information and Protection of Privacy Act,

and, in the case of Section 14.2.1 and Section 14.2.6 above, upon obtaining from such person or entity to whom the disclosure is to be made an undertaking of strict confidentiality in relation to the Confidential Information in question.

14.3 Continuation of Confidentiality Obligations

The obligations of the parties under this Section 14 [Confidentiality] will continue for a period of 5 years following the date of termination of the Concession Agreement.

14.4 Publicity Regarding Disputes

Neither the Agent nor any of the Senior Funders will without the prior written consent of the Province publish alone or in conjunction with any other person any articles or other material relating to any dispute arising under this Agreement nor impart any information regarding any such dispute except to its professional advisors under obligations of confidentiality and except and to the extent that such publication arises out of any statutory or regulatory obligation applicable to the Agent or the relevant Senior Funder.

14.5 Remedies

Without prejudice to any other rights and remedies that any other Party would have, each of the Parties agrees that damages would not be an adequate remedy for any breach of this Section 14 [Confidentiality] and that the other Parties will be entitled to the remedies of injunction, specific performance and/or other equitable relief for any threatened or actual breach of this Section 14 [Confidentiality] subject, in the case of a claim for any such remedy against the Province, to the provisions of the *Crown Proceeding Act*, R.S.B.C. 1996, c. 89.

15. ENTIRE AGREEMENT

This Agreement (when read together with the Concession Agreement but without prejudice thereto, save to the extent affected hereby, and without prejudice to the Senior Funding Agreements and the Security Documents) contains or expressly refers to the entire agreement between the Parties with respect to the specific subject matter hereof and expressly excludes any warranty, condition or other undertaking implied at law or by custom and supersedes all previous agreements and understandings between the Parties with respect thereto, and each of the Parties acknowledges and confirms that it does not enter into this Agreement in reliance on any representation, warranty or other undertaking not fully reflected in the terms of this Agreement.

16. EXPIRY

16.1 Extinction of Rights

If:

- 16.1.1 the Concession Agreement expires or is terminated (except by the Province in breach of this Agreement) for whatever reason and, in the case of termination, any termination compensation payable by the Province as a consequence of the

termination in accordance with the provisions of the Concession Agreement is paid; or

- 16.1.2 all sums due and owing to the Senior Funders by the Concessionaire under the Senior Funding Agreements are repaid by the Concessionaire and the Senior Funders are not required to make further advances to the Concessionaire under the Senior Funding Agreements,

then the rights of the Agent for itself and on behalf of the Senior Funders under this Agreement will be extinguished and the Agent, at no cost to the Province, will (subject to Sections 3.5.3 and 3.5.4 of this Agreement) release and discharge any Security over the Concession Agreement, the Project Documents and the Assets which has not previously been released and discharged. The Agent will provide notice to the Province of the date referred to in Section 16.1.2 within 30 days of its occurrence.

16.2 Agent's Rights

The right of the Agent to serve a Step-In Notice in accordance with Section 4.1 [Step-In] or a Proposed Novation Notice in accordance with Section 5.1 [Proposed Substitute Concessionaire], including in accordance with Section 5.4 [Subsequent Proposed Novations], will be exercisable on more than one occasion, provided that any Event of Default existing at the commencement of the prior Step-In Period or occurring during the prior Step-In Period was cured by the time of delivery of the subsequent Step-In Notice and further provided that no more than one Step-In Notice or Proposed Novation Notice may be outstanding at any particular time.

17. AUTHORITY

17.1 Warranty of Authority

The Agent represents and warrants to and undertakes with each of the Province, BCTFA and the Concessionaire that the Agent is duly authorized by each of the Senior Funders to assume the obligations expressed to be assumed by it pursuant to this Agreement and to undertake on behalf of each Senior Funder in the terms of this Agreement so as to bind such Senior Funder as if it were a party to this Agreement, and each such Senior Funder will be so bound in accordance with the terms of this Agreement.

17.2 Authority

The Parties:

- 17.2.1 are entitled to assume that any act done, document executed or entered into or waiver given by the Agent has been duly authorized by each of the Senior Funders; and
- 17.2.2 are not obliged to make any enquiry as to the authority of the Agent in doing, executing, entering into or giving such act, document or waiver.

18. AMENDMENTS

No purported amendment or modification of this Agreement will be valid unless in writing executed by the Parties (and in the case of the Senior Funders, it will be sufficient if the same are executed on their behalf by the Agent).

19. NOTICES**19.1 Requirement for Writing**

Wherever in this Agreement provision is made for the giving or issuing of any notice, consent or approval by any person (a "Notice"), unless otherwise specified such Notice will be in writing and the words "notify", "consent" or "approval" will be construed accordingly.

19.2 Addresses

Any Notice will be duly given if signed by or on behalf of a duly authorized officer of the person giving the Notice and (a) personally delivered to, (b) sent by a recognized express mail or courier service (with delivery receipt requested), or (c) sent by confirmed facsimile transmission with telephone confirmation, to the following addresses:

Province and BCTFA

5B – 940 Blanshard Street
Victoria, British Columbia V8W 9T5

Telephone: (250) 387-3260
Fax No.: (250) 387-6431
Attention: Assistant Deputy Minister, Highways Department
Ministry of Transportation

Agent

207 Queen Quay West, Suite 700
Toronto, Ontario M5J 1A7

Telephone: (416) 507-2400
Fax No.: (416) 594-3849
Attention: Chief Operating Officer

Concessionaire

675 Cochrane Drive, West Tower, Suite 630
Markham, Ontario L3R 0B8

Telephone: (905) 530-2114
Fax No.: (905) 530-2214
Attention: John McArthur

Issuer

675 Cochrane Drive, West Tower, Suite 630
Markham, Ontario L3R 0B8

Telephone: (905) 530-2114
Fax No.: (905) 530-2214
Attention: John McArthur

19.3 Changes

Any Party may change its address for notice to another address in British Columbia by prior notice to the other Parties.

19.4 Receipt

Any Notice will be deemed to have been received:

19.4.1 if sent by personal delivery or by an express mail or courier service, when delivered;

19.4.2 if sent by facsimile, upon sending, subject to:

19.4.2.1 confirmation of uninterrupted transmission by a transmission report, and

19.4.2.2 there having been no telephonic communication by the recipient to the sender (any such telephonic communication to be confirmed in writing) that the facsimile has not been received in legible form:

- (i) within 3 hours after sending, if sent on a Working Day and between the hours of 9.00 a.m. and 4.00 p.m.; or
- (ii) by noon on the next following Working Day if sent after 4.00 p.m. on a Working Day but before 9.00 a.m. on the next following Working Day,

provided that any Notice given by facsimile will be confirmed by letter sent by personal delivery or by a recognized express mail or courier service, with delivery receipt requested, but without prejudice to the original fax Notice if received in accordance with this Section 19.4.2

20. ACKNOWLEDGMENTS AND WAIVER**20.1 Acknowledgments**

The Agent on behalf of the Senior Funders acknowledges that the Disclosed Data made available to the Concessionaire prior to the date of the Concession Agreement has been made available on the basis set out in Sections 6.1 [Site Inspection and Investigations], 38.2 [Disclaimer] and 39 [Indemnities] of the Concession Agreement.

20.2 Waiver

Without prejudice to Section 20.1[Acknowledgments]:

- 20.2.1 the Agent on behalf of the Senior Funders agrees and confirms that the Province will not be liable to any of the Agent or the Senior Funders (whether in contract, tort, by statute or otherwise howsoever and whether or not arising out of any negligence on the part of the Province or any of its employees, contractors or agents) in respect of any inaccuracy, error, omission, unfitness for purpose, defect or inadequacy of any kind whatsoever in the Disclosed Data;
- 20.2.2 the Province gives no warranty or undertaking to the Agent or the Senior Funders or any of them that the Disclosed Data represents all of the information in its possession or power (either during the procurement process for the Project or at the execution of this Agreement or the Concession Agreement) relevant or material to the Project or the obligations undertaken by the Agent or any other person under this Agreement;
- 20.2.3 the Province will not be liable to the Agent or the Senior Funders or any of them in respect of any failure to disclose or make available (whether before or after the execution of this Agreement) to any of them or the Concessionaire or the Issuer any information, documents or data, nor to keep the Disclosed Data up to date, nor to inform any of such parties (whether before or after execution of this Agreement or the Concession Agreement) of any inaccuracy, error, omission, unfitness for purpose, defects or inadequacy in the Disclosed Data;
- 20.2.4 the Agent on behalf of the Senior Funders acknowledges and confirms that it will not be entitled to make any claim against the Province whether in damages or for extensions of time or additional payments under this Agreement or the Concession Agreement on the grounds of any misunderstanding or misapprehension in respect of the Disclosed Data or the matters referred to in Section 6.1 [Site Inspection and Investigations] of the Concession Agreement or on the grounds that incorrect or insufficient information relating thereto or to the Site or Adjacent Areas was given to it by any person, whether or not in the employ of the Province, or by or on behalf of the Concessionaire. Nor will any Party be relieved from any risks or obligations imposed on or undertaken by it under this Agreement on any such ground.

20.3 Appropriation

The Concessionaire, the Issuer and the Agent on behalf of the Senior Funders acknowledge that they are aware of the provisions of subsection 28(2) of the *Financial Administration Act*, R.S.B.C. 1996, c. 138.

21. GOVERNING LAW AND JURISDICTION

21.1 Law

This Agreement will be governed by and construed in all respects in accordance with the laws of the Province of British Columbia and the laws of Canada applicable therein and will

be treated in all respects as a British Columbia contract, without regard to conflict of laws principles.

21.2 Jurisdiction

The Parties agree that the Courts of the Province of British Columbia will have exclusive jurisdiction to hear and settle any action, suit, proceeding or dispute in connection with or arising out of this Agreement and hereby irrevocably attorn to the jurisdiction of such Courts.

22. CONSENTS AND APPROVALS

22.1 Unless otherwise specified, where any consent, permission, expression of satisfaction or other approval is to be given by the Province under the terms of this Agreement, the same may be given or withheld in the absolute and unfettered discretion of the Province.

22.2 The provisions of this Agreement and the rights and obligations of the parties hereunder are subject and without prejudice to and in no way limit or constitute a waiver of any requirement to obtain the approval of the Lieutenant Governor in Council pursuant to section 2(1) of the Transportation Investment Act in respect of the entering into of an agreement as contemplated in the aforesaid section 2(1) that may result from or be required under the provisions of this Agreement or as a result of any action taken in the exercise of rights hereunder after the date hereof.

23. RELATIONSHIP OF PARTIES

This Agreement is not intended to and does not create or establish between the Parties any relationship as partners, joint venturers, employer and employee, or of principal and agent. None of the Concessionaire, the Issuer, the Agent or any of its or their representatives are or shall be deemed to be an employee or agent of the Province or BCTFA.

24. ENUREMENT

This Agreement will be binding upon each of the Parties and their respective successors, transferees and assigns and will enure to the benefit of the Parties and their respective successors and permitted transferees and assigns.

25. CONFLICT IN DOCUMENTS

In the event of any ambiguity, conflict or inconsistency between the provisions of this Agreement and the provisions of the Concession Agreement, the provisions of this Agreement will prevail.

26. FURTHER ASSURANCES

Each Party will do all things and execute all further documents necessary to give full effect to this Agreement.

27. MISCELLANEOUS

- 27.1 The Province and BCTFA will, at the Concessionaire's expense, take whatever action the Agent or an Appointed Representative effecting a novation in accordance with Section 5.5 [Implementation of Novation] may require for perfecting any transfer or release under Sections 4 [Step-In and Step-Out] and 5 [Novation], including the execution of any transfer or assignment and the giving of any notice, order or direction and the making of any registration which, in each case, the Agent or Appointed Representative reasonably requires.
- 27.2 Neither the Province nor BCTFA will take any action to appoint a receiver or receiver-manager or institute proceedings in respect of the bankruptcy, liquidation, dissolution or winding-up of the Concessionaire.
- 27.3 If:
- 27.3.1 the Agent has given a Step-In Notice to the Province pursuant to Section 4.1 [Step-In] or the Province has consented in writing to a proposed novation of the Concessionaire's rights and obligations under the Concession Agreement to another person pursuant to Section 5 [Novation]; and
 - 27.3.2 the approval of the Lieutenant Governor in Council is required to be obtained, pursuant to subsection 2(1) of the Transportation Investment Act, in relation to the appointment of an Appointed Representative under Section 4.1 [Step-In] or a

proposed novation to which the Province has consented pursuant to Section 5 [Novation]; and

27.3.3 the approval of the Lieutenant Governor in Council has not been obtained on or before that date which is 60 days after: (a) the date on which the Province receives a Step-In Notice from the Agent (in the case of an appointment of an Appointed Representative), or (b) the Proposed Novation Date (in the case of a proposed novation to which the Province has consented pursuant to Section 5 [Novation]),

the Agent, on behalf of the Senior Funders, will be entitled to give a notice to the Province (the "Agent's Election") requiring the termination of the Concession Agreement. Within 10 days of receipt by the Province of the Agent's Election, the Province will terminate the Concession Agreement pursuant to Section 42.4 [Termination for Failure to Obtain Lieutenant Governor in Council Approval] of the Concession Agreement.

28. PROOF OF AUTHORITY

The Province reserves the right to require any person executing this Agreement on behalf of the Concessionaire or the Agent to provide proof, in a form acceptable to the Province, that they have the requisite authority to execute this Agreement on behalf of and to bind the Concessionaire or the Agent and the Senior Funders, as applicable.

IN WITNESS WHEREOF this Agreement has been executed as of the day and year first before 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 in the presence of:)

_____)
(Witness) _____)

JOHN DYBLE
Deputy Minister, Ministry of Transportation

BC TRANSPORTATION FINANCING AUTHORITY

Per: _____
JOHN DYBLE
Chief Executive Officer

CIT GROUP SECURITIES (CANADA) INC.

Per: _____
Name:
Title:

TRANS-PARK HIGHWAY GENERAL PARTNERSHIP

by its partners:

TRANS-PARK HIGHWAY INVESTMENT INC.

Per: _____
JOHN McARTHUR
President

Per: _____
STEVE SKELTON
Vice-President

TRANS-PARK HIGHWAY INC.

Per: _____
JOHN McARTHUR
President

Per: _____
STEVE SKELTON
Vice-President

TRANS-PARK HIGHWAY FINANCE INC.

Per: _____
JOHN McARTHUR
President

Per: _____
STEVE SKELTON
Vice-President

SCHEDULE 3
PROJECT SCHEDULE

Item	Event	Date
1.	Substantial Completion Date	November 15, 2007
2.	Final Completion Date	May 29, 2008

SCHEDULE 4**LAND****Part 1****EXISTING HIGHWAY**

This Part 1 of Schedule 4 may be updated from time to time until the Commencement Date of this Agreement.

Existing Highway (highway described from West to East)

Section, Township, Range, Meridian	Road Name	Legal Description	LTO document
South ½ of Sec. 13, T.P. 27, R. 22, W5M	Trans-Canada Highway	Part in Highway Plan R301	Gazette Jan. 29, 1953
South ½ of Sec. 13, T.P. 27, R. 22, W5M	Trans-Canada Highway	Part in Highway Plan 10914	
South ½ of Sec. 13, T.P. 27, R. 22, W5M	Trans-Canada Highway	Part dedicated by Plan NEP22368	
South ½ of Sec. 13, T.P. 27, R. 22, W5M	Trans-Canada Highway	Part dedicated by Plan NEP22362	
South ½ of Sec. 13, T.P. 27, R. 22, W5M	Trans-Canada Highway	Part dedicated by Plan NEP22146	
South ½ of Sec. 13, T.P. 27, R. 22, W5M	Trans-Canada Highway	Part dedicated by Plan NEP22422	
South ½ of Sec. 13, T.P. 27, R. 22, W5M	Trans-Canada Highway	Part dedicated by Plan NEP22366	
Sec. 12, T.P. 27, R. 22, W5M	Trans-Canada Highway	Part in Highway Plan 10914	
Sec. 18, T.P. 27, R. 21, W5M	Trans-Canada Highway	Part dedicated by Plan 4868	
Sec. 18, T.P. 27, R. 21, W5M	Trans-Canada Highway	Part dedicated by Plan 10108	
Sec. 7, T.P. 27, R. 21, W5M	Trans-Canada Highway	MoT Asbuilt Project 398	Gazette February 10, 1961
Sec. 8, T.P. 27, R. 21, W5M	Trans-Canada Highway	MoT Asbuilt Project 398	Gazette February 10, 1961
Sec. 17, T.P. 27, R. 21, W5M	Trans-Canada Highway	MoT Asbuilt Project 398	Gazette February 10, 1961
Sec. 16, T.P. 27, R. 21, W5M	Trans-Canada Highway	MoT Asbuilt Project 398	Gazette February 10, 1961

Section, Township, Range, Meridian	Road Name	Legal Description	LTO document
Sec. 15, T.P. 27, R. 21, W5M	Trans-Canada Highway	MoT Asbuilt Project 398	Gazette February 10, 1961
Sec. 10, T.P. 27, R. 21, W5M	Trans-Canada Highway	MoT Asbuilt Project 398	Gazette February 10, 1961
Sec. 11, T.P. 27, R. 21, W5M	Trans-Canada Highway	MoT Asbuilt Project 398	Gazette February 10, 1961
Sec. 11, T.P. 27, R. 21, W5M	Trans-Canada Highway	Part dedicated by Plan NEP67761	Gazette February 10, 1961
Sec. 12, T.P. 27, R. 21, W5M	Trans-Canada Highway	MoT Asbuilt Project 398	Gazette February 10, 1961
Sec. 1, T.P. 27, R. 21, W5M	Trans-Canada Highway	MoT Asbuilt Project 398	Gazette February 10, 1961
Sec. 6, T.P. 27, R. 20, W5M	Trans-Canada Highway	MoT Asbuilt Project 398	Gazette February 10, 1961
Sec. 6, T.P. 27, R. 20, W5M	Trans-Canada Highway	Part in Highway Plan R310	Gazette June 24, 1964
Sec. 5, T.P. 27, R. 20, W5M	Trans-Canada Highway	Part in Highway Plan R310	Gazette June 24, 1964
Sec. 4, T.P. 27, R. 20, W5M (Unsurveyed Crown Land)	Trans-Canada Highway	Part in Highway Plan R310	Gazette June 24, 1964
Sec. 32, T.P. 26, R. 20, W5M	Trans-Canada Highway	Part in Highway Plan R310	Gazette June 24, 1964
Sec. 33, T.P. 26, R. 20, W5M	Trans-Canada Highway	Part in Highway Plan R310	Gazette June 24, 1964
Sec. 34, T.P. 26, R. 20, W5M	Trans-Canada Highway	Part in Highway Plan R310	Gazette June 24, 1964
Sec. 34, T.P. 26, R. 20, W5M	Trans-Canada Highway	Part in Highway Plan R272	Gazette June 14, 1962
Sec. 35, T.P. 26, R. 20, W5M (Unsurveyed Crown Land)	Trans-Canada Highway	Part in Highway Plan R272	Gazette June 14, 1962
Sec. 26, T.P. 26, R. 20, W5M	Trans-Canada Highway	Part in Highway Plan R272	Gazette June 14, 1962
Sec. 25, T.P. 26, R. 20, W5M	Trans-Canada Highway	Part in Highway Plan R272	Gazette June 14, 1962
Sec. 24, T.P. 26, R. 20, W5M	Trans-Canada Highway	Part in Highway Plan R272	Gazette June 14, 1962

Section, Township, Range, Meridian	Road Name	Legal Description	LTO document
<u>Side Roads:</u>			
Sec. 25, T.P. 26, R. 20, W5M	Wapta Road	Part in Highway Plan R272	Gazette June 14, 1962
Sec. 24, T.P. 26, R. 20, W5M	Wapta Road	Part in Highway Plan R272	Gazette June 14, 1962
Sec. 24, T.P. 26, R. 20, W5M	Beaverfoot Road	Part dedicated by Plan 9863	
Sec. 19, T.P. 26, R. 19, W5M	Beaverfoot Road		Gazette December 5, 1985
Sec. 19, T.P. 26, R. 19, W5M	Kicking Horse Road		Gazette December 5, 1985
Sec. 24, T.P. 26, R. 20, W5M	Kicking Horse Road	Part dedicated by Plan 9864	

The lands forming the Existing Highway set forth in the Existing Highway table in this Part 1 are shown in the Composite Drawing.

The following lands in Phase 1 will form part of the Existing Highway from substantial completion of the Phase 1 Section Works:

- the land shown as right of way on Phase 1 Contract 1 drawing R3-208-003; Phase 1 Contract 2 drawings R3-210-101 to 103; Phase 1 Contract 3 drawings R2-211-101 to 104, each of which are contained in the Data Room. This description of lands is approximate and subject to legal survey and registration.

SCHEDULE 4**LAND****Part 2****HIGHWAY IMPROVEMENT****Highway Improvement**

The lands forming the Highway Improvement are shown on the Concessionaire drawings numbered R2-NNN-101RW to R2-NNN-122RW and constructed or modified or to be constructed or modified by the Concessionaire pursuant to this Agreement.

This description of new lands contained in the Concessionaire drawings is approximate in area and subject to legal survey and registration after Substantial Completion of the Highway Improvement.

SCHEDULE 4

LAND

Part 3

[NOT USED]

SCHEDULE 4**LAND****Part 4****ACCESSES AND CONNECTING ROADS**

This Part 4 of Schedule 4 may be updated from time to time until the Commencement Date of this Agreement.

Private Access Permit No	Approx. Km	Description
	0.00	Rte 1 E/B at Intersection with Rte 95 in Golden Southwest side
	1.10	Access to Golden Hill Pit North Side
	1.20	Viewpoint Access, South Side
	1.40	Rte 1 E/B at Intersection with Golden - Donald Upper Road in Golden North Side, Golden View Road South Side
	1.72	Rte 1 E/B at Intersection with LaFontaine Road in Golden North Side
	2.34	Rte 1 E/B at Intersection with Golden View Road in Golden South Side
37 CA31/87	3.00	Rte 1 E/B drive way for Purcell Heli Skiing North side
	4.10	Rte 1 E/B Sheep Feeding area access South side
	6.40	Rte 1 E/B Dart Creek Forestry Rd North Side
	8.20	Rte 1 E/B CPR access # 1 South side
	12.00	Rte 1 E/B Rafters pullout access North side
	12.53	Rte 1 E/B access to Yoho Rest Area # 117 North side
	15.10	Rte 1 E/B CPR access # 2 South side
	16.30	Rte 1 E/B Access to Rafters Lookout
CA 12B 4/01	17.03	Rte 1 E/B Access to 10 Mile Rst Area # 60 and Brakecheck Logging Access min Of Forests (Glenogle FSR) North side

Private Access Permit No	Approx. Km	Description
CA 12B 4/03	18.00	Rte 1 E/B Logging Access LP Engineerd Wood Products Ltd South side
CA 12B 5/03	19.00	Rte 1 E/B logging Access LP Engineerd Wood Products Ltd and Mt Hunter Waste Site North side
CA 12B 6/03	21.00	Rte 1 E/B Logging Access LP Engineerd Wood Products Ltd South side
CA 12B 7/03	21.00	Rte 1 E/B logging Access LP Engineerd Wood Products Ltd North side
	24.58	Rte 1 E/B at first Intersection with Wapta Road North side
	25.25	Rte 1 E/B at Intersection with Beaverfoot Road South side
	25.62	Rte 1 E/B at second Intersection with Wapta Road North side
	25.81	Rte 1 E/B at Boundary: Yoho National Park East of Golden
	25.42	Rte 1 E/B, Private Access, Wild Water Adventures, South Side
	24.21	Rte 1 E/B Private Cabin Access, North Side
	22.21	Rte 1 E/B logging access LP Engineered Wood Products Ltd., South Side; Vacation Creek Main

The Accesses and Connecting Roads listed in the above table will be modified from and after the Substantial Completion Date as follows:

1. *delete*: Rte 1 E/B existing rafter's pullout at approximate LKI 12.00, north side;
2. *add*: Rafter's Pullout as shown on Concessionaire Preliminary Design Drawing R2-NNN-0102 at Stn 101+60.062 to stn 101+30.062, north side;
3. *delete*: access at approximate LKI 12.53 Rte 1 E/B access to Yoho Rest Area #117, north side;
4. *delete*: access at approximate LKI 15.10 Rte 1 E/B CPR Access #2, south side
5. *add*: CPR access Road as shown on Concessionaire Preliminary Design Drawing R2-NNN-0114 at Stn 151+00(approx), south side; and
6. *modify location of Glenogle FSR/Brake Check*: as shown on Concessionaire Drawing R2-NNN-0114 at Stn 149+30 approximate north side.

SCHEDULE 4**LAND****Part 5****ORDERS**

Any new Order(s) identified after the Proponent's Proposal has been submitted but prior to the Commencement Date will be treated as a Province Change provided that the new Order(s) does not arise as a result of the Proponent's Proposal. This Part 5 of Schedule 4 may be updated from time to time until the Commencement Date of this Agreement.

The Orders listed below are located in Section 8.5.1 of the Data Room.

A.	<u>Orders in Council</u>	<u>Date</u>
	Order-in-Council #3452	December 15, 1964
	Order-n-Council #3654	December 16, 1976
	Order-in-Council #903	May 1, 1986
B.	<u>Other</u>	<u>Date</u>
	Land Act Map Reserve #014003	April 25, 2001
	Land Act Map Reserve #014006	July 21, 2001
	Land Act Map Reserve #014016	November 21, 2001
	Mineral Tenure Act Reserve BC Reg. 54/2002	March 25, 2002 and May 6, 2002

SCHEDULE 4

LAND

Part 6

[NOT USED]

SCHEDULE 4**LAND****Part 7****GRAVEL PITS AND GRAVEL LICENCES**

Any new Quarries-Gravel Pits identified after the Proponent's proposal has been submitted but prior to the Commencement Date will be treated as a Province Change provided that the new Quarries-Gravel Pits do not arise as a result of the Proponent's proposal. Section A of this Part 7 of Schedule 4 may be updated from time to time until the Commencement Date of this Agreement.

Section A

1. Quarries - Gravel Pits

Quarry - Gravel Pit Name	Allowable Usage by Concessionaire
Kicking Horse Pit ¹	No limit designated.
Crozier Pit ²	No limit designated, except for a reserve that is proposed to be added to this pit for park use only. This additional area will not be permitted to be encroached upon by the Concessionaire.

2. Without limiting Section 8.10.2 [Gravel Pits] of this Agreement, the availability of any Gravel Pit is subject to the Province having the right to issue to the Concessionaire, in respect of such Gravel Pit, a licence, in substantially the form and containing substantially the terms set out in Section B of this Part 7 of Schedule 4.
3. The approximate maximum aggregate quantities and usage conditions described in Paragraph 1 in this Part 7 to Schedule 4 are subject to the provisions of Section 8.10.4 of this Agreement.

¹ Reference should be made to the pit development report in Section 3.4.3.4 of the Resource Documents DVD.

² Reference should be made to the pit development report in Section 3.4.3.1 of the Resource Documents DVD.

Section B

1. Any gravel licence issued by the Province to the Concessionaire will be in substantially the form set out below.

FORM OF GRAVEL LICENCE

THIS GRAVEL LICENCE dated for reference the ___ day of _____, 200__.

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA,
represented by the Minister of Transportation (the "Province")

@COMPANY-NAME, (the "Concessionaire")

NOW THEREFORE the Province and the Concessionaire agree as follows.

1. DEFINITIONS

1.1 In this Gravel Licence, unless the context otherwise requires:

- (a) **"Province Improvements"** means any premises or building equipment existing on the Gravel Pits at any time during the Term;
- (b) **"Concessionaire's Stockpiles"** means
 - (i) all stockpiles of Material processed by or for the Concessionaire with Pit-Run from the Gravel Pits, and
 - (ii) all stockpiles of Material located at the Gravel Pits processed by or for the previous highway maintenance Concessionaire or the Province and which have been sold or transferred to the use of the Concessionaire;
- (c) **"Gravel Fees Appendix"** means the fee provisions attached as Appendix "B" attached to this Gravel Licence;
- (d) **"Gravel Pits"** means those gravel pits and quarries described in Appendix "A" attached to this Gravel Licence;
- (e) **"Material"** means Pit-Run, winter abrasive (with or without salt), crush, sealcoat and any other aggregate used for construction, maintenance and repair of highways which may be processed from Pit-Run and includes any by-products resulting from the processing of Pit-Run;
- (f) **"Pit-Run"** means pit-run granular aggregate excavated from a Gravel Pit with no further processing;
- (g) **"Subsisting Rights"** means
 - (i) all subsisting grants to or rights of any person made or acquired under the *Land Act*, R.S.B.C. 1996, c. 245, *Coal Act*, R.S.B.C. 1996, c. 51, the

Forest Act, R.S.B.C. 1996, c. 157, the *Mineral Tenure Act*, R.S.B.C. 1996, c. 292, or any extension or renewal of the same, whether or not the Concessionaire has actual notice of them,

- (ii) any prior dispositions made pursuant to the *Land Act*, R.S.B.C. 1996, c. 245, and
 - (iii) the exceptions and reservations of rights, interests, privileges and titles referred to in section 50 of the *Land Act*;
- (h) “**Concession Agreement**” means the agreement entitled “@@” between the Province and the Concessionaire dated for reference the _____, as it may be amended from time to time; and
- (i) “**Term**” means the term of this Gravel Licence described in section 2.1.

2. TERM AND GRANT OF LICENCE

- 2.1 The term of this Gravel Licence will commence on _____ and end on _____ unless sooner terminated in accordance with the terms of this Gravel Licence.
- 2.2 The Province hereby grants to the Concessionaire a non-exclusive licence to enter on and occupy the Gravel Pits during the Term for the purpose of processing and removing Material subject to and in accordance with the terms and conditions of this Gravel Licence.
- 2.3 The Concessionaire acknowledges and agrees that this Gravel Licence does not grant to the Concessionaire any proprietary or property rights or interests in any of the Gravel Pits or in any of the Material at the Gravel Pits.
- 2.4 This Gravel Licence is subject to all Subsisting Rights.
- 2.5 The Concessionaire acknowledges and agrees with the Province that:
- (a) any interference with the rights of the Concessionaire under this Gravel Licence by virtue of the exercise or operation of any of the Subsisting Rights will not constitute a breach of the Province’s obligations under this Gravel Licence and the Concessionaire releases and discharges the Province from and against any claim for loss or damage arising directly or indirectly out of any such interference;
 - (b) all costs and expenses, direct or indirect, that arise out of any interference by the Concessionaire with any of the Subsisting Rights will be borne by the Concessionaire; and
 - (c) the Concessionaire will not commence or maintain proceedings under section 65 of the *Land Act* in respect of any interference with rights of the Concessionaire under this Gravel Licence arising directly or indirectly out of the exercise or operation of any of the Subsisting Rights.

3. CONCESSIONAIRE'S COVENANTS

3.1 The Concessionaire will:

- (a) only use Material removed from the Gravel Pits for the purpose of performing its obligations under the Concession Agreement;
- (b) return or cause the return to the Province of any and all Material that is not used for the performance of the Concessionaire's obligations under the Concession Agreement;
- (c) not remove Material from the Gravel Pits except from locations or stockpiles on the Gravel Pits approved by the Province or from the Concessionaire's Stockpiles;
- (d) clearly mark and segregate each of the Concessionaire's Stockpiles from other stockpiles in a manner satisfactory to the Province;
- (e) conduct its operations at the Gravel Pits in accordance with any applicable "pit development plan" and gravel management plan as may be established by the Province from time to time;
- (f) not place or maintain any improvements on any of the Gravel Pits without the prior written consent of the Province;
- (g) make and keep each of the Gravel Pits in a safe, clean and sanitary condition satisfactory to the Province and, unless otherwise specified by notice in writing by the Province to the Concessionaire, make and keep safe, clean and sanitary any improvements at the Gravel Pits;
- (h) comply with any directives issued by the Province in respect of environmental protection or preservation arising from the Concessionaire's occupation or use of the Gravel Pits;
- (i) permit the authorized representatives of the Province to enter any of the Gravel Pits at any time for any purpose;
- (j) survey the pit or quarry, as the case may be, prior to any extraction of Material, in order to provide a baseline condition from which to determine Material usage quantities;
- (k) determine final excavation quantities by resurvey following completion of use of the pit or quarry, as the case may be;
- (l) provide adequate security for each of the Gravel Pits and prevent entry to the Gravel Pits or removal of Material from the Gravel Pits by persons who are not authorized by the Province or the Concessionaire;
- (m) provide drainage control measures at the Gravel Pits as required by the Province;

- (n) not interfere with the activities of any person authorized by the Province to enter on and use any of the Gravel Pits under a prior or subsequent licence granted by the Province, but will coordinate with any such persons as necessary;
- (o) arrange, at the written request of the Province and at the expense of the Concessionaire, for a quantity survey to be undertaken by a person reasonably qualified to do so in the opinion of the Province to confirm the quantity of Material removed by or on behalf of the Concessionaire from the Gravel Pits or located in the Concessionaire's Stockpiles, or both;
- (p) permit persons authorized by the Province to enter on any of the Gravel Pits and remove Material except from the Concessionaire's Stockpiles;
- (q) pay and discharge when due all taxes, levies, charges and assessments now or hereafter assessed, levied or charged which relate to the Gravel Pits or any improvements on the Gravel Pits provided that if the Concessionaire does not pay the taxes as required the Province will have the right to pay such charges and to recover the same forthwith from the Concessionaire unless such taxes are being contested in good faith by the Concessionaire and the Concessionaire may in law withhold payment of them and in such event the Concessionaire will pay all costs of contestation and will not in any way render any of the Gravel Pits subject to seizure;
- (r) observe, abide by and comply with all laws, bylaws, orders, directions, ordinances and regulations of any competent governmental authority relating to the Gravel Pits, and the entry on, occupation and use of the Gravel Pits, including the *Mines Act*, and accompanying regulations and codes including the Health, Safety and Reclamation Code for Mines in British Columbia, and the *Workers Compensation Act* and accompanying regulations;
- (s) not commit or suffer any willful or voluntary waste, spoil or destruction of the Gravel Pits or the Material or do or cause or permit to be done on the Gravel Pits anything that may be or become a nuisance or annoyance to the owners or occupiers of adjoining land other than as expressly authorized under this Gravel Licence;
- (t) not remove from the Gravel Pits any Material processed by or for the Concessionaire until
 - (i) the quantity survey report in respect of such Material has been delivered to the Province in accordance with section 2 of Appendix B to this Part 7 of Schedule 4 [Gravel Fees Appendix], and
 - (ii) the Gravel Usage fee in respect of such Material has been paid to the Province in accordance with section 1 of the Gravel Fees Appendix;
- (u) not remove Pit-Run from the Gravel Pits for processing outside the Gravel Pits without the prior approval of the Province;

- (v) not remove processed Material from the Gravel Pits for storing or stockpiling outside the Gravel Pits without the prior approval of the Province;
- (w) pay for the cost of the supply to, or use and consumption on, those portions of the Gravel Pits to which the Concessionaire has access under this Licence and in accordance with any plans of the Province set out in Section 3.1(e) herein of electricity, gas, water and other utilities provided that the cost of such utilities is determined by separate metering;
- (x) unless otherwise directed by the Province, at all times keep and maintain any improvements made by the Concessionaire on the Gravel Pits, in a state of repair and condition at least equivalent to the state of repair and condition of such improvements at the commencement of the Term, or at the time the improvements were made, whichever is later, and to the same extent as would a prudent and careful owner in occupation, reasonable wear and tear only excepted;
- (y) repair any improvements made by the Concessionaire on the Gravel Pits in accordance with directives as may be issued by the Province from time to time;
- (z) obtain and maintain in force during the Term insurances in form and content and with an insurer or insurers acceptable to the Province and such insurance will include comprehensive general liability insurance, automobile liability insurance, and equipment insurance;
- (aa) indemnify and save the Province harmless (and such indemnity will survive the expiration or termination of this Gravel Licence) from and against all claims, demands, losses, damages, costs, expenses, fines, penalties, assessments and levies made against or incurred, suffered or sustained by the Province at any time or times (whether before or after the expiration or termination of this Gravel Licence) where the same or any of them are based upon or arise out of any breach, violation or non-performance of any covenant, condition or agreement in this Gravel Licence by the Concessionaire its agents, contractors and subcontractors of any tier and employees of any of them, or any personal injury, death or property damage occurring at any of the Gravel Pits or happening by virtue of any acts or omissions of the Concessionaire or its agents, contractors and subcontractors of any tier and employees of any of them;
- (bb) perform its obligations set out in Appendix "C" attached to this Gravel Licence;
- (cc) have regard to and comply with the terms of the Variances set out in Appendix "D" attached to this Gravel Licence;
- (dd) if topsoil or undesirable overburden exist, strip and place such topsoil and overburden in separate stockpiles as directed by the Ministry Representative for future use in pit or quarry reclamation;
- (ee) not operate any Gravel Pit in a manner which will contaminate remaining granular material nor leave any Gravel Pit in a condition which will limit its future use;

- (ff) use those portions of all Gravel Pits to which the Concessionaire has access under this Licence to their full potential, having consideration to the quality of the Material and the costs of extraction thereof by the Concessionaire;
- (gg) not waste any portion of the products of crushers or screening plants that can be used but will stockpile or use any such product as directed by the Ministry Representative;
- (hh) when the Concessionaire discontinues operations in any Gravel Pit, trim the sides of any excavations, waste piles and stockpiles in the Gravel Pit to a 1.5 to 1 slope, or such other slope as the Province may direct, open up such drains or ditches as may be required to prevent water standing therein and drain such water, and leave the Gravel Pit in a neat condition, all to the satisfaction of the Province.

4. PROVINCE'S COVENANTS

4.1 The Province:

- (a) will advise the Concessionaire from time to time of the identity of those persons authorized by the Province to enter on and use any of the Gravel Pits;
- (b) will accept interim estimates of Material usage based on load count or other reasonable means of estimation;
- (c) may, in its sole discretion, undertake surveys for verification of quantities information submitted by the Concessionaire; and
- (d) will, within 30 days after the commencement of the Term, provide the Concessionaire with a report (showing quantities and locations) of all stockpiles of Material at the Gravel Pits as of the commencement of the Term of this Licence.

5. FEES

- 5.1 In consideration of the licence granted by the Province to the Concessionaire in this Gravel Licence, the Concessionaire will pay fees to the Province in accordance with the Gravel Fees Appendix.

6. RECORDS AND REPORTS

6.1 The Concessionaire will maintain records of:

- (a) all Pit-Run removed from the Gravel Pits and used in unprocessed form for the purposes of the Concession; and

- (b) all Pit-Run from the Gravel Pits processed by the Concessionaire into other Material

in such form and containing such information as the Province may reasonably require.

6.2 The Concessionaire will:

- (a) permit the Province or representatives of the Province to attend at the offices of the Concessionaire to examine the records described in section 6.1 of this Gravel Licence during normal office hours; and
- (b) upon the written request of the Province, deliver to the Province copies of such records within 10 days after the request.

6.3 The Concessionaire will establish and maintain proper books of account and cause to be made therein accurate entries of all transactions in relation to removal of Material from the Gravel Pits during the Term and at all reasonable times will supply to the Province such information relating to removal of Material from the Gravel Pits as the Province may reasonably require.

6.4 The Concessionaire will, no later than the end of January of each year of the Term, deliver to the Province a detailed statement, in a form satisfactory to the Province, showing for each Gravel Pit the quantity of Material removed from the Gravel Pit and used by the Concessionaire in unprocessed form during the previous calendar year (or portion thereof), during the Term.

7. TERMINATION

7.1 The Province may, in its sole discretion, delete any of the Gravel Pits from this Gravel Licence or terminate this Gravel Licence by giving to the Concessionaire at least one year's written notice of the deletion or termination and sections 7.3 and 7.4 of this Gravel Licence will apply to any deleted Gravel Pit as if this Gravel Licence had been terminated or had expired in respect of that Gravel Pit as of the effective date of deletion.

7.2 If the Concessionaire fails to observe, perform or comply with any provision of this Gravel Licence or the Concession Agreement, the Province may terminate this Gravel Licence upon giving not less than 30 days written notice of termination to the Concessionaire.

7.3 On the expiration or termination of this Gravel Licence, the Concessionaire will

- (a) cease occupation of the Gravel Pits; and
- (b) remove all buildings, machinery, plant equipment and apparatus owned or leased by the Concessionaire located at the Gravel Pits.

- 7.4 Any buildings, machinery, plant equipment and apparatus owned or leased by the Concessionaire remaining at the Gravel Pits later than 30 days after expiration or termination of this Gravel Licence:
- (a) will be absolutely forfeited to and become the property of the Province; and
 - (b) may be removed from the Gravel Pits by the Province and the Concessionaire will pay to the Province, on demand, all costs of removal.

8. INTERPRETATION

- 8.1 Unless the context otherwise requires, any reference to “this Gravel Licence” means this schedule and all of the appendices attached to it.
- 8.2 The headings or captions in this Gravel Licence are inserted for convenience only and do not form a part of this Gravel Licence and in no way define, limit, alter or enlarge the scope or meaning of any provision of this Gravel Licence.
- 8.3 Each appendix attached to this Gravel Licence is an integral part of this Gravel Licence as if set out at length in the body of this Gravel Licence.
- 8.4 The Concessionaire will not:
- (a) assign this Gravel Licence;
 - (b) sublicense any of the Gravel Pits; or
 - (c) dispose of any of its rights in respect of this Gravel Licence or any of the Gravel Pits;
- without the prior written consent of the Province, which consent may be arbitrarily withheld by the Province.
- 8.5 The Concessionaire will treat as confidential and will not, without the prior written consent of the Province, publish, release or disclose or permit to be published, released or disclosed either before or after expiration or termination of this Gravel Licence, any information supplied to, obtained by, or which comes to the knowledge of the Concessionaire as a result of this Gravel Licence except insofar as such publication, release or disclosure is required by law or is necessary to enable the Concessionaire to fulfill the obligations of the Concessionaire under this Gravel Licence.
- 8.6 The Concessionaire will not, during the Term, perform a service for or provide advice to any person, firm or corporation or other legal entity where the performance of the service or the provision of the advice may or does, in the reasonable opinion of the Province, give rise to a conflict of interest between the obligations of the Concessionaire to the Province under this Gravel Licence and the obligations of the Concessionaire to such other person, firm or corporation or other legal entity.
- 8.7 Any notice, document, statement, report, demand or payment desired or required to be given or made under this Gravel Licence will be in writing and may be given or made by

personal delivery to the party to whom it is to be given or made, or by facsimile transmission, or by mailing in Canada with postage prepaid addressed to:

if to the Province:

Ministry of Transportation

Fax number: @NUMBER

and if to the Concessionaire

@@

Fax number: @NUMBER

and any such notice, document, statement, report, demand or payment so mailed will be deemed given to and received by the addressee on the third business day after the mailing of the same except in the event of disruption of postal services in Canada in which case any such notice, document, statement, report, demand or payment will be deemed given to and received by the addressee when actually delivered to the particular address set out above.

- 8.8 Either party may, from time to time, advise the other by notice in writing of any change of address or facsimile number of the party giving such notice and from and after the giving of such notice the address or facsimile number therein specified will, for purposes of section 8.7 be deemed to be the address or facsimile number, as the case may be, of the party giving such notice.
- 8.9 If any provision of this Gravel Licence or the application thereof to any person or circumstance is invalid or unenforceable to any extent, the remainder of this Gravel Licence and the application of such provision to any other person or circumstance will not be affected or impaired thereby and will be valid and enforceable to the extent permitted by law.
- 8.10 All provisions of this Gravel Licence in favour of the Province and all rights and remedies of the Province, either at law or in equity, will survive the expiration or termination of this Gravel Licence.
- 8.11 No waiver by either party of a breach or default by the other party in the observance, performance or compliance of any of its obligations under this Gravel Licence will be effective unless it is in writing and no such waiver will be deemed or construed to be a waiver of any other breach or default and failure or delay on the part of either party to complain of an act or failure of the other party or to declare such other party in default, irrespective of how long such failure or delay continues, will not constitute a waiver by such party of any of its rights against the other party.
- 8.12 Time will be of the essence of this Gravel Licence.

8.13 This Gravel Licence will enure to the benefit of and be binding upon the Province and its assigns and the Concessionaire and its successors and permitted assigns.

IN WITNESS WHEREOF the parties have executed this Gravel Licence on the date 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)
in the presence of:)

(Witness)

For the Minister of Transportation

THE common seal of @NAME)
OF CONCESSIONAIRE)
was hereunto affixed)
in the presence of:)

(Signature)

(c/s)

(Title)

APPENDIX “A” (TO GRAVEL LICENCE)

Gravel Pits

1. Subject to any deletions made by the Province under section 7.1 of this Gravel Licence, the Gravel Pits are those gravel pits identified by the following numbers on the map attached as Exhibit “A” to this Appendix:

Gravel Pit Name	Gravel Usage Fee Rate (\$1.75 /cubic metre) ¹
	\$

¹ The gravel usage fee rate of \$1.75/cubic metre will apply until January 2011. The gravel usage fee rate commencing on January 2011 will be agreed upon on an annual basis between by the Province and the Concessionaire provided that in the event of a failure between the Province and the Concessionaire to agree on the gravel usage fee rate, the gravel usage fee rate for that year shall be the amount then charged by the Province to contractors providing standard maintenance services on highways within the region of the Province in which the Concession Highway is situate.

APPENDIX "B" (TO GRAVEL LICENCE)**Gravel Fees Appendix****Gravel Usage Fees**

1. The Concessionaire will pay to the Province a Gravel Usage fee at the applicable rate established for the Gravel Pits as set out in section 1 of Appendix "A" based on the quantity of Pit-Run from the Gravel Pits, as measured in situ, used by the Concessionaire, which fees will be paid by set-off at the same time a quantity survey is required to be delivered to the Province in accordance with section 2 of this Appendix.

Quantity Surveys

2. The Concessionaire will, within 15 days of the completion of any Material processing operations conducted by or for the Concessionaire using Pit-Run from the Gravel Pits, deliver to the Province a quantity survey report produced by a person qualified to do so in the opinion of the Province certifying the quantity of Pit-Run used by the Concessionaire in such completed processing operations, which report will form the basis for calculating the fees payable under section 1 of this Appendix.

Fees Exclusive of Taxes

3. All fees required to be paid by the Concessionaire to the Province under this Gravel Licence are exclusive of applicable taxes.

APPENDIX "C" (TO GRAVEL LICENCE)**Obligations under *Mines Act***

1. In this Appendix:
 - (a) "Act" means the *Mines Act*, R.S.B.C. 1996, c. 293;
 - (b) "Code" means the health, safety and reclamation code prescribed under the Act, as it may be amended from time to time; and
 - (c) "Manager" means a manager as defined in the Act.
2. The Concessionaire will in respect of the Gravel Pits comply with any and all obligations of a Manager described in the Act and the Code.
3. The Concessionaire will:
 - (a) at least 2 weeks prior to the commencement of any operations at a Gravel Pit which is expected to utilize in excess of 1000m³ of Material, advise the Province of the nature and anticipated duration of the operations;
 - (b) install and maintain "No Entry" signs satisfactory to the Province at each road entrance to a Gravel Pit;
 - (c) comply with any order made under section 14(3) of the Act directed to the Concessionaire or to the Province by virtue of any activities or operations of the Concessionaire at a Gravel Pit;
 - (d) restrict hours of employment at the Gravel Pits in accordance with sections 1.5.1 to 1.5.5 of the Code;
 - (e) establish an Occupational Health & Safety Committee for each Gravel Pit in accordance with section 1.6.1 of the Code;
 - (f) as soon as it is practical to do so, advise the Province of any notifications made or reports prepared under sections 1.7.1 to 1.7.4 of the Code or section 15(6) of the Act; and
 - (g) shall appoint a properly certified supervisor or shift boss in compliance with the *Mines Act*, and ensure that the supervisor or shift boss is duly certified in accordance with all applicable laws, including the Health, Safety and Reclamation Code for Mines in British Columbia.

APPENDIX "D" (TO GRAVEL LICENCE)

Variances

1. The following listed Variances to the Health, Safety and Reclamation Code for Mines in British Columbia will apply to pits and quarry operations which fall under the Ministry of Transportation ownership.

The Chief Inspector of Mines has provided the following clarifications to the Ministry in a letter dated August 9, 1999:

Application for Continuation of Variance to Mine Code Section 1.5.1 - Hours of Employment

"Pursuant to section 13 of the *Mines Act*, R.S.B.C. 1996. c293, the assigned Ministry of Transportation (MoT) Pit Manager may permit the employment of persons in a sand and gravel pit or quarry (Mine) for up to 12 hours in a 24 hour period. This variance applies only to pits managed by the MoT (Ministry of Transportation).

The Pit Manager shall communicate this variance to all affected workers, whether employees of the Ministry of Transportation, its contractors or sub-contractors. This variance is subject to review within five years as provided by section 13(4) of the Mines Act. A copy of this variance is available to any MoT regional or district Occupational Health and Safety Committees which may be involved in sand and gravel pit or quarry operations."

Section 4.9.1 – Health, Safety and Reclamation Code for Mines in British Columbia (Code)

"Due to the short period of time that some haul trucks spend at your various pits and quarries, i.e. for loading purposes only, I am hereby enabling a Health and Safety Inspector of the Mines Branch to vary the requirement for automatic back-up alarms on transient haul trucks at the discretion of the Inspector. If, in the opinion of the Inspector, the time spent by the truck at the pit or quarry is of short duration, and the required routing of the truck for loading purposes is such that no hazards are created by such a routing, then an automatic back-up alarm need not be required and the use of any audio warning device will be accepted while in reverse."

"You are reminded that the above refers only to transient haul trucks and not to trucks used for production purposes; neither does it apply to any other vehicle in excess of 7,000 kg gross vehicle weight."

Section 4.9.5 - Health, Safety and Reclamation Code for Mines in British Columbia (Code)

As a haul truck driver's visibility of the area surrounding the truck tends to improve as the size of the truck decreases, I am prepared to allow a variance to the above section of the Code as follows:

"Provided that any haul truck used for production purposes at a gravel pit or quarry does not exceed 45 tonnes gross vehicle weight, there will be no requirement for the attachment of a whip antenna fitted with a flag and lamp, or a flashing light mounted on the cab of nonproduction vehicles."

SCHEDULE 4**LAND****Part 8****CONCESSION HIGHWAY ENCUMBRANCES**

Any new Concession Highway Encumbrances identified after a Proponent's proposal has been submitted but prior to the Commencement Date of this Agreement will be treated as a Province Change provided that the new Concession Highway Encumbrances do not arise as a result of the Proponent's proposal. This Part 8 of Schedule 4 may be updated from time to time until the Commencement Date of this Agreement.

Table 1: Forestry Encumbrances

Number	Type	Notes
1	BC Timber License (Small Business Area)	Sec 10, Twp 27, Rge 21, W5M, KD
2	1587 Woodlot Forestry Service	Dart Creek
3	8289 Road	Dart Creek FSR
4	A17645 Forest License Forestry Service	
5	7746 Road	Glenogle FSR
6	CA 12B 7/03 Access Permit	Vacation Main
7	CA 12B 6/03 Access Permit	Mine Road
8	CA 12B 4/03 Access Permit	Lwr Hunter Rd
9	CA 12B 5/03 Access Permit	Hunter Main
10	CA 12B 4/01 Access Permit	Glenogle Creek
11	CA12B8/99 Access Permit	19 kms east Golden
12	CA 306/75 Access Permit	10 Miles East

Table 2: Permits and Other Encumbrances

Reference #	Document	Date	General Location	Miscellaneous
1	03-112-12B5/99	Permit	01/99 199 Kicking Hrs Rd	Access
2	37-CA 31/87	Permit	07/87 3 Km East	Access
3	N26/81	Permit	05/81 1.7 Km east	Signage
4	N16/82	Permit	03/82 Jnction 1 & 95	Signage
5	03-012-12B 52/91	Permit	09/96 198 Beaverfoot	Installation of Power Line
6	12B53/97	Permit	11/97 Adjacent to Hwy 1 East of Golden	Replace Braces to Field
	12b-06/89to12b-12/89&12b-			
7	14/89	Permit	11/89 Hwy 1 r/w, sec18, tp27, rg21	Installation of Power Pole
8	12B54/96	Permit	09/96 198 Beaverfoot	Installation of Power Line
9	12b/3/90	Permit	11/90 604R Trans Canada	Installation of Power Line
10	N37-5/84	Permit	05/84 South side r/w Plan 10914 Sec13 TP27 Rg 22 W5	Installation of pedestal & cable
11	N37-43/80	Permit	07/80 Lot 1, plan 4039 Sec12TP27RG21	Sewer Main
	N37-42, 43			
12	44/80	Permit	06/80 Lot 1, plan 5103 NE1/4sec12tp27 rg21	Installation water main
13	N37-54/88	Permit	07/88 East side r/w Plan R301 sec24tp27rg22 Under hiwy 1, Blk 10. S.L.7,SE1/4 Sec13, Tp27, Rg21	Installation of telephone service box.
14	N37-42/80	Permit	06/80 Rg21	Installation Sewer Main
15	N37-31/83	Permit	04/83 R/W #1, Plan R-272, sec24&25, tp26, rg20	Buried cable, pedestals
16				
17	03-012-12B29/95	Permit	07/95 199 Kicking Hrs Rd	Installation of Water Line
18	N37-63/83	Permit	06/83 #74 Wapta Rd	Access
19	N37-82/79	Permit	07/79 Lot 1 Plan 5607 Sec 25, twp 26, rg 30	Access
20	402804		SECTION 10, TOWNSHIP 27, RANGE 21, WEST OF THE 5TH MERIDIAN, KOOTENAY DISTRICT.	BRITISH COLUMBIA HYDRO
21	402703	Permit	SECTION 12, TOWNSHIP 27, RANGE 21, WEST OF THE 5TH MERIDIAN, KOOTENAY DISTRICT.	Purpose: Utility Subpurpose: Electric Power Line
22	403685	Licence of Occupation	SECTION 33, TOWNSHIP 26, RANGE 20, WEST OF THE 5TH MERIDIAN, KOOTENAY DISTRICT.	Purpose: Commercial Recreation Subpurpose: Guided Freshwater Recreation
23	403677	Licence of Occupation	SECTION 12, TOWNSHIP 27, RANGE 21, WEST OF THE 5TH MERIDIAN, KOOTENAY DISTRICT.	Purpose: Commercial Recreation Subpurpose: Guided Freshwater Recreation
24	403679	Licence of Occupation	SECTION 12, TOWNSHIP 27, RANGE 21, WEST OF THE 5TH MERIDIAN, KOOTENAY DISTRICT.	Purpose: Commercial Recreation Subpurpose: Guided Freshwater Recreation
25	403685	Licence of Occupation	SECTION 6, TOWNSHIP 27, RANGE 20, WEST OF THE 5TH MERIDIAN, KOOTENAY DISTRICT.	Purpose: Commercial Recreation Subpurpose: Guided Freshwater Recreation
26	403674	Licence of Occupation	SECTION 6, TOWNSHIP 27, RANGE 20, WEST OF THE 5TH MERIDIAN, KOOTENAY DISTRICT.	Purpose: Commercial Recreation Subpurpose: Guided Freshwater Recreation
27	403685	Licence of Occupation	SECTION 5, TOWNSHIP 27, RANGE 20, WEST OF THE 5TH MERIDIAN, KOOTENAY DISTRICT.	Purpose: Commercial Recreation Subpurpose: Guided Freshwater Recreation
28	403674	Licence of Occupation	SECTION 5, TOWNSHIP 27, RANGE 20, WEST OF THE 5TH MERIDIAN, KOOTENAY DISTRICT.	Purpose: Commercial Recreation Subpurpose: Guided Freshwater Recreation
29	403684	Licence of Occupation	SECTION 32, TOWNSHIP 26, RANGE 20, WEST OF THE 5TH MERIDIAN, KOOTENAY DISTRICT.	Snowmobiling Purpose: Commercial Recreation Subpurpose: Guided Freshwater Recreation
30	403679	Licence of Occupation	SECTION 32, TOWNSHIP 26, RANGE 20, WEST OF THE 5TH MERIDIAN, KOOTENAY DISTRICT.	Purpose: Communication Subpurpose: Communication Sites
31	403382		SECTION 16, TOWNSHIP 27, RANGE 21, WEST OF THE 5TH MERIDIAN, KOOTENAY DISTRICT.	
32	964006		SECTION 15 and 16, TOWNSHIP 27, RANGE 21, WEST OF THE 5TH MERIDIAN, KOOTENAY DISTRICT.	Purpose: Environment, Conserv Purpose: Environment, Conservation, & Recr Subpurpose: Urep/Recreation Reserve
33	61279		SECTION 1, 6 and 12, TOWNSHIP 27, RANGE 21, WEST OF THE 5TH MERIDIAN, KOOTENAY DISTRICT.	

Table 3: Mining Encumbrances

	Tenure Number	Tag Number	Claim Name	Tenure Status	Tenure Type
1	395471	712183M	FIVE MILE	GOOD STANDING 2007.08.06	Two Post Claim
2	395472	712184M	SIX MILE	GOOD STANDING 2007.08.06	Two Post Claim

Table 4: Trapping Licences

1	From Dart Creek – SE ¼, Sec 16, TP 27, R21, W5M – East to Yoho Park	Guide Outfitter is D. Wolfenden
2	From Dart Creek – SE ¼, Sec 16, TP 27, R21, W5M – East to Yoho Park	Trapper is J. Blair
3	Mt. Seven (Southh Side of Kicking Horse River) – NW ¼, Sec 9, TP 27, R21, W5M - Back to town	Trapper is T. Sime
4	Dart Creek – SW ¼, Sec 16, TP 27, R21, W5M - Back to Golden on north side of river	Trapper is P. Feuz

Table 5: Licences of Occupation

	<u>Licence #</u>	<u>Purpose</u>
1	403689	Commercial Recreation (Sub-purpose: Guided Freshwater Recreation)
2	403675	Commercial Recreation (Sub-purpose: Guided Freshwater Recreation)
3	493676	Purpose: Commercial Recreation (Sub-purpose: Guided Freshwater Recreation)

Information related to permits and other encumbrances are located in Section 8.0 (Property) of the Data Room.

Information related to certificates under the *Railway Act* are located in Section 3.2.1 (Railway Crossings) of the Data Room.

SCHEDULE 4

LAND

Part 9

[NOT USED]

SCHEDULE 4

LAND

Part 10

[NOT USED]

SCHEDULE 4

LAND

Part 11

[NOT USED]

SCHEDULE 5

DESIGN AND CONSTRUCTION REQUIREMENTS

Part 1

DESIGN AND CONSTRUCTION OUTPUT SPECIFICATIONS

1. In the design, planning and execution of the Works and other works in connection with the repair, maintenance, rehabilitation or improvement of the Project Facilities, the Site and the Adjacent Areas, and functions associated with the construction of the Project Facilities (including the Works), the Concessionaire shall take all such action and do all such things (including organizing itself, adopting measures and standards, executing procedures, including inspection procedures and safety patrols, and engaging and managing contractors, agents and employees) as will and in such manner as will:
 - 1.1 enable the Province to provide an acceptably safe highway in respect of its condition (structural safety) and use (road safety); and
 - 1.2 enable the Province and other Governmental Authorities to fulfill its and their statutory and common law functions, duties and obligations;and, subject to paragraphs 1.1 and 1.2 above:
 - 1.3 enable the Police, Public Authorities, and others with statutory duties or functions in relation to the Concession Highway or Connecting Roads to fulfill those duties and functions;
 - 1.4 minimise the occurrence and adverse effects of accidents and ensure that all accidents and emergencies are responded to as quickly as possible;
 - 1.5 minimise the risk of damage, destruction or disturbance to third party property;
 - 1.6 ensure that members of the public are treated with all due courtesy and consideration;
 - 1.7 provide a safe, clear and informative system of road signs;
 - 1.8 comply with any specified schedule requirements, including for the completion of the Works or any part or parts thereof;
 - 1.9 enable standards of reliability, durability, accessibility, maintainability, quality control and assurance, and fitness for purpose appropriate to a highway of the character of the Concession Highway to be achieved throughout the Contract Period;
 - 1.10 comply with the Orders and any New Order;

- 1.11 comply with the environmental requirements detailed in the CEAA Screening Report and the CEAA Approval, including the achievement of a high standard in the mitigation of adverse environmental effects; and
 - 1.12 achieve a high standard in the appearance and aesthetic quality of the Project Facilities, the Site and the Adjacent Areas and achieve integration of the Concession Highway with the character of the surrounding landscape through both sensitive design and sensitive management of all visible elements including those on the Existing Highway.
2. The Concessionaire shall comply with the Design and Construction Output Specifications identified in Appendix 1.

Appendix 1 to Part 1 of Schedule 5

General

This Appendix defines the scope of Works designed or constructed in connection with the repair, maintenance, rehabilitation or improvement of the Project Facilities, the Site and the Adjacent Areas but excluding the Phase 1 Section Works and contains the following:

Part 1 - Scope of work for design and construction for Works; and

Part 2 - Design criteria and performance specifications for Works.

1. SCOPE OF WORK FOR DESIGN AND CONSTRUCTION

1.1 Overview

The Concessionaire will provide all resources, materials and tools necessary to completely manage, design and construct the Works in conformance with the standards, design criteria, drawings, specifications and guidelines outlined and referenced within the Concession Agreement, and as more particularly described in this Part 1. The Works must be Substantially Completed by October 31, 2009. Capitalized terms used herein not otherwise defined in Schedule 1 [Definitions and Interpretation] shall have the meaning given to such terms as set out in Appendix 2.

The Concessionaire's scope of work for design and construction of Works is to re-align and improve the Phase 2 Section of the Existing Highway. The Works include the west approach to the Park Bridge immediately east of the Phase 1 Section, Park Bridge replacement and Ten Mile Hill to the east of the Park Bridge to the vicinity of the Brake Check. The Concessionaire will provide a minimum of four lanes for the entire length of the Phase 2 Section between the easterly limit of Phase 1 Section and the Brake Check area.

The Works include but are not limited to the following elements:

- highways and roadways;
- intersections and other access provisions;
- bridges;
- retaining structures;
- tunnels;
- excavation and embankment including rock removal, haul and placement;
- slope stabilization;
- protection of highway from avalanches and rockfall;
- pavement;
- safety appurtenances;

- drainage facilities;
- lighting and traffic control devices;
- signs and pavement markings;
- utilities;
- landscaping and aesthetic features;
- temporary work and facilities;
- securing permits and approvals necessary to carry out the construction of the Works and other works in connection with the improvement of the Project Facilities, the Site and the Adjacent Areas; and
- environmental mitigation and enhancements.

The Works may also include but not be limited to the provision of:

- quality management;
- traffic management;
- communications management;
- project management; and
- risk management.

1.2 References

Code, standard and guideline references are listed in Section 1.2 of Appendix 2. The most current editions as of October 27, 2004 are applicable unless noted otherwise. For features not covered by these references, the Concessionaire will submit recommendations for appropriate references as part of the design review process.

1.3 Reviews

The Concessionaire will submit design materials and progress reports to the Province's Representative for review in accordance with Part 3 of Schedule 5 [Design and Certification Procedure].

The purpose of reviews by the Province is to ensure that submissions are in accordance with the provisions of the Concession Agreement. Reviews are not intended as a guarantee of the applicability of the material provided but are intended to identify non-conforming elements that do not meet the Concession Agreement requirements.

Without limiting the obligations of the Concessionaire to comply with Part 3 of Schedule 5 [Design and Certification Procedure], the Concessionaire will make the following design submissions including all necessary design materials and progress reports in respect of the Works at the following design stages:

- 50% Detailed Design completion or as appropriate to show all functional elements of the designs; and
- 100% Detailed Design completion immediately prior to issuing for construction.

The Concessionaire will address all comments provided by the Province to the satisfaction of the Province.

Without limiting in any way the obligations of the Concessionaire to comply with Part 3 of Schedule 5 [Design and Certification Procedure], the Concessionaire will be responsible for all approvals that are specified in the codes, standards and guideline references as written. Submissions to the Province will be limited to those specifically required in the Concession Agreement.

1.4 Designs, Drawings and Document Preparation

The Concessionaire will prepare all detailed design drawings and documents required for design compliance, reviews in accordance with Part 3 of Schedule 5 [Design and Certification Procedure] and for its construction use. All detailed design drawings will be prepared in accordance with the *BC Supplement to TAC Geometric Design Guide* except as modified in this Part 1.

All detailed design drawings, design notes and computations, design reports, quality control reports, test results, and final “record” drawings must be certified by a Professional Engineer.

The Concessionaire will provide the Province with the following documents:

- design reports showing the design decision process, criteria and assumptions used to develop the design;
- all issued for construction drawings and related specifications;
- tunnel design data as may be inherent in the Concessionaire’s design;
- all changes to the issued for construction drawings and related specifications; and
- record drawings in accordance with the requirements stated in this Part 1.

1.5 Key Components of the Work

1.5.1 Project Management

The Concessionaire will provide complete project management for the purposes of construction of the Works in accordance with the requirements of the Concession Agreement.

1.5.2 Construction Safety

The Concessionaire will comply with all construction safety requirements in accordance with the Concession Agreement.

1.5.3 Environmental Management

The Concessionaire will provide a complete environmental management organization in accordance with the Concession Agreement including the requirements stated in Schedule 12 [Concessionaire's Environmental Obligations].

1.5.4 Traffic Management

The Concessionaire will provide Traffic Management during construction of the Works in accordance with Part 6 of Schedule 5 [Traffic Management Output Specifications (Original Service Period)].

1.5.5 Quality Management System

The Concessionaire will provide Quality Management for the Project in accordance with Schedule 6 [Quality Management].

1.5.6 Communications Management

The Concessionaire's involvement in Communications Management throughout the construction of the Works shall be in accordance with Schedule 17 [Liaison Procedures].

1.6 **Construction Physical Requirements**

1.6.1 Geotechnical and Materials – Investigation and Design

The Province has performed limited geotechnical investigations in the form of drill holes and seismic refraction surveys at various locations adjacent to the Existing Highway including the Phase 2 Section. This information was provided to the Concessionaire during the Proposal preparation period. In addition, the Province has undertaken a limited amount of drilling, sampling and testing and seismic refraction surveys at locations requested by the Concessionaire. However, if the Concessionaire determines that additional surface or subsurface geotechnical information is necessary to properly design and construct the Works, the Concessionaire will perform such investigations and analysis at its own expense, and in accordance with the requirements of the Concession Agreement.

Any geotechnical investigation and design undertaken by the Concessionaire will generally include, but will not necessarily be limited to:

- soils, bedrock and groundwater investigation and interpretation;
- foundation designs for bridge structures and retaining walls;

- cut slope and retaining wall stability assessment and design, including probabilistic assessment of stability of retaining walls under static and pseudo-static conditions;
- geological / natural hazard assessment and mitigation design;
- seismic assessment and design;
- slope stability and design;
- embankment stability design and settlement assessment;
- utility issues;
- groundwater assessment;
- aggregate and borrow source evaluation and selection;
- excavation of waste disposal sites and design of disposal procedure;
- pavement structure design (where not specified by the Province);
- concrete mix design; and
- asphalt mix design.

The Concessionaire will conduct an evaluation of the conditions along the Highway Improvement and an assessment of the design and proposed construction activities to determine whether any surrounding infrastructure or properties are at risk of damage arising from such things as vibration, ground movement, or groundwater changes induced by construction activities and post-construction operation of the Works. A Professional Engineer must carry out the above-described evaluation. The Concessionaire will be responsible for conducting pre-construction “baseline” inspections of all infrastructure, properties, water wells, utilities, etc., identified to be at risk. The Concessionaire will monitor the impact of construction, address any complaints regarding construction impacts, modify the design and/or construction activities to minimize impacts, and resolve any claims arising from impacts associated with, or resulting from, construction activities.

The Concessionaire will provide all geotechnical investigations, designs and evaluations in respect of the Highway Improvement and the Works for review by CP Rail.

1.6.2 Highway Design and Construction

Highway design and construction generally includes, but is not necessarily limited to:

- design and construction of highway re-alignment and widening improvements, for which the detail design will be in accordance with the geometric design criteria included and referenced in this Appendix 1; and

- design and construction of ancillary highway features, such as vehicle and viewpoint pullouts, and maintenance and emergency vehicle turnarounds at appropriate locations.

The design and construction of the highway improvements will be in accordance with the design criteria and performance specifications provided and referenced within Section 2.0 of this Appendix 1.

1.6.3 Structural Design and Construction

Structural design and construction includes, but is not necessarily limited to:

- bridges including the crossing of the Kicking Horse River and the CP Rail Lands;
- other bridges as may be inherent in the Concessionaire's design;
- retaining walls along the Highway Improvement to accommodate widening and re-alignment. The Works may also include design and construction of retaining walls along the median of the highway to accommodate a split-grade alignment;
- overpass structures;
- rockfall catchment structures;
- avalanche control structures, shed(s) and related structures;
- avalanche shed(s) and related structures;
- culverts greater than 3.0 metres in diameter; and
- overhead and cantilever sign structures.

The design and construction of the structures will be in accordance with the design criteria and performance specifications provided and referenced within Section 2.3.2 of this Appendix 1.

1.6.4 Hydrology / Hydraulic Design and Construction

Hydrology / hydraulic design and construction includes, but is not necessarily limited to:

- the determination of the design flow using station frequency analysis, stage discharge computations and other applicable methods as confirmation;
- computation of required hydraulic opening size and configuration, general and local scour depths, designing rip rap protection for banks, in-stream pier design, force of ice on piers, assessment of geomorphic stream pattern changes, and channel stability and debris impact; and
- construction of riverbank and pier protection works.

The design and construction of hydraulic structures will be in accordance with the design criteria and performance specifications provided and referenced within Section 2.3.2.1 of this Appendix 1.

1.6.5 Intersection Design and Construction

Intersection design and construction includes, but is not limited to:

- full movement access to the joint use rest area and Rafters' Pullout;
- combined full movement access to the Brake Check and Glenogle Forest Operations Road; and
- access to CP Rail's right of way and rail line near the existing Park Bridge location.

The design and construction of intersections will be in accordance with the design criteria and performance specifications provided and referenced within Section 2.3.1 of this Appendix 1.

1.6.6 Traffic and Electrical Design and Construction

Traffic and electrical design and construction will include, but is not necessarily limited to:

- all temporary and permanent regulatory, warning and information signage;
- all temporary and permanent paint markings;
- all roadside and median traffic barriers; and
- all traffic control devices and lighting.

The design and construction of traffic and electrical appurtenances will be in accordance with the design criteria and performance specifications provided and referenced within this Appendix 1.

1.6.7 Drainage Facilities Design and Construction

Drainage facilities design and construction will include, but is not necessarily limited to:

- accommodation of surface runoff flowing through and generated from the Highway Improvement;
- accommodation of surface runoff flowing through the CP Rail right-of-way adjacent to the Highway Improvement where required by the Concessionaire's design; and
- culverts, ditches and related drainage structures.

The design and construction of drainage facilities will be in accordance with the design criteria and performance specifications provided and referenced within Section 2.3.7 of this Appendix 1.

1.6.8 Avalanche Defences Design and Construction

Avalanche defences design and construction will be required to meet the Province's objectives as referenced in this Appendix 1 and must ensure the risk to the traveling public is minimized and the exposure to avalanche hazards are considered acceptable.

The design and construction of avalanche defences will be in accordance with the design criteria and performance specifications provided and referenced within Section 2.3.8 of this Appendix 1.

1.6.9 Landscape Design and Construction

Landscape design and construction will include, but will not necessarily be limited to:

- a site inventory, site analysis and visual impact assessment associated with the Works;
- preliminary and detail landscape and aesthetic planning and design for the Works to ensure it is compatible with the area setting;
- aesthetic design of all structures;
- the New Rest Area and Rafters' Pullout; and
- provision for point features designs.

The Concessionaire will design and construct landscaping and aesthetic treatments for all areas affected by the Works with an emphasis on viewpoints, bridge structures and other components where aesthetic enhancements will add value.

All aesthetic designs are to be developed and signed by a Landscape Architect or Architect.

The design and construction of landscape and aesthetic features will be in accordance with the design criteria and performance specifications provided and referenced within Section 2.3.14 of this Appendix 1.

1.6.10 Design and Construction of Works in Relation to CP Rail Lands

Design and construction of Works in relation to the CP Rail Lands will include, but is not necessarily limited to:

- mitigation of all actual or potential impacts on existing or planned future infrastructure installed or maintained by CP Rail adjacent to the Highway Improvement and the Works; and
- access from the Highway Improvement to the CP Rail Lands in the vicinity of the existing Park Bridge.

The Concessionaire will prepare a Railway Impact Assessment Report to assess design, construction and operational impacts of the Works on existing and planned future CP Rail facilities and operations and to identify the CP Rail Works. The report will identify and assess:

- rail related impacts associated with the design of the Works in accordance with the design criteria and performance specifications outlined in Section 2 of this Appendix 1;
- rail related impacts associated with the construction of the Works improvements and any related decommissioning work; and
- rail corridor and railway operation impacts associated with the Works.

Issues to be addressed by the Concessionaire in the Railway Impact Assessment Report include, but are not limited to: access to the CP Rail Lands, public access, track protection during construction, surface drainage and groundwater changes, construction impacts on slope / soils and rock stability, utility and road crossing impacts.

The Concessionaire will obtain a letter from CP Rail (the “CP Rail Design Acceptance Letter”) that indicates its acceptance of the Concessionaire’s design as it might affect CP Rail infrastructure and acceptance of the Concessionaire’s plan for working in and around CP Rail Lands prior to beginning any construction.

1.6.11 Utilities Design and Construction

Utilities design and construction will include, but is not necessarily limited to:

- confirmation of actual locations of existing Utilities;
- identification of requirements of all Utilities and Utilities Suppliers;
- determination of the most effective strategy to undertake the protection, temporary relocation or permanent relocation of Utilities;
- securing all necessary arrangements with the Utility Suppliers with respect to their affected Utilities, including but not limited to obtaining approvals for protection and relocations and providing information and plans to the Utility Suppliers following completion of the Works; and
- protection, temporary relocation or permanent relocation of Utility Works affected by the Works while retaining the Utility in service during and after completion of the Works.

The Province has prepared a utility report, which summarizes the work done to date and information obtained regarding known Utilities, which could be affected by the construction of the Works. While the report attempts to capture the scope and extent of Utilities along the Phase 2 Section, the Province does not guarantee the completeness or accuracy of the information. Nor does the utility report limit the Concessionaire’s obligations under the Concession Agreement or these Construction Output Specifications. The utility report forms part of the Disclosed Data.

The Province has entered into Utility Agreements including the following Utility Protocol Agreements and Master Use Agreements:

- Protocol Agreement: The Province / BC Hydro (1995);
- Protocol Agreement: The Province / BC Tel (1996);
- Master Use Agreement for Wireless Communication Sites: Ministry of Transportation and BC Tel Mobility Cellular (04 Dec 97);
- Master Use Agreement for Wireless Communication Sites: Ministry of Transportation and Bell Mobility Cellular Inc. (11 Jun 01);
- Master Use Agreement for Wireless Communication Sites: Ministry of Transportation and Micro Cell Connexions Inc. (21 Oct 97);
- Master Use Agreement for Wireless Communication Sites: Ministry of Transportation and Rogers Cantel Inc. (14 Nov 97); and
- Classified Highways – Part 3 Highway Act Responsibility and Cost Sharing Guide (September 1987).

The Concessionaire is responsible for liaising, coordinating and performing all Utility Agreements (including the Utility Protocol Agreements, the Master Use Agreements and the Cost Sharing Guide known as “Classified Highways – Part 3 Highway Act Responsibility and Cost Sharing Guide (September 1987)” and arrangements with Utility Suppliers, communities, local governments, ministries and authorities of the Province or the federal government and including without limitation, any costs and expenses incurred for the protection, temporary relocation and permanent relocation of all Utilities.

The Concessionaire shall be responsible for adjustment and relocation of all Utilities in accordance with the MOT’s Utility Policy Manual where applicable.

1.6.12 Highway Safety and Road Safety Audit

Road Safety Audit

The Concessionaire will retain an independent safety audit team to carry out a Road Safety Audit on the design as outlined in Section 2.3.15 of this Appendix 1.

The Road Safety Audit will be a formal and independent review by a team of recognized safety experts, with specific and extensive experience in the area of highway design in mountainous terrain. The Road Safety Audit will identify and assess the elements of the design(s) that may adversely affect the expected safety performance of the facility.

1.6.13 Right-of-Way and Access

The Concessionaire shall construct the Works and perform the Operations on the Site as set out in Schedule 4 [Land] and Section 8 [Land] of the Concession Agreement.

1.6.14 Work by Others

Third parties may be undertaking construction or other activities adjacent to the Existing Highway during the course of the Works. The Concessionaire will make its own investigations with respect to activities by third parties that could affect the performance of the Works.

Some of the activities that will or may be undertaken by other contractors within or adjacent to the Site during the course of the Works are as follows:

- Phase 1 Section Works are scheduled for completion by Fall 2006; and
- work on the Phase 3 Section that may be undertaken independently by the Province or any other party contracting with the Province.

Other works that may be undertaken by other contractors within the limits of the Concession Highway will be made known to the Concessionaire in a timely manner to ensure effective interaction between all parties, and, efficiency and continuity of the desired service to the traveling public.

In accordance with Section 14.4 [Access] of the Concession Agreement and without restricting the obligations of the Concessionaire under that section, the Concessionaire will allow other contractors who are responsible for certain sections of the Concession Highway including the Project Facilities, the Site and the Adjacent Areas or other persons authorized by the Province access to the Concession Highway including the Project Facilities, the Site and the Adjacent Areas and through the Phase 2 Section as necessary for them to carry out their construction activities.

1.6.15 Demolition / Removal of Existing Park Bridge and By-Passed Sections of Existing Highway

Demolition / removal Works within the Phase 2 Section shall include:

- the existing Park Bridge including substructure to a depth of 500 mm below finished grade; and
- the by-passed section(s) of the Existing Highway with the exception of any sections required to maintain existing access to the CP Rail Lands and to provide maintenance access to the new bridge structure and approaches.

The removal of the Existing Highway is to include appropriate grading to facilitate revegetation of the affected areas. Revegetation is to be in accordance with the landscape design criteria described in Section 2.3.14 of this Appendix 1 and to the satisfaction of the Ministry of Water Land and Air Protection with respect to wildlife habitat value.

The demolition of the existing Park Bridge will be in accordance with the design criteria and performance specifications described in Section 2.3.15A of this Appendix 1.

2. DESIGN CRITERIA AND PERFORMANCE SPECIFICATIONS FOR THE WORKS

2.1 General

Unless explicitly stated to the contrary in the Concession Agreement, the Concessionaire will be solely responsible for ensuring that all aspects of the scope of work are designed and constructed in accordance with current Ministry directives, accepted standards, specifications, practices, policies and procedures in effect as of October 27, 2004. The Technical Requirements, the Concessionaire's Quality Management System and the design criteria presented in this section, define the minimum standards that will be met by the Concessionaire.

2.2 Performance Criteria

The Concessionaire will meet or exceed the operational and safety performance criteria as described in the following sections.

2.2.1 Operational Performance

The Works will be designed to operate at Level of Service (LOS) B/C or better for the Contract Period.

2.2.2 Access

Access to and from the Concession Highway will be established and maintained by the Concessionaire and will include the following:

- combined full movement access to the rest area and Rafters' Pullout area to be constructed as part of the Works;
- combined full movement access to the Brake Check and Glenogle Forest Operations Road.
- CP Rail's current maintenance access east of the existing Park Bridge to the CP Rail Lands will be maintained during construction of the Works and thereafter the Concessionaire shall provide CP Rail with a permanent access roadway in its stead to the satisfaction of CP Rail in accordance with the CP Rail Design Acceptance Letter.

2.3 Design Criteria

This section provides an outline of the design criteria and construction performance specifications that the Concessionaire shall use for the Works. In general this section addresses the following:

- roadway design criteria;
- structural design criteria;
- tunnel design criteria;
- geotechnical design criteria;

- utilities design criteria;
- drainage design criteria;
- avalanche design criteria;
- environmental design criteria;
- pavement design criteria;
- electrical and traffic engineering design criteria;
- signing design criteria;
- pavement marking design criteria;
- landscape design criteria;
- materials and construction specifications;
- traffic management during construction;
- accommodation of railway traffic;
- accommodation and coordination of the Phase 1 Section Contract relating to the Phase 1 Section Works;
- accommodation of highway safety; and
- final documentation.

2.3.1 Roadway Design Criteria

The design criteria and performance specifications stated in this Section 2.3.1 define minimum design standards that must be achieved in respect of roadway design and performance. The Concessionaire will use analytical tools and Good Industry Practice when applying the design criteria.

The Concessionaire will design the roadway elements of the Works to meet Transportation Association of Canada (TAC) requirements, BC Supplement to “*TAC Geometric Design Guide*” (2001) and the Required Design Standards referred to in the following Tables 2-1 and 2-2:

**Table 2-1
Trans Canada Highway**

Roadway Design Criteria	Present Conditions	Required Design Standards
Highway Classification	Rural Arterial Undivided (RAU)	Rural Arterial Divided (RAD)
Design Speed	70 – 80 km/h	100 km/h
Basic Number of Lanes	2, 3 and 4	4 throughout
Minimum Radius (Road)	148 m	440 m
Bridge / Tunnel Radius	n/a	> 440 in consideration of the poor winter conditions the area is prone to
K Factors range	Sag 9-95; Crest 19-59	Sag 37-50; Crest 45-80
Maximum Grade: - Highway (road) Grade - Bridge / Tunnel Grade	7.7% N/A	6% < 6% in consideration of the area setting and the poor winter conditions the area is prone to
Maximum Super-Elevation - Road sections - Bridge / Tunnel sections	8% - 10% n/a	6% < 6% in consideration of the poor weather conditions the area is prone to
Stopping Sight Distance	Varies	To meet 150 mm object height without barrier
DSD range at Intersections	132 – 318 m	300 – 400 m
Lane Width (through lanes)	3.6 m	3.7 m
Right Hand Shoulder Width (including in tunnels)	0.8 – 2.0 m	2.5 m
Right Hand Shoulder Width on Bridge Structures	0.5 m	2.0 m
Median Width	N/A	2.6 m
Design Vehicle	N/A	WB-20

**Table 2-2
Side Roads**

Roadway Design Criteria	Present Conditions	Required Design Standards
Road Classification	Rural Local Undivided (RLU)	Rural Local Undivided (RLU)
Design Speed	50 km/h	50 km/h
Basic Number of Lanes	2	2
Maximum Road Grade:	8.0%	8.0%
Stopping Sight Distance	Varies	To meet 150 mm object height without barrier
Lane Width (through lanes)	3.5 m	3.6 m
Right Hand Shoulder Width	Not applicable	1.0 m 1.3 m required to a barrier face
Median Width	Not applicable	0.0 m
Design Vehicle	Not applicable	WB-20

Roadway design criteria notes:

- In designing the Works, the Concessionaire will address the combination of horizontal alignment, vertical profile, road surface conditions and environmental factors when applying geometric design criteria.
- All intersections will be designed to accommodate a WB-20 Vehicle for all movements and will include appropriate turning lanes. Intersections will be limited to:
 - access to the joint use rest area and Rafters' Pullout;
 - access to the Brake Check and Glenogle Forestry Operations Road; and
 - other accesses as may be required by the Concessionaire's design.
- the Works will also include the design and construction of an access road to the CP Rail Lands east of the Kicking Horse River which will be constructed in accordance with the CP Rail requirements and which will be designed and constructed so that maintenance due to rockfall, drainage and other related issues will be well within the expectations of CP Rail. Following its construction, CP Rail will be responsible for maintenance of the access road.

2.3.2 Structural Design Criteria

This Section contains the structural design criteria which is the minimum requirement for the Works.

2.3.2.1 Design of New Bridges and Structures

All bridges and structures forming part of the Works shall be classified as facilities to which the Canadian Standards Association's (CSA's) *Canadian Highway Bridge Design Code* (CAN/CSA-S6-00) will apply as the governing code unless noted otherwise. The design of all structures including bridges shall be in accordance with CAN/CSA-S6-00. The live load classification will be CL 625.

For seismic design all bridge structures will be defined as "Emergency Route Bridges" in accordance with CAN/CSA-S6-00.

In accordance with Section 1.1.1 of CSA S6-00 any structures designed to provide protection against avalanches and rock falls shall be designed in accordance with the recommendations of a specialist who is experienced in the design of these structures and is a Professional Engineer. The design avalanche shall have a return period of 300 years.

Hydraulic design for the Works shall be carried out in accordance with Section 1.10 of CAN/CSA-S6-00 except as follows:

- the reference to the *TAC Guide to Bridge Hydraulics* shall refer to the June 2001 edition of that document;
- the normal design flood shall have a return period of 200 years;
- design for a check flood will not be required; and
- the minimum clearance between the soffit of the structure and the design high water level will be 1.5 m.

Bridge supports shall not be placed within the 1 in 200 year flood level of the Kicking Horse River unless specific approval to do so is obtained by the Concessionaire from the all applicable approving agencies under applicable Laws and Regulations.

Structure foundation design shall be carried out in accordance with Ministry Technical Circular T10/99, "Foundation Design" dated August 31, 1999.

For fatigue design, Class A Highway ADTT will be used.

2.3.2.2 Clearances

The minimum vertical clearance over all paved surfaces will be 5.5 metres. The minimum vertical clearance will be maintained throughout the life of the structure (and without restricting the generality of the foregoing, long term settlement of supports, superstructure deflection and other matters which may affect the minimum vertical clearance shall be accounted for).

CP Rail plans a future twin track adjacent to its existing track. The new bridge to be constructed by the Concessionaire as part of the Works will

provide the following required clearances to the existing single track and proposed future twin track of CP Rail:

- minimum vertical clearance of 7.160 m from base of rail to underside of bridge;
- minimum horizontal clearance of 5.500 m between the bridge support and the outside rail of the nearest existing or future railway track;
- where the bridge support footing is founded on ground above the near track grade, the minimum horizontal clearance distance will be increased to 7.620 m; and
- if a pier face is less than 8.000 m from an existing or future track centreline then a crashwall in accordance with AREMA Chapter 8 standards will be required.

These clearances are illustrated in Overhead Application Layout Standard Drawing D.2.2 of the Ministry's Manual of Bridge Standards and Procedures.

2.3.2.3 Design Service Life

Bridges forming part of the Works will be designed to have a durability that will ensure a minimum design life as defined in CSA S6-00 of 75 years. The design of any components of the Works with a design service life less than 75 years shall allow for inspection and maintenance access as well as ease of replacement.

2.3.2.4 Integral Abutments

Integral abutments, if used, will be designed to take account of the zone of soil / structure interaction behind the abutments, specifically the lateral soil pressure build-up and settlements that will occur in this zone as a result of thermal cycling. The design will be in accordance with a recognized publication applicable to the type of integral abutment under consideration which has been approved by the Province.

2.3.2.5 Bridge Deck Joints

The number of bridge deck joints will be minimized. Where joints need to be used, the Concessionaire will ensure that the design is such that future maintenance requirements are minimized and the structural design life of the bridge is not adversely affected.

Bridge deck joints will be of the multi-gland type.

The Concessionaire will seek acceptance of proprietary deck joint products from the Ministry, prior to use in the Works. All such products will be in general conformance with the *"Manual of Bridge Standards and Procedures"*.

2.3.2.6 Settlement of New Structures and Approach Fills

The maximum permissible design differential settlement between the abutment supported end and the grade-supported end of each approach slab forming part of the Works will be:

- two years after Substantial Completion – 50 mm; and
- long term (25 years) – 100 mm; and
- the maximum length of an approach slab shall be 6.0 metres and its maximum permissible change in grade shall be 1.0%.

The maximum permissible design differential foundation settlement between any adjacent abutments, associated wing walls, and piers will be:

- two years after Substantial Completion – 25 mm; and
- long term (25 years) – 50 mm.

As part of its obligations under Schedule 6 [Quality Management] the Concessionaire shall institute a monitoring program to ensure and confirm that the above-noted limits are not exceeded.

2.3.2.7 Products and Systems

The following systems are not approved for use in the new bridge structure. The list below does not constitute a complete list of non-approved products:

- steel grid decking;
- induced current cathodic protection system;
- modular deck joints;
- bridge deck heating systems;
- timber components;
- proprietary composite steel / concrete girders; and
- full depth precast deck panel.

2.3.2.8 Structural Steel

For a structural steel bridge, the following requirements will be followed:

- the grade for superstructure members will be 350 AT for plate and 350 A for rolled sections;
- all structural steel located within a distance of 1.5 'h' of all deck joints will be coated for increased corrosion resistance, where 'h' is the overall depth of the superstructure;

- the structural steel / concrete interface will be detailed such that no rust staining of the concrete occurs;
- access to steel girders for inspection purposes will be incorporated into the design, including, where appropriate, devices to enable inspectors to walk along all girders and tie off safely per WCB regulations;
- tie off devices will be designed such that the devices require a minimum level of maintenance and inspection;
- tie off devices shall be 1.5 m above the bottom flange and no slack on the tie off device will be permitted; and
- access to the girders by the general public will be blocked by ending the tie off devices at some distance from abutments, forcing the use of a ladder, and by providing locking devices on any hatches that give access from deck level.

2.3.2.9 Corrosion Rates for Steel Below Ground

For structural design, the sacrificial thickness for each surface exposed to soil or below the water table shall be based on a 100-year service life and will be computed as follows:

**Table 2-3
Corrosion Rates**

Galvanization loss	= 15 micrometers / year for first two years = 4 micrometers / year for subsequent years
Carbon steel loss	= 12 micrometers / year after zinc depletion

2.3.2.10 Reinforcing Steel

Reinforcing steel in the top mat of deck slabs and within the top 100 mm of the deck and all parapet steel will be epoxy coated. Galvanized reinforcing may be used in lieu of epoxy coated reinforcing provided that if galvanized steel is used, all bridge deck slab reinforcing and all parapet reinforcing will be galvanized.

Reinforcing steel within all potential plastic hinge zones will be grade 400W.

Couplers will not be used in plastic hinging zones.

Mechanical connectors for reinforcing bars will be couplers without bar offset and will be in accordance with the Standard Specifications for Highway Construction (latest edition), Subsection 412.34.03 - "Mechanical Coupler Splices".

Welded splices or joints in reinforcing steel will not be permitted.

2.3.2.11 Prestressing Steel

Strands will be seven-wire, uncoated, low relaxation, grade 1860 MPa ultimate. Pretension strands may be nominal 13 mm or 15 mm diameter.

Unbonded post tension tendons will not be used.

For segmental box girder bridges, additional post tensioning will be provided in accordance with AASHTO "Guide Specifications for Design and Construction of Segmental Highway Bridges", 1999 2nd Edition, clause 15.2 during construction and clause 15.3 for future dead load or deflection. The additional tendons required in clause 15.3 may be provided at the time of construction.

2.3.2.12 Bridge Decks

The Concessionaire may provide either a concrete deck overlay or a waterproof membrane and asphalt pavement overlay.

1. Deck Concrete

For new bridge decks and concrete deck overlays, deck and parapet concrete will contain 7% to 8% silica fume by weight of portland cement for durability unless an alternative protection system against de-icing salts is used. The use of an alternative protection system shall not result in an increase in the level of maintenance, repair or rehabilitation required in the deck and parapet concrete after the end of the Contract Period.

The 90 day chloride permeability of the deck and parapets will not be more than 1000 coulombs.

Superplasticizers are permitted for use in bridge decks.

The use of precast concrete deck slabs is not permitted.

Bridges with concrete decks will include a dead load allowance for an additional 50 mm of asphalt overlay.

The maximum proportion of fine aggregate (all aggregate passing the 5 mm screen) shall be 35% of the total mass of the coarse and fine aggregate.

The total alkali content (Na_2O equivalent) of the portland cement shall not exceed 0.6% and the total alkali content (Na_2O equivalent) contributed by the Portland cement to the concrete mix shall not exceed 2.4 kg per cubic metre.

The alkali-aggregate reactivity potential of the aggregate in the concrete mix shall be based on CSA A23.2-14A test results showing a maximum expansion of 0.04% in the concrete at 1 year.

The utilization of vapour barrier and membrane compounds for curing of deck concrete will not be permitted. The curing system shall utilize a free film of water on the cast concrete surfaces for a minimum of 7 days.

2. Deck Waterproofing Membrane and Asphalt Overlay

Waterproofing membrane and asphalt overlay may be used on new bridge decks. Asphalt overlay will have a minimum thickness of 100 mm.

Waterproofing membrane criteria are listed in the Ministry's Recognized Products List in the "Prefabricated" category under "Deck Membrane Systems".

Drains will be provided in accordance with the Ministry's Standard Specifications for Highway Construction (latest edition).

2.3.2.12A Alkali-Aggregate Reactivity

All aggregates intended for use in concrete are required to be tested and evaluated for alkali-aggregate reactivity potential, in accordance with Standard Specifications for Highway Construction, Table 211-D, Test Methods for Normal Density Coarse and Fine Aggregate, CSA A23.2-14A and CSA A23.2-27A. The Concessionaire will implement preventative measures in accordance with CSA A23.2-27A.

2.3.2.13 Piles

Unfactored dead and live loads plus details of splices and tips will be indicated on the Concessionaire's drawings. Anticipated and maximum pile tip elevations (minimum penetration) will be shown on the Concessionaire's drawings.

Steel pipe piles shall meet the requirements of ASTM A252.

2.3.2.14 Surface Water Runoff

Runoff water from the surface of bridges and/or approach roads will be conveyed to discharge at locations that are acceptable to the regulatory agencies under applicable Laws and Regulations, CP Rail and the Ministry and are in accordance with the Environmental Design Criteria referred to in Section 2.3.9. A minimum of 2% cross-fall will be provided on bridge decks.

2.3.2.15 Bearings

Bearings will be designed for easy maintenance inspection and replacement. Jacking locations and jacking loads will be shown on the bridge drawings. The Concessionaire will seek approval of proprietary products from the Ministry, prior to use in the Works.

2.3.2.16 Parapets and Railings for New Structures

Concrete parapets and railings will be provided as required by the Ministry's "Manual of Bridge Standards and Procedures", and will comply with the requirements in Section 12 of CAN/CSA-S6-00. In no case will the standard provided be less than PL-2.

Railings for pedestrian safety will be provided wherever a vertical drop of more than 0.5 m exists.

2.3.2.17 Slope Pavements

For abutment slope pavements refer to "Manual of Bridge Standards and Procedures".

2.3.2.18 Aesthetics

An aesthetically pleasing structure, including the structural configuration and surface treatments will be provided by the Concessionaire as part of the Works which will be in keeping the general guidelines referred to in the Ministry's Manual of Aesthetic Design Practice. The Concessionaire shall give due consideration to minimizing maintenance resulting from vandalism to surfaces and finishes.

2.3.3 Retaining Walls

2.3.3.1 Design Code

Structural design for retaining walls will be performed using the Limit State Design approach of CAN/CSA-S6-00. For mechanically stabilized earth (MSE) walls, structural items not covered by CAN/CSA-S6-00 will meet the requirements of the AASHTO "Standard Specifications for Highway Bridges, 17th Edition, 2002.

For MSE walls, items not covered by AASHTO will meet the requirements of U.S. Federal Highway Administration (FHWA) Publication No. FHWA NHI-00-043, "Mechanically Stabilized Earth Walls and Reinforced Soil Slopes, Design and Construction Guidelines".

2.3.3.2 Seismic Design

Seismic design of the global stability of any retaining walls will be performed in accordance with the Mononobe-Okabe Method as per AASHTO, "Standard Specifications for Highway Bridges", 17th Edition, 2002.

Refer to geotechnical design criteria at Section 2.3.5 for liquefaction assessment.

2.3.3.3 Design Service Life

Design abutment walls will have a durability to ensure a minimum design life of 75 years.

Other retaining walls will have a durability to ensure a minimum design life of 75 years.

2.3.3.4 Wall Types

MSE walls with non-extensible reinforcement and segmental precast concrete facing panels shown in the current edition of the Ministry Recognized Products List in the applicable category under "Retaining Walls (up to 9 metres in height)" will be permitted to have a maximum height of 12 metres. The MSE walls may bear on a cast-in-place starter wall.

Where a product shown in the current edition of the Ministry Recognized Products List in the applicable category under "Tentative Products" is proposed for any retaining wall, this product will require documentation that shows the supplier has a proven track record of successful use on past projects that have design and exposure conditions similar to those on which the product is proposed to be used.

For retaining walls (excluding abutment walls), only the wall systems listed in the current edition of the Ministry Recognized Products List, in the applicable category for retaining walls under "Proprietary Structures", will be accepted except as noted below:

MSE walls with dry cast concrete block facings will not be permitted.

Walls with wire facings will not be permitted for median walls and upslope retaining walls visible to road traffic.

2.3.3.5 MSE Walls with Polymeric Reinforcement

MSE walls with polymeric reinforcement will not be permitted for use as abutment walls or associated wing walls. Geotextiles will not be permitted for use as reinforcement.

The maximum height of any MSE walls with polymeric reinforcement will be equal or less than the values noted in the following table:

**Table 2-4
MSE Walls With Polymeric Reinforcement**

Wall Batter (degrees)	Maximum Wall Height (m)
0° (Vertical)	5.0 m
5°	5.7 m
10°	6.5 m
15°	7.6 m
20°	8.8 m
25°	10.2 m
30°	12.0 m
45°	> 12.0 m
The above values are based on horizontal backfill behind the wall.	

2.3.3.6 MSE Abutment Walls

Acceptable MSE wall systems for bridge abutments will only be those listed under the heading “Bridge Abutments and Retaining Walls” in the current edition of the Ministry Recognized Products List in the “Bridge Abutments” category under “Proprietary Structures”.

Precast concrete facing panels will be used for bridge abutment walls and the associated wing walls.

The tops of the walls will be finished in straight-line segments to provide an aesthetically pleasing appearance and will have a cast-in-place concrete coping.

2.3.3.7 Drainage for MSE Walls

Drainage water will be discharged at locations that are acceptable to the environmental agencies, and the Province. For MSE walls, a drainage system will be provided behind the reinforced fill zone as well as immediately behind the wall.

2.3.3.8 Aesthetics

Retaining walls will be designed to provide an aesthetically pleasing structure. Patterned finishes will be provided on large concrete surfaces that are highly visible to road traffic. Horizontal ledges and other features, which may require maintenance, will be avoided. The Concessionaire shall give due consideration to minimizing maintenance resulting from vandalism to surfaces, finishes and other parts of the retaining walls.

2.3.4 Tunnel Design Criteria

2.3.4.1 Design Service Life

Design tunnels will have a durability to ensure a minimum design life of 75 years.

2.3.4.2 Design Philosophy

The design of any tunnels will be based on providing a final concrete lining that will be designed to support all short and long-term loads over the specified design life.

2.3.4.3 Tunnel Portals

Tunnel Portal design shall provide for the following:

- a stable tunnel rock pillar / separation shall be provided for twin 2-lane tube tunnel arrangement;
- loading factor of 1.5 on representative rock loading for rock anchor design allowing for cross-section reduction at an approved corrosion rate for entire design service life;
- nominal portal canopy structures will be provided at portals to prevent snow and rain from entering the tunnel;
- all concrete portal structural components to be integrated with rock using rock anchors; and
- insulation measures to prevent ice build-up at the portals and elsewhere.

2.3.4.4 Tunnel Arrangement

There shall be a minimum tunnel rock pillar / separation of 10 m for twin 2-lane tube tunnel arrangement.

A 3-hour rated fire separation concrete wall for the single, 4-lane tunnel arrangement will be provided.

2.3.4.5 Internal Clearance and Lane Dimension Requirements

The design of any tunnel shall provide for internal clearance and lane dimensions consistent with the drawings attached as Appendix 3. Additionally, the following internal clearance and lane dimension requirements shall apply:

- traffic lane widths of 3.70 m;
- minimum vertical clearance of traffic lanes inside of tunnel will be 5.50 m;

- right-hand side bicycle lane / shoulder width of 2.50 m;
- left-hand shoulder width of 1.0 m from lane edge to the face of barrier;
- roadway height emergency egress walkway of minimum width 1.5 m along inside shoulder extending along entire length of tunnel;
- concrete pier barrier inside of roadway height walkway along entire length of tunnel with openings at Emergency Response Stations;
- concrete pier barrier outside of outside shoulder; and
- minimum transverse gradient of 2.0%.

2.3.4.6 Emergency Egress and Safety Requirements

The code governing the requirements for systems within any tunnel forming part of the Works is NFPA 502, Standard for Road Tunnels, Bridges and other Limited Access Highways.

NFPA 502 calls for cross passages to be no further than 200 m apart. For a tunnel length less than 500 m one cross passage will be provided at mid-location of tunnel at above grade with minimum internal width 2500 mm and minimum internal height 2200 mm. The cross passage will be concrete lined with self-closing fire doors with 1.0 hour fire rating with normal and emergency lighting and small positive air pressure. Access to cross passage will be at roadway height.

Emergency Response Stations with telephones will be provided at 50 m intervals. The telephones will be connected by landline to the emergency response facilities in Golden.

Services / cables ducts will be integrated within the tunnel with removable concrete slabs at pull box and emergency panel positions for access purposes.

The tunnel shall contain a concrete pier barrier along entire width of cross passage to prevent direct access into adjacent roadway and there shall be openings within concrete pier barrier at all Emergency Response Stations.

Traffic control devices will be provided to control traffic and clear traffic following the activation of a fire alarm within the tunnel. The traffic control system will be connected into existing traffic management systems by landline.

A radio system will be provided complete with leaky feeder and transmitter / receiver to allow for emergency services communications within the tunnel and between Emergency Response Panels and Emergency Response Stations.

Emergency Response Panels will be provided at each portal. Each portal panel will contain a telephone with a connection to the other portal panel. Facilities will be provided in the panels for controlling the direction of airflow in the tunnel. In addition the panels will have the facility to accept information on tunnel device performance (SCADA) for downloading at the panel and future connection to a tunnel control centre in Golden. All tunnel electrical and mechanical equipment will be monitored. Gas monitors will be provided throughout the tunnel to detect the spillage of liquefied petroleum gas (LPG) and liquefied natural gas (LNG).

2.3.4.7 Initial Tunnel Support (Tunnel Excavation Stage)

The tunnel design shall provide for the initial tunnel support at the excavation state:

- loading factor of 1.0 on hydrostatic groundwater pressure; and
- loading factor of 1.5 on representative rock loading.

2.3.4.8 Tunnel Waterproofing and Drainage

The following components shall be provided as part of tunnel waterproofing and drainage including the requirements as more particularly set out in NFPA 502, 7.11.3:

- PVC sheeting waterproof membrane over entire internal excavated tunnel surface excluding tunnel invert;
- circumferential drainage behind waterproof membrane comprised of perforated pipes or flat-ribbed wick drains wrapped with geotextile spaced at regular intervals or at locations of emanating groundwater inflows;
- shotcrete smoothing substrate layer (maximum irregularity 50 mm over 1000 mm in all directions) prior to application of any membrane;
- complete control and channelling / panning of all seeps to drainage system prior to application of any membrane;
- longitudinal drainage below concrete base slab with insulated drainage near portals on both sides of tunnel connected to external discharge system that will not freeze during winter operations;
- drain inlets / catch basins at minimum 75 m intervals on each side of the roadway connected to longitudinal drainage system;
- transverse interceptors at East portal to catch surface run-off into tunnel; and
- drainage system will be fully insulated to prevent freeze up during winter operations.

2.3.4.9 Final Tunnel Lining (Tunnel Operations Stage)

The final tunnel lining shall meet the following requirements:

- loading factor of 1.5 on effective drained groundwater pressure;
- loading factor of 1.5 on representative long-term rock loading assuming full corrosion of rock support unless rock support designed to approved corrosion rate for entire design service life;
- CAN/CSA-S6 will apply;
- concrete final lining with embedded monofilament polyethylene fibres as required to provide fire resistance;
- ACI 216R-89 Guide to Determining the Fire Endurance of Concrete Elements (2001) will apply;
- concrete with minimum 7.5% silica fume will be provided for tunnel lining;
- reinforcing steel minimum cover of 70 mm; and
- reinforcing steel within top 100 mm will be epoxy coated or galvanized.

2.3.4.10 Ventilation Requirements

A longitudinal jet fan ventilation system will be provided. The ventilation system will be designed to clear vitiated air from the tunnel for the worst-case condition of a congested tunnel with stopped traffic.

The ventilation control system will be designed to provide, under emergency conditions smoke control to enable a safe egress route with a vehicle fire with a fire output of 100 MW.

The Concessionaire shall provide carbon monoxide, nitrous oxide, and visibility monitors in addition to ventilation control and monitoring by a SCADA system to monitor air condition and fan performance.

2.3.4.11 Fire Life Safety Requirements

NFPA 14 will apply.

NFPA 502 (2001) will apply.

Class 1 dry standpipe system with fire hydrant valves conforming to NFPA 14 and Chapter 9 of NFPA 502 with insulated and heated supply / storage tanks (minimum 5000 litres) will be provided at both portals to prevent freezing and able to provide a minimum water pressure of 700 kPa at all locations within the tunnel.

Fire hose connections will be on one side of the roadway at 85 m intervals with heat traced and insulated pipes and fittings to prevent freezing of the system during winter operations.

2.3.4.12 Emergency Spill Collection System

External storage tank / sump structure will be provided with a minimum volume of 100 m³ and connected to longitudinal drainage system to channel and contain spills and prevent release to the environment with easy access for pumping out of any waste / sludge materials following emergency spill or fire event.

Hydrocarbon detectors will be included within emergency spill collection system.

2.3.4.13 Tunnel Lighting Requirements

IESNA RP-22 American National Standard Practice for Tunnel Lighting will apply.

The Concessionaire shall provide:

- daylight lighting level in threshold zone of 200-300 cd/m² reducing to 10 cd/m² in the interior zone;
- threshold and transition zone lighting;
- automated lighting control system using photocells;
- lighting for means of egress in accordance with NFPA 502 11.4; and
- waterproof fixtures capable of withstanding traffic vibration, air turbulence, ventilation, exhaust fumes, dirt, high pressure washing and brushing, and climatic conditions.

2.3.4.14 Tunnel Power System

Primary and secondary power sources will be provided in accordance with NFPA 502 11.4. The primary source will be from the utility company, the secondary source may be from an automatic stand-by generator and will be sized to provide all tunnel electrical loads.

Services / cables ducts will be integrated within tunnel with removable concrete slabs for access purposes.

Un-interruptible power supply (UPS) will be provided.

2.3.4.15 Tunnel Portal Emergency Services Station

An emergency services station area of 12 m long by 3 m wide will be provided at both portals with arrangement enabling emergency vehicles to

park and turn around and move from one tunnel tube to the other as required. The Emergency Response Panels will be located in these areas.

2.3.4.16 Tunnel Roadway

The following requirements shall apply to the tunnel roadway:

- a reinforced concrete base slab with minimum 7.5% silica fume will be provided within the tunnel;
- Class A Highway ADTT will be used;
- the Highway will include reinforcing steel minimum cover of 70 mm;
- reinforcing steel within top 100 mm will be epoxy coated or galvanized;
- roadway surface heating system to facilitate snowmelt will be provided;
and
- granular sub-base drainage layer will be placed on well-cleaned rock invert.

The following extracts from NFPA 502 will be adopted:

**Table 2-5
NFPA 502 Extracts**

Code Reference	Requirement	Comments
NFPA 502, 7.2 (3)	Requirements for tunnel lengths exceeding 240 m	if tunnel forming part of Works is longer than 240 m
NFPA 502, 7.3.1	Automatic fire detection to identify fire location	within 15 m of fire
NFPA 502, 7.3.1.1	Fire alarm boxes	spaced at 90 m, at cross passages and at means of egress from the tunnel
NFPA 502, 7.3.1.2	CCTV	to be considered in the design
NFPA 502, 7.5	Traffic Control	traffic control will be applied
NFPA 502, 7.8.1	Portable fire extinguishers	spacing 90 m
NFPA 502, 7.11	Tunnel drainage system	tunnel drains at 75 m intervals on each side of road
NFPA 502, 7.16.7	Cross passageways	spacing 200 m
NFPA 502, 9.1, 9.2	Standpipe and water supply	at portal and within the tunnel
NFPA 502, 9.4.2	Hose connections	spacing 85 m
NFPA 502, 10	Ventilation during fire emergencies	jet fans mounted within the tunnel
NFPA 502, 11	Electrical systems	main and standby power supply systems
NFPA 502, 12	Emergency response plan	to be developed with emergency response teams
NFPA 502, 13	Control of hazardous materials	rules and regulations to be complied with

2.3.5 Geotechnical Design Criteria

2.3.5.1 References

The following references will apply to the geotechnical design criteria:

- Canadian Foundation Engineering Manual, Latest Edition;
- AASHTO and FHWA publications, Latest Edition; and
- CAN/CSA-S6-00.

2.3.5.2 Seismic Design

The geotechnical seismic design will follow the applicable sections of the following documents:

- CAN/CSA-S6-00;
- Ministry of Transportation publication “Seismic Retrofit Design Criteria” dated July 2000;
- Ministry Technical Circular T-2/92, February 14, 1992, “Seismic Design and Rehabilitation Criteria” and the amendment dated March 11, 1994;
- AASHTO, “Standard Specifications for Highway Bridges”, Seventeenth Edition, 2002; and
- Publication FHWA-SA-97-076, “Geotechnical Engineering Circular No. 3 – Design Guidance: Geotechnical Earthquake Engineering for Highways” – Vol. I and II, May 1997.

Seismic motion information for the Works will be as defined in the National Building Code of Canada (NBCC, 1995) or through a seismic site response analysis performed by the Geological Survey of Canada. The Works will be designed for an earthquake having a 10 percent risk of exceedence in 50 years (equivalent to a 1 in 475 year return period).

Liquefaction potential will be evaluated for structures, walls and embankments, and the design will incorporate ground improvements and other methods of addressing potential liquefaction as necessary.

2.3.5.3 Slope Stability

The factor of safety for slope stability is not to be less than 1.3 under static conditions, and not to be less than 1.0 under pseudo-static seismic analysis conditions using 2/3 of the design earthquake acceleration. Temporary excavations or slopes must not result in undue deformation or failure of adjacent materials.

2.3.5.4 Foundations / Retaining Walls

The minimum factor of safety under static loading conditions against bearing capacity failure, sliding, and overturning will be 3.0, 1.5, and 2.0 respectively.

Retaining walls will have a static factor of safety (FOS) ≥ 1.5 for global stability.

2.3.5.5 Settlement Analysis

Settlement analysis and prediction for pre-existing and new structures and embankments will be performed. Foundations for structures and embankments will be designed such that differential settlements are limited

to tolerable amounts as specified by the structural design, roadway design, and utility considerations.

1. Settlements of Adjacent Existing Structures

The new bridge structure and approaches will be designed to not impact on CP Rail, any existing structure(s) located on the CP Rail Lands or any other existing structure(s).

The Concessionaire will submit a report including any necessary calculations showing how the construction will not affect existing structures including the Park Bridge and CP Rail track.

The Concessionaire will carry out pre-construction and post-construction surveys of the existing Park Bridge and the existing CP Rail infrastructure. The results of the surveys in a form acceptable to the Province will be submitted to the Province prior to application for certification that the Works are Substantially Complete.

2. Maximum allowable settlements of existing structures are:

- for pier and abutment footings, 25 mm measured at the column locations; and
- differential settlement between two columns at a pier shall be a maximum of 25 mm.

The Concessionaire will be responsible for the costs of the design and construction of any repairs to the rail line and any structure located on the CP Rail Lands resulting from unacceptable (as determined by CP Rail) movements / settlements induced by the construction of the Works.

2.3.6 Utilities Design Criteria

In addition to the other requirements set out in Section 1.6.11 of this Appendix 1, unless otherwise specified, all existing Utilities in the Phase 2 Section are to be retained in service during and after completion of the Works.

Utilities design will be in accordance with the Ministry's Utility Policy Manual.

2.3.7 Drainage Design Criteria

The drainage design for roadways forming part of the Works will be in accordance with the major / minor flow concept (see Section 1010 of the BC Supplement to TAC Geometric Design Guide). Any proposed changes to the existing drainage system will conform to the drainage plans for the area and comply with the environmental agency requirements and applicable Laws and Regulations.

Abandoned culverts will be removed.

Existing culverts will not be incorporated into the drainage design unless the Concessionaire obtains written approval from the Province's Representative.

Culvert capacity will be attained at the inlet without risk of overtopping any roads or flooding any private property with a minimum of 600 mm freeboard. The design will incorporate elements that will minimize the risk of culvert blockage.

The following storm return periods will be used for the design of the drainage systems:

- storm water inlets – 1:5 year storm return frequency;
- gutters – 1:5 year storm return frequency;
- storm sewers – 1:10 year storm return frequency;
- highway ditches – 1:10 year storm return frequency; and
- culverts – 1:100 year storm return frequency.

Design of the drainage systems for CP Rail Works will be in accordance with CP Rail standards. The Concessionaire will assume all responsibility for determining the criteria CP Rail will apply.

2.3.8 Avalanche Design Criteria

The Concessionaire will design the Work to meet the following Province objectives for a new highway or upgrading of an existing high traffic highway:

- to reduce the avalanche hazard to a 1:30-year return period for avalanches of greater than Size 2 as defined in ¹*Canadian Avalanche Association 2002*; and
- to reduce the avalanche hazard to a 1:10 year return period for avalanches of Size 2 or less.

All design work on structural avalanche defences must be completed under the seal of a Professional Engineer, with expertise in snow avalanche hazard mitigation.

The 1:10 year design standard for avalanches of Size 2 or less will be based on:

- the volume of snow produced by the 1:10 year avalanche;
- the avalanche deposits not extending past the fog line;
- the shoulder of the road being 2.5 m wide; and
- the ditch containing 1 metre of snow.

¹ Canadian Avalanche Association 2002: Guidelines for Snow Avalanche Risk Determination and Mapping in Canada. McClung, D.M., C.J. Stethem, P.A. Schaerer and J.B. Jamieson, (eds.) Canadian Avalanche Association, Revelstoke, BC.

The Province will not accept any design, which increases the avalanche hazard for the Highway Improvement unless the design includes suitable mitigation acceptable to the Province to reduce the risk level that is acceptable to the Province.

2.3.9 Environmental Design Criteria

The Concessionaire will design and build the Works in full compliance with:

- applicable Laws and Regulations, permits, licences and approvals, or the requirements of any Governmental Authority that are current at the time of design and construction or which may be required under any Law or Regulation; and
- CEAA screening review requirements including the requirements of the CEAA Screening Report and the CEAA Approval.

In addition, the Concessionaire will design the project in accordance with the Provincial and Federal guidelines and policies that are current at the time of design and construction including but not limited to the following:

- Section 165, Protection of the Environment of the Standard Specifications for Highway Construction (latest edition) and for the purpose of these Design and Construction Output Specifications, the Site is classified as a “designated environmentally sensitive area” in accordance with Section 165.01.04 and is subject to all the restrictions set out in Section 165.
- Habitat Conservation and Protection Guidelines, Fisheries and Oceans Canada, 1998, Standards and Best Practices for Instream Works, Ministry of Water, Land and Air Protection, March 2004.
- Land Development Guidelines for the Protection of Aquatic Habitat, Departments of Fisheries and Oceans Canada and Ministry of Environment, Lands and Parks, 1993.
- Manual of Control of Erosion and Shallow Slope Movement, Ministry of Transportation (and Highways), August 22, 1997.
- Best Management Practices – Ministry of Water, Land and Air Protection.
- Practitioners Guide to Habitat Compensation for DFO Habitat Management Staff, Fisheries and Oceans Canada, 2002.
- Best Management Practices Guide, Ministry document, July 2004.

In addition to its obligations under Schedule 12 [Concessionaire's Environmental Obligations], the Concessionaire will avoid or, where avoidance is not possible, minimize to the fullest extent any adverse environmental impacts associated with the project to the satisfaction of the environmental agencies. The Concessionaire will comply with the following design requirements:

- wildlife passage mitigation must be incorporated into the design to the satisfaction of the Province and the Ministry of Water, Land and Air Protection;
- provide wildlife collision mitigation design in accordance with the CEAA Screening Report and the CEAA Approval which may include:
 - wildlife fencing;
 - avoidance reflector systems; and
 - incorporation of wildlife passage into culvert designs;
- no Work is to occur within 15 metres of the high water mark of Glenogle Creek, within 100 metres of the high water mark of Mount Hunter Creek or within the 200 year floodplain of the Kicking Horse River.

The Concessionaire will evaluate the potential for production of acid rock drainage ("ARD") during construction. ARD production potential will be evaluated in accordance with the policy and methods outlined by the Ministry Technical Circular, T-10/04, "ARD Testing at Quarry and Rock Cut Sites". In the event that the potential for ARD production is identified, the Concessionaire shall develop and implement a plan to prevent ARD generation.

2.3.10 Pavement Design Criteria

2.3.10.1 General

The Works shall include the design and construction of new and upgraded pavement structures within the proposed Highway Improvement.

Only asphalt pavements will be accepted.

The pavement on existing roadways within the proposed Highway Improvement will be overlaid where lane-marking eradication has been performed.

Asphalt paving will be designed and constructed in accordance with Good Industry Practice.

The Detailed Design of the Works shall provide details and timing of structural enhancements that are to be carried out within the Contract Period.

2.3.10.2 Approved Pavement Design Methods

Pavement designs will be conducted in accordance with the latest edition of the AASHTO (1993) "Guide for Design of Pavement Structures" and/or the TAC97 "Pavement Design and Management Guide for traffic data computations". The latest edition of AASHTO pavement design software program DARWIN may be utilized.

The following design criteria and input parameters will be used in conjunction with the AASHTO Pavement Design Method:

- analysis period: 25 YEARS.
- performance period (initial): >10 years.
- reliability: $R=85\%$.
- standard deviation: $S_o=0.45$.
- initial serviceability index: $p_i=4.2$.
- terminal serviceability index: $p_t=2.5$.

2.3.10.3 Asphalt Pavement Thickness

In new construction, the asphalt pavement riding surfaces will be a minimum depth of 100 mm on the roadway and 75 mm on structures.

2.3.10.4 Rehabilitation

In addition to the obligations of the Concessionaire in respect of rehabilitation set out in Schedule 7 [Operation, Maintenance, Rehabilitation and End of Term Requirements], rehabilitation of pavements will be designed by the Concessionaire in accordance with Good Industry Practice and recognized good construction practices using products currently on the Ministry's 'Recognized Products List'. Where strengthening of pavement is required, use Falling Weight Deflectometer (FWD) and conduct structural analysis and overlay design using AASHTO or ELMOD methods, based on user-defined design parameters.

2.3.11 Electrical Design Criteria

The design of the lighting will conform to the latest edition of the Ministry "Electrical and Traffic Engineering Manual – guidelines for the Design of Lighting, Signal and Sign Installation" and all relevant TAC and IESNA standards. In general, lighting is required for the tunnels and Brake Check areas. In accordance with "Electrical and Traffic Engineering Manual", bridges are considered to be part of the roadway and, as such, do not require any special lighting. However, given the nature of the bridge the Concessionaire will complete an analysis of these requirements to determine whether lighting on the bridge is warranted.

All electrical drawings will be issued a drawing series number provided by the Province.

New traffic counting stations will collect 24 hr volume information for all through movements on the Concession Highway. Data collection will be via Ministry standard permanent count stations.

2.3.11.1 Electrical Servicing

Standard electrical services will be 120/240 V or 120/208 V only. 347/600 V may be permitted for specialized electrical installations, but must be approved in advance by the Ministry. 347/600 V will not be permitted for conventional roadway lighting.

2.3.11.2 Roadway Lighting

All lighting will be designed and installed to the Ministry's Standards.

All permanent roadway lighting levels will meet or exceed the appropriate Ministry Standard for land use and roadway classification.

Roadway lighting will utilize flat glass style luminaries.

The Concessionaire will provide all necessary lighting at the Brake Check and lighting at the New Rest Area.

2.3.11.3 Bridge Electrical

Two conduits will be cast into each side of the bridge deck and run the length of the structure to allow for future expansion of the electrical system or addition of lighting to the structure. Expansion / deflection joints will be installed in conduit runs as required.

Conduits cast in new bridges will be 50 mm R.P.V.C. with the exception of the conduit from junction box to luminaries or sign base, which will be 32 mm R.P.V.C. Junction boxes cast into bridges will be Scepter 12124 or approved equal, will be drained using a 25 mm R.P.V.C. conduit, and these and pole handholes will be accessible from the top of bridge decks.

Bases for light standards are to be incorporated into the bridge design for future addition of lighting if not specifically included in current design.

2.3.11.4 Traffic Volume and Vehicle Length Data Collection Measuring Equipment

The requirements for traffic volume and vehicle length data collection measuring equipment are as follows:

- the Measuring Equipment shall provide a continuous count of the number of Motor Vehicles per hour in each lane including a continuous

count of the total number of Motor Vehicles in each lane classified as described in Table 2-6;

**Table 2-6
Vehicle Class Length Bins**

<u>Vehicle Class</u>	<u>Length Bin Configuration</u>
Passenger Vehicles	0 to 600 cm
Single Unit Trucks	600 cm to 1250 cm
Tractor Trailer Units (Short)	1250 cm to 2250 cm
Tractor Trailer Units (Medium)	2250 cm to 3500 cm
Tractor Trailer Units (Long)	3500 cm and over

- changes to the length bin configurations may be required over time at the direction of the Province;
- the Measuring Equipment shall record the year, date and time period measured;
- the Measuring Equipment shall be capable of measuring to the following accuracy:
 - in respect of the count of the number of Motor Vehicles in each category in each direction, within plus or minus 2%; and
 - in respect of the count of the total number of Motor Vehicles in each lane, within plus or minus 2%;
 - at (in both of the foregoing cases) 98% confidence interval, without bias to under-recording or over-recording. These accuracy levels shall be achieved over every period of 24 hours and at all speeds;
- the Measuring Equipment shall operate in accordance with requirements defined above for not less than 98% of the time during every 12-month period;
- data from the Measuring Equipment shall be transmittable by public service telephone network in a mutually agreed format with the Province pursuant to paragraph 1.5.3 of Part 2 of Schedule 15 [Reports]; and
- the Measuring Equipment shall include adequate devices to prevent persons tampering or interfering with it.

2.3.12 Signing and Sign Structures Design Criteria

Regulatory, warning, information and guide signing will be implemented in accordance with the Ministry's current "Manual of Standard Traffic Signs and Pavement Markings".

Sign supports, sign structures and poles will be designed in accordance with CAN/CSA-S6-00. Anchor bolts for sign structures will be fabricated from ASTM/SAE 4140 steel complete with double nuts above the base plates and be galvanized after fabrication. Leveling nuts below the base plates are not permitted.

Concessionaire will provide sign record drawings.

2.3.13 Pavement Marking Design Criteria

The pavement marking design and drawings will be prepared in accordance with the Ministry's Manual of Standard Traffic Signs and Pavement Markings.

2.3.13.1 Installation

Pavement markings will be applied to all new hard-finished road surfaces.

Existing pavement markings will be eradicated and replaced in order to fully facilitate the new traffic flow.

The Concessionaire will provide survey layout for pavement markings. The survey layout will be provided in adequate detail to allow paint line crews to apply markings without supplementary measurement or survey.

The Concessionaire shall obtain the Province's acceptance of the pavement marking layout prior to application of the paint lines.

2.3.14 Landscape Design Criteria

Landscaping will provide for re-vegetation of disturbed land to establish a ground cover for erosion control and aesthetic purposes. This will involve primarily the hydroseeding of appropriate grass seed mixtures for the area, in accordance with Section 757 of the Standard Specifications for Highway Construction (latest edition). Where feasible and advantageous to the re-vegetation of affected roadsides, the work is to include the planting of native shrub and tree seedlings, and the use of bioengineering slope stabilization techniques. The Concessionaire will utilize the services of a professional agrologist and erosion control specialist to prepare a suitable re-vegetation plan for approval by the Province. This plan will be complementary and integral to the provisions of the Environmental Management Plan.

The Concessionaire will design, construct and develop the New Rest Area and Rafters' Pullout to provide the following facilities:

- asphalt parking area for 40 automobiles, 10 trucks or automobile plus trailer units;
- restroom building with a minimum of two mens and two womens toilet units, and one separate access unisex / family unit;
- picnic tables;

- bear-proof litter receptacles;
- access for people with disabilities;
- pay telephones;
- potable water;
- area lighting;
- power for maintenance and emergency purposes;
- pet walk areas; and
- low maintenance landscaping.

All landscape plans must comply with guidelines outlined in the B.C. Landscape Standards published by the B.C. Landscape and Nursery Trades Association and the BCSLA.

2.3.15 Road Safety Audit

The Concessionaire must retain, at the Concessionaire's expense, an audit team, independent of the Design Team to carry out a Road Safety Audit on the design and on the constructed Works.

The Road Safety Audit will ensure that the Works are designed to a high standard of safety, which attempts to ensure that the design exceeds the application of minimum design standards. The Road Safety Audit is intended to be a proactive safety process, attempting to pre-empt and address safety concerns at the design stage, rather than retrofitting the completed Works at a later date.

At a minimum a Road Safety Audit will be conducted at the stages defined in Part 3 of Schedule 5 [Design and Certification Procedure].

2.3.15A Bridge Demolition

The demolition procedures shall be subject to the Design and Certification Procedure as set out in Part 3 of Schedule 5 [Design and Certification Procedure].

Removal of the existing structure shall be carried out in accordance with applicable Laws and Regulations, permits and licences including the requirements of paragraph 2.3.9 of this Appendix 1. Demolition work near or above the railway will require the approval of CP Rail and must be carried out in strict compliance with the requirements of CP Rail.

The Concessionaire is advised that the Park Bridge steelwork has a red lead primer coat with an alkyd topcoat of C-3 silver, aluminum colour. The steel bridge railing posts are metallized with zinc and the rails have standard galvanized coating.

The Concessionaire shall carry out demolition in accordance with *CSA S350-80, Code of Practice for Safety in Demolition of Structures*.

The Concessionaire shall take precautions to prevent debris from falling into the Kicking Horse River. All material which falls into the river as a result of demolition of the existing bridge must be removed. All concrete from the existing deck and curbs must be removed prior to this demolition, as described herein.

The Concessionaire shall demolish concrete decks and curbs by approved means. Areas of the concrete deck over the Kicking Horse River or the CP Rail right-of-way shall be saw cut and removed, taking measures to avoid dropping concrete rubble and reinforcing steel into open water or the railway right-of-way respectively.

The Concessionaire shall completely demolish all pier and abutment structures to 500 mm below final grade. Any voids created by removal of the footings shall be backfilled with bridge end fill, compacted and leveled.

All demolished materials shall become the property of the Concessionaire and shall be removed from the site.

The Concessionaire shall dispose of all removed materials in an environmentally acceptable manner to the satisfaction of the Province and the Ministry of Water, Land and Air Protection at a location off site.

Upon completion of the Work, the Concessionaire shall remove debris, trim surfaces and slopes and leave work site clean. Slopes shall be graded so that no slope is steeper than 1.5H:1V.

The Concessionaire shall reinstate areas outside area of removal of the Park Bridge to the condition which existed prior to commencement of the Work.

2.3.16 Materials and Construction Specifications

All materials incorporated into the Works and all construction practices will be in accordance with the Standard Specifications for Highway Construction (latest edition).

2.3.17 Final Documentation

Completed final documentation for the design and construction phases will be as defined in this Section.

The Works shall not be certified Finally Complete under the Concession Agreement until final documentation has been completed to the satisfaction of the Province.

Final documentation will comprise of all required deliverables as specified by the Design and Construction Output Specification or otherwise required as part of the design and construction of the Works under the Concession Agreement. The Province will carry out reviews of the deliverables and be satisfied with them as a condition of Substantial Completion of the Works for the purposes of Part 3 of Schedule 5 [Design and Certification Procedure]. In all cases the Ministry's review

comments will be provided no later than one month after submission of the required documentation. The Concessionaire will resubmit final documentation with all the Province's comments addressed, within one month of receipt.

The Province's maintenance costs associated with the Existing CP Rail Agreements and the CP Rail Agreement will be borne by the Concessionaire.

2.3.17.1 Warranty

The Concessionaire shall provide semi-annual warranty inspection reports and certification by the professional of the appropriate discipline licenced to practice in the Province of British Columbia that all deficiencies will be addressed prior to the Works being certified for Final Completion pursuant to Part 3 of Schedule 5 [Design and Certification Procedure].

2.3.17.2 Design Folders

Design folders will be provided by the Concessionaire and will have indexes and sectional dividers. The folders will include:

- pertinent correspondence arranged in chronological order by subject matter;
- design calculations and backup information; and
- items listed in Section 202.10 of the *Traffic and Electrical Engineering Design Standard Manual*.

2.3.17.3 Record Drawings / Reports

All design work, engineering reports, and record drawings for the Works will be certified by the professional of the appropriate discipline licensed to practice in the Province of British Columbia.

Letters of Assurance signed by the professional of the appropriate discipline confirming all Works have been constructed in accordance with these Design and Construction Output Specifications and the Concessionaire's Design and Construction Requirements, will be supplied.

The Concessionaire shall provide to the Province record drawings based on the Detailed Designs in accordance with the following:

Two sets of paper prints and two sets of AutoCAD digital drawings on CD as-built drawings consisting of initial drawings approved for construction clearly marked to show revisions made during construction. Record drawings will be signed and sealed by a Professional Engineer.

- The record drawings will be plotted on standard mylar drawing sheets with waterproof ink (refer to BC Supplement to TAC Geometric Design Guide Section 1200 Contracts and Drawings Chapter and Section 700 of the Electrical and Traffic Engineering Manual for standards).

- Record drawings will, at a minimum, include the following:
 - design plans, profiles and typical cross-sections;
 - right-of-way acquisition plans;
 - supplemental drawings;
 - geometrics and laning;
 - signing plans showing all signs including information, guide, service / attraction regulatory and warning signs;
 - pavement marking plans;
 - underground utility plans;
 - landscape plans;
 - final record cross-section and material types on all roadways;
 - structural drawings; and
 - final versions of shop drawings.
- The Concessionaire shall also provide to the Province:
 - electrical plans including wiring, conduit placement and illumination levels for all signs, signals, luminaries and other electrical work; and
 - environmental mitigation drawings.

The Concessionaire will provide two (2) sets of clearly marked reports and other documentation including the following:

- test results, mill certificates and quality control reports;
- pavement design documentation;
- all geotechnical, traffic, and other reports;
- hydrologic and hydraulic calculations, drawings, maps, etc.;
- all quality control folders showing test data and location;
- a certified final Quality Audit Report;
- a certified Road Safety Audit;
- environmental assessment reports;

- “turn-over” letters from all Utility Suppliers stating that the requirements of each Utility Supplier have been incorporated into the Works; and
- “turn-over” letters and permits from all applicable environmental agencies stating that environmental permit requirements have been incorporated into the Works.

A construction completion report that includes:

- title page;
- table of contents;
- Concessionaire’s team;
- executive summary;
- a five (5) page narrative that describes each of the major aspects of the Works and how it compares to the preliminary design shown in the Concessionaire’s Design and Construction Requirements;
- lessons learned; and
- photograph index.

Appendix 2 to Part 1 of Schedule 5

1. DEFINITIONS, STANDARDS, CODES AND INTERPRETATION

1.1 Definitions

“**Architect**” means a person having a certificate of practice with the Architectural Institute of British Columbia.

“**ARD**” means acid rock drainage.

“**B/C**” means level B/C as defined in the Level of Service.

“**Brake Check**” means that location on the Existing Highway at approximately kilometre 16.8.

“**Canadian Wildlife Service**” means the federal department responsible for wildlife.

“**CP Rail Design Acceptance Letter**” means the letter obtained by the Concessionaire indicating CP Rail’s acceptance of the Concessionaire’s design as set out in Section 1.6.10 of Appendix 1 to Part 1.

“**Deck Membrane Systems**” has the meaning as set out in the Ministry Recognized Product List.

“**Design Speed**” means a speed selected for purposes of design and correlation of the geometric features of a road and is a measure of the quality of design offered by the road. It is the highest continuous speed at which individual vehicles can travel with an acceptable level of safety on a road when weather conditions are favourable and traffic density is so low that the safe speed is determined by the geometric features of the road. (source: TAC BC supplement)

“**Design Vehicle**” means a selected vehicle whose physical characteristics will control the geometric design of the intersection. The design will allow the design vehicle to make all turning movement without encroaching on adjacent lanes, opposing lanes, curbs, or shoulders. (source: TAC BC supplement)

“**DFO**” means the Federal Department of Fisheries and Oceans (Canada).

“**DSD**” means Decision Sight Distance: The distance required for a driver to detect an information source or hazard which is difficult to perceive in a roadway environment which might be visually cluttered; to recognize the hazard or its potential threat, select appropriate action, and complete the manoeuvre safely and efficiently. See TAC, Manual of Geometric Design Standards for Canadian Roads, 1986 Metric Edition, Section B.2.4.

“**Emergency Response Panels**” means the emergency response panels referred to in Section 2.3.4.6 of Appendix 1.

“**Emergency Response Stations**” means the emergency response stations referred to in Section 15 of Part 6 of Schedule 5 [Traffic Management Output Specifications (Original Service Period)].

“Emergency Services” means services provided by service providers in the event of an emergency including those listed in Section 15 of Part 6 of Schedule 5 [Traffic Management Output Specifications (Original Service Period)].

“Falling Weight Deflectometer” or **“FWD”** means a device that measures a deflection basin caused by a controlled load to determine structural condition of the pavement.

“Geotechnical Design Criteria” means those criteria set out in Section 2.3.5 of Appendix 1.

“Glenogle Forest Operations Road” means that certain forest service road which intersects the Highway at LKI 16.90.

“Highway Classification(s)” means the system of highway classification used by MOT.

“K Factors” means the horizontal distance along a parabolic curve required to effect a one percent change in gradient. (as defined in the BC supplement to the TAC manual)

“Landscape Architect” means a person having a certificate of practice in British Columbia with the British Columbia Society of Landscape Architects.

“Letters of Assurance” means the letters of assurance referred to in Section 2.3.17.3 of Appendix 1 and consist of papers signed and stamped by a Professional Engineer or Architect in accordance with the British Columbia Building Code (requires that an owner engage the requisite registered professional (as determined under the architectural and engineering professions' statutes) along with a coordinating registered professional, to conduct and to certify and to coordinate the corresponding design and field reviews of a building that falls under the jurisdiction of the British Columbia Building Code).

“Level of Service” or **“LOS”** means a qualitative measure describing operational conditions within a traffic stream, and their perception by motorists. A Level of Service definition generally describes these conditions in terms of such factors as speed and travel time, freedom to manoeuvre, traffic interruption, comfort and convenience, and safety. There are six levels of service, designated A to F, with A representing the best operating conditions and F the worst. (as defined in the TAC BC supplement)

“LNG” means liquefied natural gas.

“LPG” means liquefied petroleum gas.

“MSE” means mechanically stabilized earth.

“New Rest Area” means the new or refurbished existing rest area and Rafters' Pullout to be constructed or refurbished by the Concessionaire as part of the Works referred to in Section 2.3.14 of Appendix 1.

“Passenger Vehicle” means a Motor Vehicle which is an Other Vehicle with a length bin configuration of zero to 600 cm in accordance with Section 2.3.11.4 of Appendix 1 to this Part 1.

“Proprietary Structures” has the meaning set out in the Ministry's Recognized Product List.

“**Quality Audit Report**” means written reports prepared for the Province in accordance with the Quality Management System.

“**R.P.V.C.**” means round polyvinyl chloride.

“**Rafters’ Pullout**” means that location on the Existing Highway at approximately kilometre 12.

“**Railway Impact Assessment Report**” means the report referred to in Section 1.6.10 of Appendix 1.

“**Road Safety Audit**” means a formal and independent safety performance review of a road transportation project by an experienced team of safety specialists as discussed in Section 2.3.15 of Appendix 1.

“**Single Unit Truck**” means a Motor Vehicle which is an Other Vehicle with a length bin configuration of 600 cm to 1250 cm as set out in Section 2.3.11.4 of Appendix 1 to this Part 1.

“**Ten Mile Hill**” means the hill located on the Existing Highway at approximately kilometre 14.2 to 15.5 on the Highway.

“**Tractor Trailer Unit (Short)**” means a Motor Vehicle which is a Heavy Vehicle having a length bin configuration of 1250 cm to 2250 cm as set out in Section 2.3.11.4 of Appendix 1 to this Part 1.

“**Tractor Trailer Unit (Medium)**” means a Motor Vehicle which is a Heavy Vehicle having a length bin configuration of 2250 cm to 3500 cm as set out in Section 2.3.11.4 of Appendix 1 to this Part 1.

“**Tractor Trailer Unit (Long)**” means a Motor Vehicle which is a Heavy Vehicle having a length bin configuration over 3500 cm as set out in Section 2.3.11.4 of Appendix 1 to this Part 1.

“**UPS**” means uninterruptible power supply.

“**WCB**” means the Workers’ Compensation Board of British Columbia.

1.2 **Standards, Codes and Guidelines**

Some of the Standards, Codes and Guidelines used in Part 1 include:

“**AASHTO**” means American Association of State Highway and Transportation Officials.

“**AASHTO ‘Guide Specifications for Design and Construction of Segmental Highway Bridges’**” means Guide Specifications for Design and Construction of Segmental Concrete Bridges; Document Number: AASHTO GSCB; published by the American Association of State and Highway Transportation Officials Jan. 1999; AMENDED by AASHTO E-19-GSCB-2-11.

“**AASHTO ‘Standard Specifications for Highway Bridges’**” means Standard Specifications for Highway Bridges, 17th Edition; Document Number: AASHTO HB-17;

published by: American Association of State and Highway Transportation Officials Sept 2002.

“AASHTO Pavement Design Method” means Guide for Design of Pavement Structures; Document Number: AASHTO GDPS-4; published by American Association of State and Highway Transportation Officials; Jan 1993.

“ACI 216R-89 Guide to Determining the Fire Endurance of Concrete Elements (2001)”

“AREMA Chapter 8” means The American Railway Engineering and Maintenance of Way Association.

“Asset Inventory & Condition Study” or **“AICS”** means report produced by EBA Engineering available on the Resource Documents DVD.

“ASTM/SAE 4140” means American Society for Testing of Materials / Society of Automotive Engineers: 4140 is a type of steel defined by above mentioned associations.

“BC Landscape Standards” means the landscape standards developed by the BC Society of Landscape Architects and the BC Landscape & Nursery Association to establish levels of quality and standardize variables to minimize variation in manufacture, production and/or use.

“BC Ministry of Transportation ‘Electrical and Traffic Engineering Manual’” is a technical manual prepared by the Ministry.

“BC Supplement to TAC Geometric Design Guide” means British Columbia Supplement to the Transportation Association of Canada Geometric Design Guide for Canadian Roads (TAC Guide), dated February, 2001. This manual replaces the Highway Engineering Design Manual.

“BCSLA” means British Columbia Society of Landscape Architects.

“Best Management Practices Guide” is a technical manual prepared by the Ministry and dated July 2004.

“CAN/CSA-S6-00” means Canadian Highway Bridge Design Code.

“Canadian Foundation Engineering Manual (1992) Third Edition” is a manual published by the Canadian Geotechnical Society.

“Class A Highway ADTT” means that class of highway defined in CAN/CSA-S6-00.

“Classified Highways” – Part 3 Highway Act Responsibility and Cost Sharing Guide (Sept 1987) produced by the Ministry.

“DARWIN” means DARWin (Design, Analysis and Rehabilitation for Windows) which is the designation for and represents the series of computer software programs for pavement design and is an implementation of the 1993 AASHTO publication - Guide For The Design of Pavement Structures. (DARWin 3.1 is latest version)

“DSD” means Decision Sight Distance: The distance required for a driver to detect an information source or hazard which is difficult to perceive in a roadway environment which might be visually cluttered; to recognize the hazard or its potential threat, select appropriate action, and complete the manoeuvre safely and efficiently. See TAC, Manual of Geometric Design Standards for Canadian Roads, 1986 Metric Edition, Section B.2.4.

“ELMOD” means Evaluation of Layer Moduli and Overlay Design. It is proprietary software produced and marked by Dynatest International for doing pavement analysis and overlay design.

“FHWA” means Federal Highway Administration of the United States Department of Transportation (DOT).

“Habitat Conservation and Protection Guidelines, Fisheries and Oceans Canada, 1998 Standards and Best Practices for Instream Works” is a document prepared by the Ministry of Water, Land and Air Protection (B.C.) dated March 2004.

“IESNA” means The Illuminating Engineering Society of North America.

“IESNA RP-22 American National Standard Practice for Tunnell Lighting” is a transaction of the Illuminating Engineering Society of North America.

“ISO” means International Organization for Standardization.

“Land Development Guidelines for the Protection of Aquatic Habitat” is a document prepared by Fisheries and Oceans Canada and the Ministry of Environment, Lands and Parks dated 1993.

“Limit State Design” has the meaning set out in CAN/CSA-S6-00.

“Manual of Aesthetic Design Practice” means the manual found on the Resource Documents DVD.

“Manual of Bridge Standards and Procedures” is a document prepared by the Ministry to supplement CAN/CSA-S6-00.

“Manual of Control of Erosion and Shallow Slope Movement” means document found on the Resource Documents DVD.

“Manual of Standard Traffic Signs and Pavement Markings” means document found on the Resource Documents DVD.

“Ministry’s Recognized Products List” means document link found on the Resource Documents DVD.

“Ministry’s Standard Specifications” means the Ministry’s standard specifications for highway construction found on the Resource Documents DVD.

“Mononobe-Okabe Method” means a method used for the determination of dynamic earth pressure.

“Ministry’s Utility Policy Manual” means the MOT Utility Policy Manual available from the Queen’s Printer.

“National Building Code of Canada (NBCC, 1995)” means National Building Code of Canada (NBC) is designed to ensure that buildings are structurally sound, safe from fire, free of health hazards, and accessible. The NBC, prepared by the Canadian Commission on Building and Fire Codes, is used as a model for virtually all regulations in Canada and pertains whether you are constructing a building or renovating or altering it. Published by the National Research Council Canada.

“NCHRP Report 350” means National Cooperative Highway Research Program (NCHRP) Report 350 regarding traffic control devices in a work zone.

“NFPA 14” means National Fire Protection Association (NFPA 14-STANDARD FOR INSTALLATION OF STANDPIPE & HOSE SYSTEM).

“NFPA 502, Standard for Road Tunnels, Bridges and other Limited Access Highways” means National Fire Protection Association (NFPA 502 This Standard provides guidelines for the construction, operation, maintenance, and fire protection of limited-access highways, tunnels, bridges, elevated highways, and air right structures.)

“Pavement Design and Management Guide (1997)” is a guide published by the Transportation Association of Canada.

“Practitioners Guide to Habitat Compensation for DFO Habitat Management Staff” is a document prepared by Fisheries and Oceans Canada dated March 2002.

“SCADA” means Supervisory Control and Data Acquisition.

“Standard Specifications for Highway Constructions” means the Standards Specifications for Highway Construction document found on the Resource Documents DVD.

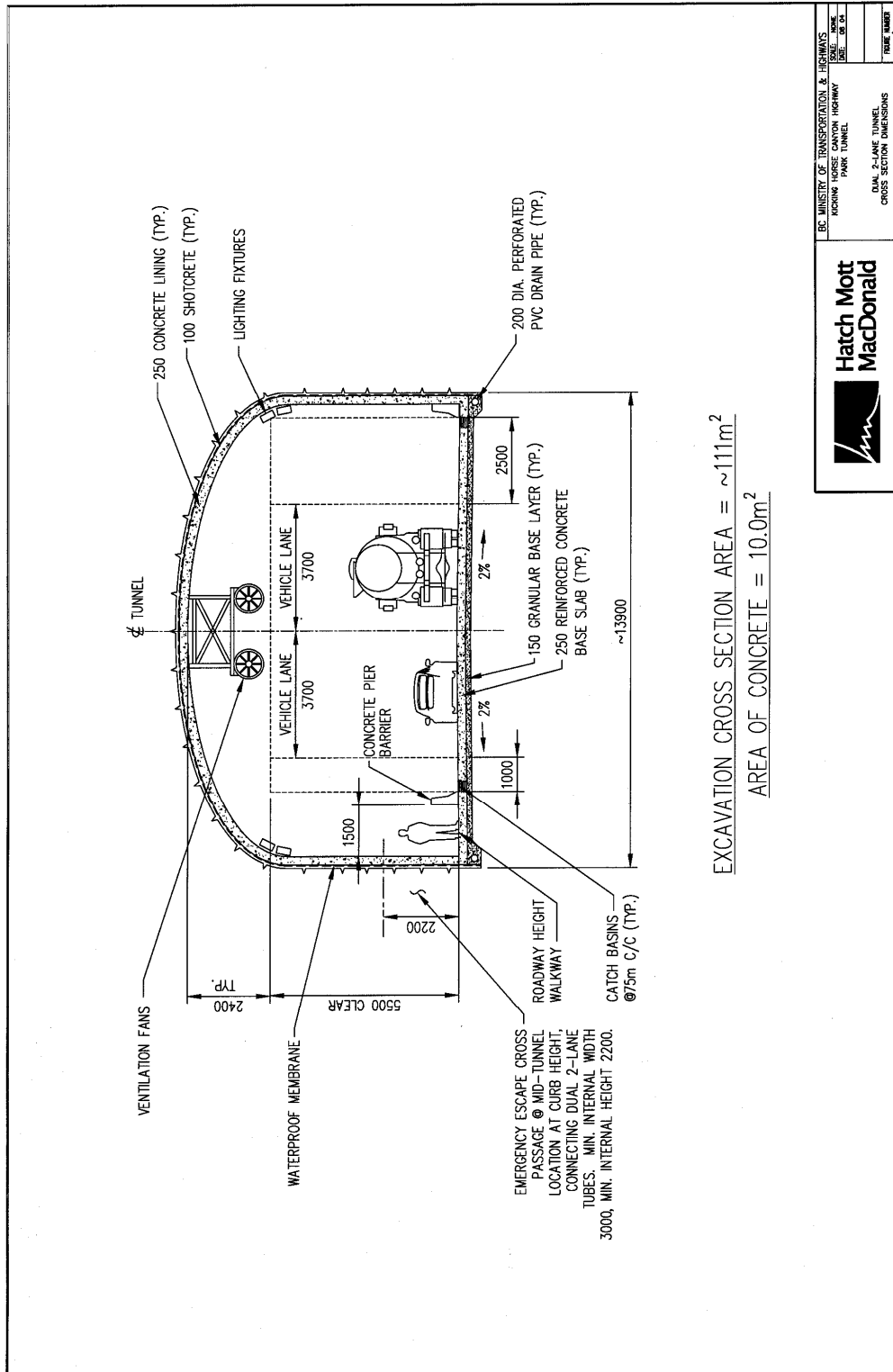
“TAC” means Transportation Association of Canada.

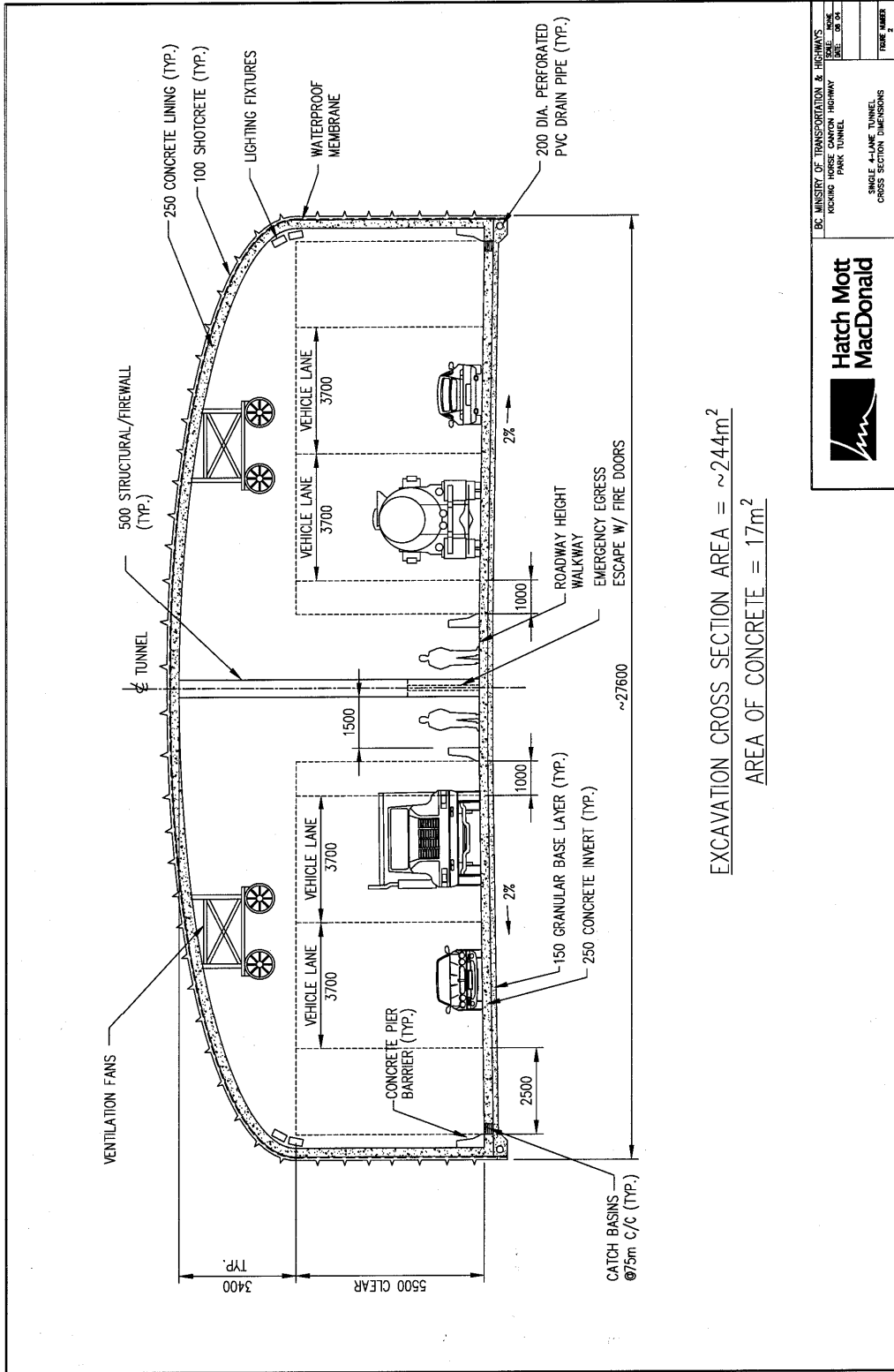
“Traffic and Electrical Engineering Design Standard Manual” means the document found on the Resource Documents DVD.

“Ministry Traffic Management Guidelines for Work on Roadways” means the Traffic Management Guidelines for Work on Roadways established by the MOT found on the Resource Documents DVD.

Appendix 3 to Part 1 of Schedule 5

Tunnel Cross Sections Figures





EXCAVATION CROSS SECTION AREA = $\sim 244m^2$
 AREA OF CONCRETE = $17m^2$

BC MINISTRY OF TRANSPORTATION & HIGHWAYS	
KICKING HORSE CANYON HIGHWAY	DATE: 08/01
PARK TUNNEL	SHEET: 05 OF 05
Hatch Mott MacDonald	
SINGLE 4-LANE TUNNEL	
CROSS SECTION DIMENSIONS	
DATE: 08/01	SCALE: 1:100

SCHEDULE 5**DESIGN AND CONSTRUCTION REQUIREMENTS****Part 2****CONCESSIONAIRE'S DESIGN AND CONSTRUCTION REQUIREMENTS**

In addition to the drawings and construction specifications identified in Part 1 of Schedule 5 [Design and Construction Output Specifications], the Concessionaire shall comply with the design and construction requirements identified in Appendix 1 to this Part 2. For greater certainty, the terms of Appendix 1 to this Part 2 shall supplement and enhance, but shall not detract from, the Concessionaire's obligations under Part 1 of Schedule 5 [Design and Construction Output Specifications] and Schedule 23 [Concessionaire Proposal Extracts]. Commitments of the Concessionaire relating to the design and construction of the Works contained in Schedule 23 [Concessionaire Proposal Extracts] shall be included as Concessionaire's Design and Construction Requirements for the purposes of the Concession Agreement and this Part 2 whether or not specifically referred to in Appendix 1 to this Part 2. In the event of conflicting specifications or requirements, the specifications or requirements setting out a higher standard or more onerous specification or requirement shall apply.

Drawings referenced in Appendix 1 to this Part 2 are references to drawings set out in Part 5 of Schedule 5 [Construction Drawings].

Headings and numbered paragraphs contained in Appendix 1 to this Part 2 correspond to those headings contained in Appendix 1 to Part 1 of Schedule 5 [Design and Construction Output Specifications] or, if applicable, to those contained in the Concessionaire's proposal set forth in Schedule 23 [Concessionaire Proposal Extracts] and are provided for clarification and convenience only and in no way limit the obligations of the Concessionaire.

Terms utilized in Appendix 1 to this Part 2 which are not defined in Schedule 1 [Definitions and Interpretation], shall have the meanings ascribed to them in Appendix 2 to Part 1 of Schedule 5 [Design and Construction Output Specifications].

Appendix 1 to Part 2 of Schedule 5

1. SCOPE OF WORK FOR DESIGN AND CONSTRUCTION

1.1 Overview

The Concessionaire shall revise the design of the alignment (eastern limit) of the Phase 1 Section, "6-Mile Hill to Rafter's Pullout, VE design" as posted on the Resource Documents DVD which indicates a limit of work to the east of the Rafter's Pullout and includes a series of 440-m radius curves, from Station 705+38.937 at the east end of the cantilevered structure, to Station 711+00. The proposed Highway Improvement shall start at Station 705+38.937 and shall reduce the length of the Phase 1 Section 440-metre curve, with a new curve to spiral at Station 705+38.937 transitioning to a new 550-metre curve. The minimum radius on the Concessionaire's Phase 2 Section alignment shall be 550 metres.

The Concessionaire requests that the last 520 metres of the Phase 1 Section VE design from the east end of the cantilevered structure to the point of conform with the existing road, including the Rafter's Pullout access, be deleted from the Phase 1 Section Contract, and that this work be undertaken within the Concession Agreement.

The Concessionaire shall, acting reasonably, negotiate with the Phase 1 Contractor, Emil Anderson Construction (EAC) Inc., and the Province the terms of an agreement for the performance of the Works within the limits of the Phase 1 Section. The Concessionaire shall assume the associated costs and risks of these negotiations. Any agreement entered into with Emil Anderson Construction (EAC) Inc. shall require its compliance with the terms, conditions and deliverables of the Concessionaire's project safety plan. The Concessionaire shall bear all the risk and costs of negotiating its agreement with Emil Anderson Construction (EAC) Inc. and the Province will have no liability whatsoever to the Concessionaire in the event the Concessionaire is unsuccessful in negotiating such an agreement with Emil Anderson Construction (EAC) Inc.

The Concessionaire shall revise the design of the Phase 1 Section from Station 705+38.937 at the east end of the cantilevered structure, to Station 711+00, and shall conduct such negotiations, acting reasonably, with Emil Anderson Construction (EAC) Inc. as are necessary to complete the Works.

1.4 Designs, Drawings and Document Preparation

The Concessionaire shall prepare detailed design drawings for construction purposes for review and approval by the Province prior to commencement of the Works in accordance with the Design and Certification Procedure and the Review Procedure. The design drawings referenced in Table 3.1-4 of the Concessionaire's proposal set forth in Schedule 23 [Concessionaire Proposal Extracts] are preliminary in nature only.

Without limiting the obligations of the Concessionaire set out elsewhere in the Concession Agreement and in particular Part 1 of Schedule 5 [Design and Construction Output Specifications] and Schedule 23 [Concessionaire Proposal Extracts], the Concessionaire shall prepare detailed design drawings in accordance with Section 1200 of the BC Supplement to TAC Geometric Design Guidelines. Table 3.1-4 in the Concessionaire's proposal set forth in Schedule 23 [Concessionaire Proposal Extracts] identifies more particularly the required drawing type, number, scale and content.

1.5 **Key Components of the Work**

1.5.6 Communications Management

The Concessionaire shall schedule weekly meetings for the purpose of providing the Province's Representative information on upcoming traffic control procedures, including schedule changes, closures, detours, lane shifts and lane closures. Such meetings shall also provide an opportunity to coordinate matters with the Phase 1 Contractor and to determine upcoming public notification requirements.

1.6 **Construction Physical Requirements**

1.6.1 Geotechnical and Materials – Investigation and Design

FOUNDATION DESIGNS FOR BRIDGE STRUCTURES AND RETAINING WALLS

Rock Socket Design

The Concessionaire shall ensure that the top of the sockets are taken down to sound rock below a weathered zone at the bedrock overburden interface, which has been inferred by the Concessionaire pursuant to available borehole logs, in the vicinity of the bridge site at each of the pier locations in the Glenogle Shale.

To ensure an adequate understanding of the site conditions, the Concessionaire shall perform borings at each pier location and log the recovered cuttings from the pile installation during construction.

Bearing Capacity on Rock

The Concessionaire shall found the east abutment and Piers 4 and 5 on spread footings on rock. Given the steeply dipping bedding within each of the rock units and the potential for the rock to be locally sheared and faulted, the Concessionaire shall ensure that each of these sites are mapped by a geotechnical engineer once the founding surfaces have been exposed to verify the allowable bearing capacities assumed during detailed design.

In the event that the Concessionaire's mapping results indicate that the rock is more highly disturbed and weaker than anticipated at Piers 4 and 5 and at the east abutment, the Concessionaire shall reinforce the rock with steel dowels or strengthen the rock by grouting or at Piers 4 and 5 by the installation of 600 mm diameter reinforced concrete pin piles.

GEOLOGICAL ASSESSMENT AND MITIGATION DESIGN CUT SLOPE STABILITY ASSESSMENT AND DESIGN

Road Hazards

The risk of rockfall from Highway Improvement rock cuts shall be mitigated by the Concessionaire by the selection of an appropriate back slope and catch ditch design for the rock type, as well as use of controlled blasting techniques to form the final faces. Without limiting its other obligations under this Schedule 5, the

Concessionaire shall comply with the summary of the proposed rock cut slopes and catchment ditch widths provided in drawing number R2-NNN-0301 and further details of which are described in Section 3.6 of the Concessionaire's proposal set forth in Schedule 23 [Concessionaire Proposal Extracts].

The Concessionaire shall not decrease the constructed width of catchment ditches from those dimensions shown in the table in drawing number R2-NNN-0301.

Settlement and Stability

The base elevation to which mesh is installed by the Concessionaire shall be sufficient to ensure all falling rocks are retained within the catchment ditch.

To mitigate rockfall hazard originating from the cut slopes, the catchment design guidelines presented in FHWA-TS-89-045 shall be followed by the Concessionaire. Drape mesh shall be required in the upper portions of the rock cuts between Stations 120+40 and 123+40, where steep cut slopes up to 80 m in height are anticipated in the McKay Group 6 Limestone.

All catch ditches beneath the cut slopes shall be graded from the shoulder of the highway down to the toe of the cut slope at 4H: 1V. The Concessionaire shall also provide concrete roadside barriers along the highway shoulders in front of all the proposed rock cuts to increase the effective catchment depth of the ditches and reduce the potential for drivers who leave the roadway from impacting the cut slopes.

The Concessionaire shall provide for horizontal spot drains to relieve potentially elevated groundwater levels between Stations 107+00 and 111+00.

A geotechnical engineer shall be onsite to review the excavated cuts and foundation conditions as they are exposed and shall modify the detailed design as necessary to account for the encountered conditions.

Suggested Foundation Types and Design Parameters

The Concessionaire shall map cut slopes as they are exposed to confirm design assumptions made during detailed design. Depending on the conditions observed, the face angle, as well as the recommended support levels, shall be adjusted from those shown in Tables 3.2-2 and 3.6-3 of the Concessionaire's proposal set forth in Schedule 23 [Concessionaire Proposal Extracts].

Adjustments made to the constructed rock slopes shall not increase the slope angle or decrease support levels without the prior written approval of the Province.

The actual quantities of slope support material will be as required by the conditions found on the slopes and as specified in the Concession Agreement at no additional cost to the Province.

The actual quantities of slope support materials in Table 3.6.3 of the Concessionaire's proposal set forth in Schedule 23 [Concessionaire Proposal Extracts] shall not be decreased without the prior approval of the Province.

NATURAL HAZARD ASSESSMENT AND MITIGATION DESIGN

Road Hazards

The Concessionaire shall install a rock berm in the location of Station 123+50 to shield highway users from unexpected wind gusts.

AGGREGATE AND BORROW SOURCE EVALUATION AND SELECTION

Testing, Inspection and Monitoring

For construction of the Works, the Concessionaire shall use full-time site-based inspectors, original design team engineers, environmental professionals and a Golden-based CSA-certified laboratory to provide resources to comply with MOT testing, inspection and monitoring requirements.

The Concessionaire shall use a CSA-certified laboratory in Golden, British Columbia for testing purposes.

Unless previous testing has been done the Concessionaire shall immediately sample the principal concrete aggregate source and prepare a preliminary mix design for testing purposes. If previous testing has been done the material to be used in the Works must be from the same source and representative of the tested material and meet the specified criteria in accordance with the CSA standards. The Concessionaire shall secure a minimum of one alternate source of aggregate and shall immediately commence similar testing from this source unless previous testing has been done. Alternate sources shall be from proven reserves. For required testing the Concessionaire shall prepare multiple samples with different aggregate, different cementitious material and admixtures combinations to enable early age testing to be performed prior to full test term to trend the results that can be expected. Such samples used for the bridge deck or parapet concrete shall be tested using the provisions given in CSA A23.2-27A ("Standard practice to identify degree of alkali-reactivity of aggregates and to identify measures to avoid deleterious expansion in concrete"). The Concessionaire shall ensure that the mix design conforms to the Ministry's Standards and shall avoid delay of the Project.

PAVEMENT STRUCTURE DESIGN

Preliminary Pavement Design

The Concessionaire shall perform a staged construction for the pavement of all Phase 2 Section lanes, Rafter's Pullout and Brake Check forming part of the Works. The 150 mm Asphalt Cement Concrete ("ACC") layer initially installed as the first stage shall last approximately 10 years prior to requiring rehabilitation as described in Table 3.8-3 of the Concessionaire's proposal set forth in Schedule 23 [Concessionaire Proposal Extracts]. At that time the Concessionaire shall mill off 25 mm and shall apply a 50 mm overlay.

As indicated on the typical section drawing R2-NNN-0301, the ACC layer will be reduced to 75 mm in thickness over the paved shoulders of the roadway.

1.6.2 Highway Design and Construction

Cross Section Elements

The Concessionaire shall provide Concrete Roadside Barrier ("CRB") for the length of the project along both outside shoulders, as well as in the median.

The Concessionaire shall install rumble strips continuously at the median and at the right shoulder.

Brake Check Design

The Concessionaire shall design and construct the Brake Check to have a capacity of not less than 60 trucks per hour.

Design Features

The Concessionaire shall provide an engineered fill on the south side of the existing roadway from the north of the eastbound truck stop to Mount Hunter Creek, which shall facilitate future widening of this portion of the Phase 3 Section. Existing culverts shall be extended beyond the toe of the slope. Culvert extensions shall be undertaken as necessary to maintain existing roadway drainage.

Roadway Construction East of the New Park Bridge

The Concessionaire shall construct a temporary haul bridge as described in Figures 4.1-2A and B of the Concessionaire's proposal set forth in Schedule 23 [Concessionaire Proposal Extracts] over the Existing Highway for use during the main grading operation. The haul bridge shall be used by rock trucks to haul surplus excavation material from the east bridge approach to the Mount Hunter Creek disposal site without impacting traffic on the Existing Highway as described in Figures 4.1-1 and 4.1-2 of the Concessionaire's proposal set forth in Schedule 23 [Concessionaire Proposal Extracts]. Once the bridge and approach embankments are in place, the Concessionaire shall use surplus material to construct a haul road as a bench on the south side of the Existing Highway. The haul road shall be separated from the active highway lanes by a concrete roadside barrier. At the completion of the work, the bench shall be available for future highway widening to four lanes.

The Concessionaire shall design and construct the fill that is intended to be used for future highway purposes from Station 155+50.00 to Station 176+40.000 as shown on Concessionaire drawings R2-NNN-0115 to R2-NNN-0121 and the design cross sections in accordance with the specifications set forth in paragraph 2 to Part 1 of Schedule 5 [Design and Construction Output Specifications], including those specifications set forth in paragraphs 2.3.5, 2.3.7 and 2.3.16. The installation of these works does not relieve the Concessionaire of its obligations under Schedule 7 [Operation, Maintenance, Rehabilitation and End of Term Requirements] for the repair and maintenance of existing and future assets.

The construction by the Concessionaire of engineered fill on the south side of the Existing Highway extending the project limit from Brake Check to Mount Hunter

Creek at Station 176+40 shall be undertaken at no additional cost to the Province, and in respect thereof the Concessionaire shall:

- obtain all necessary geotechnical assessments;
- obtain all necessary permits and approvals;
- construct drainage as necessary to maintain the integrity of the fill and the surrounding areas;
- undertake clearing, grubbing and stripping necessary to accommodate the placement of the engineered fill;
- remove unsuitable materials; and
- deliver an embankment that meets the current specifications for that purpose.

1.6.3 Structural Design and Construction

RETAINING WALLS

Retaining Structures

The Concessionaire shall use galvanized steel strapping and clean granular fill for all Mechanically Stabilized Earth ("MSE") walls.

Groundwater and Hydraulic Issues

The Concessionaire shall provide scour protection to that portion of the Rafter's Pullout area which falls within the 200-year high water level. The Concessionaire shall provide a minimum riprap diameter of 900 mm which shall be taken to a height of 1 m above the 200-year flood level.

1.6.5 Intersection Design and Construction

In relation to the eastbound truck stop and CP Rail access, the Concessionaire shall provide a rest area to the south of the Brake Check in addition to the New Rest Area. This additional rest area shall be served by right-in / right-out access only and shall include pit-type toilet facilities but no water service. The rest area shall also serve as access to CP Rail by means of a gated connection to the Existing Highway and to the existing weather station on the south side of the highway.

Brake Check Acceleration Lane

The Concessionaire shall provide an acceleration lane at Brake Check westbound exit having an acceptable merge speed, and 315 m decision sight distance to the merge. The acceleration lane shall be extended by an additional 585 m from that shown on the plans set forth in Part 5 of Schedule 5 [Construction Drawings].

Joint Use Rest Area / Rafter's Pullout

The Concessionaire shall design the curbing and luminaries at the joint use rest area / Rafter's Pullout intersection in accordance with the requirements of TAC Chapter 3.1.

The Concessionaire shall design and construct the westbound deceleration lane into the joint use rest area / Rafter's Pullout in accordance with the requirements of the BC Supplement to TAC Geometric Design Guide, Figure 710.G, at no additional cost to the Province.

The Concessionaire shall re-evaluate curbing and the location of luminaries during the detailed design to conform with "clear zone" requirements in accordance with TAC Chapter 3.1 at no additional cost to the Province. The curbing shall be removed and the intersection luminaries re-positioned behind the concrete road barrier or beyond the "clear zone".

1.6.7 Drainage Facilities Design and Construction

Culverts

The minimum cover for culverts less than 2200 mm shall be 450 mm from the crown of the pipe to shoulder grade.

Pavement Drainage

The road surface shall be drained using a combination of catch basins and drainage roadside barriers. The Rational Method shall be used for calculating run-off using a runoff coefficient of 0.95 and a time concentration of five minutes. Notwithstanding the specifications provided in paragraph 2.3.7 of Part 1 of Schedule 5 [Design and Construction Output Specifications], the Concessionaire shall calculate catch basin spacing using a design storm return period of 1 in 10 years.

Catch basins are required on all super-elevated roads where drainage would be trapped against the median barrier. The Concessionaire shall not use drainage median barriers which would permit water from the outer two lanes of a super-elevated road to drain across the inner two lanes of the super-elevated road.

Drainage roadside barriers shall be used by the Concessionaire on the downhill, outside lane edge of both super-elevated and normally crowned portions of the highway where the fill slopes are constructed using non-erodible materials. Where fill slopes are constructed with erodible soils, catch basins adjacent to roadside barriers shall be designed and constructed by the Concessionaire in accordance with the requirements set forth in the BC Supplement to TAC Geometric Design Guide, Section 1050.05.

The maximum spacing of catch basins shall meet the maximum ponding width of 65% of the paved shoulder width or 1.2 m during a 10-year return period event – whichever is greater (in accordance with BC Supplement to TAC Geometric Design Guide, 1050.04):

- catch basins adjacent to median barriers will have depressed freeway grates;
- catch basins on road shoulders will have depressed bicycle-safe grates.

Bridge Drainage

Drainage of the bridge deck shall be achieved by the Concessionaire with the use of catch basins at spaced intervals in accordance with Good Industry Practice. Catch basins shall be placed adjacent to both the median and roadside barrier.

The Concessionaire shall design and install bridge catch basins in accordance with the design detail on drawing number R2-NNN-4704.

1.6.8 Avalanche Defences Design and Construction

Road Hazards

Mitigation against road hazards shall include lengths of short retaining wall adjacent to the southern edge of the roadway in the range from approximately Station 105+00 to 113+00 to increase the snow catchment volume within the roadside ditch, and snow fencing to retard or retain flows on the higher cut slopes where the snow build up on the exposed non-vegetated faces could occur. A typical wall detail is more particularly set out in Figure 3.1-4 of the Concessionaire's proposal set forth in Schedule 23 [Concessionaire Proposal Extracts].

The Concessionaire shall design snow fencing to retain or retard snow movement in accordance with the specifications set forth in paragraph 2.3.8 of Part 1 to Schedule 5 [Design and Construction Output Specifications].

Mitigation at avalanche path 12.9 identified in the BC Snow Atlas located on the Resource Documents DVD shall consist of placement of a rock berm or gabion above the proposed cut line to retard snow movement.

The Concessionaire shall mitigate risk from snow avalanches in the avalanche paths 13.2 and 13.4 identified in the BC Snow Atlas located on the Resource Documents DVD by the installation of divisionary rock berms designed in accordance with the specifications set forth in paragraph 2.3.8 of Part 1 to Schedule 5 [Design and Construction Output Specifications] to redirect potential avalanche paths beneath the structure and to protect the piers of the new Park Bridge.

The Concessionaire shall mitigate risk from snow avalanches between Stations 127+00 and 129+00 by the use of wide ditches and rock berms designed in accordance with the specifications set forth in paragraph 2.3.8 of Part 1 to Schedule 5 [Design and Construction Output Specifications].

The Concessionaire shall mitigate risk from snow avalanches between Stations 129+00 and 131+00 by the use of rock berms and by other means of anchoring the snow pack, all designed in accordance with the specifications set forth in paragraph 2.3.8 Part 1 to Schedule 5 [Design and Construction Output Specifications].

The Concessionaire shall mitigate risk from snow avalanches between Stations 131+00 and 134+00 by the use of rock berms and by other means designed in accordance with the specifications set forth in paragraph 2.3.8 of Part 1 to Schedule 5 [Design and Construction Output Specifications].

Wall Types

The Concessionaire shall provide a short cast-in-place concrete retaining wall along the edge of the roadway in areas where avalanche catchment needs to be increased above that provided by the graded catchment ditch. These walls shall support the highway and shall have a parapet and bicycle safety railing incorporated as more particularly shown in Figure 3.2-9 of the Concessionaire's proposal set forth in Schedule 23 [Concessionaire Proposal Extracts] and drawing number R2-NNN-4905.

1.6.9 Landscape Design and Construction

Rounding and Slope Modulations

The Concessionaire shall provide final contouring and rounding of the slope cuts which shall minimize future erosion along the transition edge of the cut, and shall utilize slope modulations to create planting draws that will collect moisture and help ensure the survival of erosion control plantings and the future growth of pioneering species that will accompany the natural regeneration of slope vegetation.

Structure Aesthetics

The Concessionaire shall incorporate artistic imagery to the retaining walls associated with the new roadway widening to provide visual interest and to deter graffiti. The final product for the art work shall be developed through stakeholder input.

New Rest Area Development and Rafter's Pullout

The New Rest Area development and Rafter's Pullout shall include parking spaces for 45 cars and RVs, including handicap access stalls, two tour buses and 10 truck and trailer units. The Concessionaire shall provide 17 separate picnic sites complete with tables and concrete base pads to be centrally located close to both parking and the new washroom building. The washroom shall be connected to all areas of the site with asphalt pathways, and shall be a durable split face coloured concrete block building. The new washroom building shall be an all-season facility and shall be a heated building with two men's units and two women's units and one unisex or family unit. The new washroom building shall also serve as the location for a pay telephone and a source for potable water.

Other Proposed Features of Interest

The Concessionaire shall develop a new hiking / interpretative pathway utilizing the decommissioned highway alignment which shall provide a trail connection from the New Rest Area to a canyon overlook at the old bridge site. Development of the trail shall involve the joint use of a 3.5 m wide gravel lane. Signage for the trail shall be located at the proposed trail head to be located in the new rest area as more particularly described in Figure 3.9-8 of the Concessionaire's proposal set forth in Schedule 23 [Concessionaire Proposal Extracts]. Interpretative information and safety signage shall be provided by the Concessionaire at the terminus of the trail which shall be designed as an overlook at the old highway bridge site with the possibility of using railing salvaged from the existing bridge.

Excess blast rock and waste material shall be hauled by the Concessionaire and used to construct a second truck pull off and rest area within the contractor's laydown area at Station 152+00. The site shall include a pit toilet, an asphalt parking area to accommodate 10 trucks and three picnic tables.

1.6.10 Design and Construction of Works in Relation to CP Rail Lands

Any necessary bridge design changes and the construction associated design changes which may be required in order to obtain necessary clearances from CP Rail are at the risk of the Concessionaire. Any such changes will be at no additional cost to the Province.

Until such time as the CP Rail Design Acceptance Letter is subject to detailed design review and finalization, the Concessionaire shall negotiate and amend all details necessary to obtain unconditional acceptance of the final design by CP Rail prior to construction of the Works. It shall be the Concessionaire's sole responsibility and risk to obtain unconditional acceptance of the final detailed design by CP Rail. Such design must meet or exceed all of the design criteria and performance specifications for the Works set forth in the Concession Agreement, including bridge support clearances as may be required to accommodate future twin tracking by CP Rail.

1.6.15 Demolition / Removal of Existing Park Bridge and By-Passed Sections of Existing Highway

Decommissioning Park Bridge

The Concessionaire shall decommission the existing Park Bridge when traffic is routed onto the new roadway. The demolition shall proceed first by removal of the bridge rails and deck slab, followed by de-construction of the existing steel trusses, proceeding from west to east. Engineering calculations shall be produced by the Concessionaire for the super structure demolition to ensure that safe procedures are identified. Following removal of the super structure, the existing piers and east abutment shall be removed by the Concessionaire. Pier and abutment removal shall be completed by Final Completion. The existing west abutment shall remain in place as an outlook destination for the new interpretative trail as more particularly described in Section 3.9 of the Concessionaire's proposal set forth in Schedule 23 [Concessionaire Proposal Extracts].

Existing pavement shall be removed along the existing westerly approach for use as a recreational trail. The portions of existing pavement along the east approach shall remain in place as the access road for CP Rail as more particularly described in Section 3.1 of the Concessionaire's proposal set forth in Schedule 23 [Concessionaire Proposal Extracts].

Notwithstanding the bridge demolition requirements set forth in paragraphs 1.6.15 and 2.3.15A of Part 1 of Schedule 5 [Design and Construction Output Specifications], the Province will permit the retention of the west abutment of the existing Park Bridge. The Concessionaire shall otherwise comply with the specifications set forth in paragraphs 1.6.15 and 2.3.15A.

2. **DESIGN CRITERIA AND PERFORMANCE SPECIFICATIONS FOR THE WORKS**

2.3 **Design Criteria**

2.3.1 Roadway Design Criteria

Road Safety Elements

The Concessionaire's design shall reflect consideration of safety issues relating to traffic operations, potential road hazards and feedback received during the preliminary road safety audit process. The Concessionaire shall implement those additional road safety elements as they relate to traffic operations which are summarized in Table 3.1-3 of the Concessionaire's proposal set forth in Schedule 23 [Concessionaire Proposal Extracts]. Those additional road safety elements shall form part of the Concessionaire's obligations under paragraph 2.3.1 of Part 1 of Schedule 5 [Design and Construction Output Specifications].

The Concessionaire shall design and construct the westbound deceleration lane into the joint use rest area / Rafter's Pullout in accordance with the requirements of the BC Supplement to TAC Geometric Design Guide, Figure 710.G, at no additional cost to the Province.

Bridge Geometry

Notwithstanding the shoulder width specified in paragraph 2.3.1 of Part 1 of Schedule 5 [Design and Construction Output Specifications], the bridge width of 23.18 m shall accommodate four 3.7 m traffic lanes, two 2.5 m outside shoulders and two 1 m median shoulders. The wider shoulders shall match those on the roadway approaching the bridge resulting in minimal awareness by drivers of a change in the roadway upon crossing onto the bridge and resulting in a safer path for bicycle riders.

2.3.2 Structural Design Criteria

2.3.2.1 Design of New Bridges and Structures

Design Approach

In addition to the criteria given in paragraph 2.3.2.1 of Part 1 of Schedule 5 [Design and Construction Output Specifications], the new Park Bridge shall be designed in accordance with the following codes and standards for a CL-625 live load:

- AASHTO Guide Specifications for Horizontally Curved Steel Girders Highway Bridges;
- AASHTO/AWS D1.5M/D1.5 – Bridge Welding Code;
- FHWA Technical Advisory T 5140.22 – Uncoated Weather Steel in Structures.

2.3.2.12 Bridge Decks

Bridge Deck

The Concessionaire shall design the composite deck slab in accordance with CAN/CSA-S6-00, paragraph 8.18.4.3.1. The composite deck slab shall be protected with a roofing membrane and a 100 mm asphalt overlay.

Bridge Abutments

The Concessionaire shall construct a 6 m long approach slab at each abutment. The approach slabs shall be constructed with epoxy coated reinforcing and shall also have an asphalt overlay.

2.3.2.16 Parapets and Railings for New Structures

The new Park Bridge shall include a parapet with a height of 1070 mm topped with a steel railing for a total height of 1400 mm as described in the sketch attached to Clarification 34 which forms part of the Concessionaire's proposal set forth in Schedule 23 [Concessionaire Proposal Extracts]. The parapet and the parapet's connection to the deck shall comply with performance level PL-3 as specified in CAN/CSA-S6-00.

The parapet design shall be based on the design shown in Figure 12.5.2.1 in the Ministry of Transportation of BC Manual of Bridge Standards and Procedures. The parapet is to be based on the crash tested "42-inch F-Shape" concrete bridge railing.

The revised parapet shall be 25 mm wider than the 810 mm high parapet. The overall deck width shall therefore be increased by 50 mm to accommodate this increase while maintaining the same shoulder lane and median widths. This revision shall be provided by the Concessionaire at no additional cost to the Province.

2.3.7 Drainage Design Criteria

The Concessionaire shall ensure surface water is not discharged from the highway surface, or from water intercepted by the highway, onto the surface south of the highway between Stations 122+50 to 126+50 and Sections 139+00 to 146+00.

Culverts

In addition to the drainage design criteria set forth in paragraph 2.3.7 of Part 1 of Schedule 5 [Design and Construction Output Specifications], the Concessionaire shall:

- (a) extend culverts at least 0.5 m beyond the toe of the slope; and
- (b) headwater depth shall not exceed the diameter of culvert at the design flow.

2.3.9 Environmental Design Criteria

Federal Fisheries Act

The Concessionaire shall resolve any *Fisheries Act* issues without impact to the project schedule.

The Harmful Alteration, Disruption or Destruction of fish habitat authorization and required DFO authorization will also result in the requirement for an amendment to the CEAA Screening Report and an additional approval by the review authority. The Concessionaire shall bear the schedule risk that may result from these processes and the Concessionaire confirms that any authorizations, permits and approval required by the Concessionaire under this section are excluded from the Permits, Licences and Authorizations referred to in subparagraph (d) of the definition of Eligible Force Majeure in Schedule 1 [Definitions and Interpretation].

BC Wildlife Act

Wildlife passage and collision mitigation shall be incorporated into the Concessionaire's design in accordance with the CEAA Screening Report and to the satisfaction of the Province and the Ministry of Environment. The Concessionaire shall assume the schedule risk that may result from review and approval by the appropriate review authority required for any amendment to the CEAA Screening Report required as a result of the Concessionaire's design and the Concessionaire confirms that any authorizations, permits and approval required by the Concessionaire for a CEAA Screening Report amendment as a result of the proponent's design not meeting the provisions included in the CEAA Screening Report are excluded from the Permits, Licences and Authorizations referred to in subparagraph (d) of the definition of Eligible Force Majeure in Schedule 1 [Definitions and Interpretation].

Summary of Environmental Issues

The Concessionaire's amendment to the CEAA Screening Report shall be submitted to the appropriate authority for review and authorization.

Terrestrial Wildlife and Vegetation Protection and Site Clearing

The Concessionaire shall undertake significant replanting in the Rafter's Pullout area, and hydroseeding shall be used throughout the remaining Phase 2 Section.

The Concessionaire shall cap with soil and revegetate all areas of permanent surplus material storage in accordance with the CEAA Screening Report requirements.

Management of Long-Term Potential Environmental Impacts

The Concessionaire shall ensure that its environmental monitor samples surface water runoff from new cut rock areas at such frequency as may be required in order to detect ARD effects using Good Industry Practice.

The Concessionaire shall prepare an ARD prevention plan prior to excavating bedrock materials. The ARD prevention plan shall be implemented in the event testing of water samples indicates that ARD may be produced.

SCHEDULE 5

DESIGN AND CONSTRUCTION REQUIREMENTS

Part 3

DESIGN AND CERTIFICATION PROCEDURE

Section A: General

Interpretation

1. This Design and Certification Procedure applies throughout the Contract Period to all Design Data prepared or adopted in connection with any of the following, which, for the purposes of this Part 3, shall be known as "Proposals":
 - 1.1 the Detailed Design of the Works, including further design work once a TAF has been subject to the Review Procedure;
 - 1.2 any proposed Concessionaire Change or Province Change;
 - 1.3 any proposed Improvement;
 - 1.4 any assessment of a Structure; and
 - 1.5 any other works proposed by the Concessionaire (other than pursuant to a Subsequent Scheme) which may affect the structural integrity of Structures, pavements or any other improvement forming part of the Project Facilities (provided that in the case of an emergency the Concessionaire may proceed with such measures as are immediately necessary for the protection of persons and/or property prior to complying with the applicable provisions of this Design and Certification Procedure, in which case the Concessionaire will comply with the provisions of this Design and Certification Procedure otherwise applicable to those measures as soon as reasonably possible under the circumstances).
2. In this Part 3:
 - 2.1 "**Audit Team**" means such persons as may be appointed for the time being in accordance with the relevant provisions of this Agreement to carry out a road safety audit.
 - 2.2 "**Category**" means the classification given to a Structure in accordance with paragraph 26 having regard to its structural complexity, which determines the form of independent check required. For greater certainty, the Category descriptions for Structures set out in paragraph 26 are to be used for purposes of this Part 3, and are without prejudice to any other or different category descriptions provided for elsewhere in this Agreement or in any of the Technical Requirements or pursuant to any applicable professional standards or practices for any other purposes.
 - 2.3 "**Checking Team**" means the group of engineers within the Designer actually undertaking a design check of a Structure.

- 2.4 “**Concept Review**” means a concept review of Design Data in accordance with the Association of Professional Engineers and Geoscientists of British Columbia (APEGBC) Bylaw 14(b) – Quality Management and in accordance with the APEGBC Guidelines for Professional Concept Review, August 1994, as such Bylaws or Guidelines may be amended, supplemented or replaced from time to time.
- 2.5 “**Design Team**” means the group of engineers within the Designer actually undertaking the design or assessment of the Project Facilities (including the Works) or any other works in connection with the design, construction, operation, maintenance, rehabilitation or improvement of the Project Facilities.
- 2.6 “**M&E TAF**” means a technical appraisal form relating to the mechanical and electrical functions of a Structure in such form as the Province’s Representative shall reasonably require.
- 2.7 “**Principal**” means a senior representative employed by the Concessionaire, Contractor, Designer or Audit Team who has been designated in writing by the Concessionaire, Contractor, Designer or Audit Team to the Province as having authority to sign Certificates on behalf of the Concessionaire, Contractor, Designer or Audit Team. The Concessionaire warrants to the Province that each Principal shall have the required professional qualifications and appropriate experience to sign such Certificates.
- 2.8 “**Strengthened Earthwork**” means
- 2.8.1 soil or other material, either placed or in situ, the stability of which has been improved by tensile reinforcement acting through interface friction, bearing or other means (such as reinforced soil or soil nailing) or by external support such as gabions, where the slope of the face is less than 70 degrees to the horizontal; and
- 2.8.2 retaining walls where the retained height is less than 1.5 metres.
- 2.9 “**TAF**” means a technical appraisal form in the form shown in Appendix 2(1) to this Part 3.
- 2.10 “**Technical Appraisal Authority**” means a department of the MOT or any other relevant highway authority or other person designated in writing by the Province’s Representative to the Concessionaire as being responsible for carrying out a review of any Proposal under this Part 3.
- 2.11 “**Temporary Works**” has the meaning given in Section 1 of Schedule 1 [Definitions and Interpretation].
- 2.12 A reference (including, for greater certainty, in any Certificate submitted pursuant hereto) to Design Data or a Certificate to which there has been “no objection” under the Review Procedure is a reference to Design Data or a Certificate which has been subject to the Review Procedure and has been returned (or deemed returned) marked “received” or returned marked “received with comments”, in the latter case the Design Data or Certificate having been amended to accord with such comments.

- 2.13 A reference to a Design Certificate means in the case of Design Data referred to in paragraph 12 below a Design Certificate (Geotechnical), in the case of Design Data relating to a Structure a Design Certificate (Structures) and in all other cases a Design Certificate (General), as applicable.
- 2.14 For greater certainty, where the Province's Representative is authorized or permitted to conduct any inspection, to attend at any test or other event or to take any other action or exercise any other right pursuant to the terms of this Part 3 or any other provision of this Agreement, such inspection may be conducted, such test or other event may be attended, such action may be taken or such right may be exercised for and on behalf of the Province's Representative by a contractor, consultant or other person designated by the Province's Representative.
- 2.15 For greater certainty, a requirement for certification or for any check or review pursuant to and for purposes of this Part 3 is in addition to, and does not in any way limit, qualify, replace or relieve the Concessionaire or any other relevant person from the obligation to comply with, any other certification, check or review requirement provided elsewhere in this Agreement or in any of the Technical Requirements or pursuant to any applicable professional standards or practices.
- 2.16 References to a paragraph are, unless otherwise indicated, references to a paragraph of this Part 3.

General

3. Subject to paragraph 4, all Design Data required in connection with a Proposal shall be prepared or adopted by or under the supervision of the Designer. Prior to the submission of any Design Data in respect of any Proposal to the Province's Representative in accordance with paragraph 5, the Designer shall:
- 3.1 satisfy itself that the Design Data meets all Technical Requirements and otherwise complies with the requirements of this Agreement, and shall issue a Design Certificate in respect of the same; and
- 3.2 in the case of a Structure (including, for greater certainty, the assessment of a Structure) or Strengthened Earthwork, submit the relevant Design Data to be checked in accordance with this Part 3.
4. Notwithstanding paragraph 3, Design Data for Temporary Works may be prepared by a Professional Engineer employed by the Contractor. In respect of Temporary Works:
- 4.1 either the Contractor or the Designer (as the case may be) shall satisfy itself that the Design Data for the Temporary Works meets all applicable Technical Requirements and otherwise complies with the requirements of this Agreement and, where required by paragraphs 5 and 6 below, shall issue a Design Certificate in respect of the same;
- 4.2 the Designer shall, in the case of Temporary Works referred to in paragraphs 44 and 45, check such Design Data in accordance with paragraph 46; and
- 4.3 in the case of Temporary Works within the CP Rail right of way, the design shall be carried out by an engineer accepted by CP Rail.

5. Subject to paragraph 6 below, all Design Data prepared or adopted in connection with a Proposal (including without limitation any Design Data required to be submitted on an interim basis in connection with the design of any element of the Works) shall be submitted to the Province's Representative in accordance with the Review Procedure. Such Design Data (other than interim Design Data) shall be accompanied by all relevant Design Certificates. Unless a different period is specified for a particular class of Design Data in this Part 3 or elsewhere in this Agreement, the review time for Design Data submitted for review in accordance with the Review Procedure pursuant to this Part 3 shall be up to 15 Working Days (or, in respect of complex issues, such longer period as the Province may require, acting reasonably). In the event the Province determines that a particular issue is sufficiently complex so as to require a longer time period for review, it will so notify the Concessionaire as soon as practicable and in any event within the 15 Working Day period, or other specified period, as applicable.
6. The following are not required to be submitted to the Province's Representative unless expressly requested by the Province's Representative:
 - 6.1 calculations, in the case of any submission of interim Design Data;
 - 6.2 steel reinforcing bar schedules; and
 - 6.3 Design Data in respect of Temporary Works, except Temporary Works referred to in paragraphs 44 and 45.
7. Without prejudice to paragraph 3.11 of Part 2 of Schedule 8, if any Design Data submitted to the Province's Representative does not accord with the Technical Requirements or any other requirements of this Agreement, the Province's Representative may so notify the Concessionaire and the Concessionaire shall either:
 - 7.1 cause to be made such alterations and additions as may be necessary such that the Design Data accords with the Technical Requirements and all other requirements of this Agreement; or
 - 7.2 subject to the other provisions of this Agreement, including those relating to Concessionaire Changes, propose an Alternative Proposal (in which case the provisions of Section B of this Part 3 shall apply).
8. The Designer shall issue (if and when required in accordance with the relevant provisions of this Agreement) Province Change Certificates in accordance with Schedule 13 [Changes].
- 8A. The Concessionaire's Representative shall issue (if and when required in accordance with the relevant provisions of this Agreement):
 - 8A.1 Concessionaire Change Certificates in accordance with Section 11.4 [Concessionaire Changes] of this Agreement and Appendix 1(9) to this Part 3; and
 - 8A.2 Alternative Proposal Certificates in accordance with Section 14.6 [Maintenance and Other Works] of this Agreement and Appendix 1(11) to this Part 3.

9. All parties signing Certificates shall clearly print their name and position held in their organization. Except as provided in paragraphs 11 and 12, all Certificates shall be signed by a Principal of the organization concerned, who shall be a Professional Engineer of an appropriate discipline, who shall affix his or her seal to the Certificate.
10. All Certificates together with the supporting documentation shall be submitted to the Province's Representative in duplicate with original signatures, seals and registration numbers and in such form as to allow the Province's Representative to perform its function in respect of such Certificate without delay. Where required by the provisions of this Part 3, the Province's Representative shall complete the Certificate in accordance with the Review Procedure and return a copy to the Designer.

Archaeological, Landscaping and Environmental Work

11. The Designer shall submit Design Data in respect of any archaeological work, landscaping work or environmental work with the appropriate Design Certificate sealed and signed by a duly experienced and Professional Engineer of the appropriate discipline.

Geotechnical Works

12. In respect of geotechnical elements of the Works or of any other works the subject of a Proposal which in either case are not associated with Structures (including without limitation Strengthened Earthworks), the Designer shall issue and submit to the Province's Representative in accordance with the Review Procedure a Design Certificate (Geotechnical) sealed and signed by a duly experienced Professional Engineer, together with the submission of Design Data in accordance with paragraph 5 above.

Testing

13. To the extent and in the manner provided by the Design Management Plan, the Quality Documentation and other Technical Requirements, all testing shall be carried out by a duly accredited and certified testing facility and (except for categories of tests (if any) in respect of which the Province's Representative gives written notice to the Concessionaire that it does not require such notice) the Province's Representative shall be given timely advance notice (being not less than 2 Working Days) of the date of such tests. The Province's Representative shall be entitled to attend at any test. Any materials or Plant which fail such tests shall be rejected. The Concessionaire shall develop a test recording system which will permit ready retrieval of all test readings and shall provide test readings to the Province's Representative on request. With respect to continuous testing operations (such as concrete quality, structural concrete strengths, aggregate quality, compaction tests and bituminous material quality) the Concessionaire shall provide to the Province's Representative at regular intervals (not to exceed weekly unless otherwise agreed) test summary sheets and statistical analyses indicating strength and quality trends.
14. Any part of the Works or any other works the subject of a Proposal that does not accord with the Technical Requirements shall be rejected.

Road Safety Audits

15. All Design Data prepared or adopted in connection with a Proposal (and, in respect of an audit validation pursuant to paragraph 16.3, the Highway Improvement or other relevant works) shall be subject to road safety audits as and where required pursuant to the provisions of the Design Management Plan and the Technical Requirements and the other provisions of this Agreement, and the relevant Design Data in respect of the road safety audits in the required form together with the results of all relevant calculations will be submitted by the Concessionaire to the Province's Representative. Prior to commencing any road safety audit, the Concessionaire shall submit to the Province's Representative under the Review Procedure a proposal as to the Audit Team. The Province's Representative may object to such proposal only on the grounds that:
 - 15.1 the proposed Audit Team is not independent of the Designer; or
 - 15.2 the proposed Audit Team does not have levels of road safety engineering work and accident investigation and prevention experience, training and audit experience appropriate to the road safety audit to be carried out or otherwise does not meet the requirements set forth in the Technical Requirements.
16. The road safety audits will be submitted to the Province's Representative for validation at five stages as follows:
 - 16.1 Stage 1 Audit

On completion of preliminary design, unless otherwise agreed by the Province's Representative.
 - 16.2 Stage 2 Audit

At the 50% Detailed Design stage.
 - 16.3 Stage 3 Audit

At 100% completion of Detailed Design and prior to commencement of construction of the relevant works.
 - 16.4 Stage 4 Audit

As part of any design changes during construction.
 - 16.5 Stage 5 Audit

Immediately prior to the Concessionaire giving a notice to the Province's Representative pursuant to Section 13.1.2, 13.2.3 or 20.7.3.1 of this Agreement with respect to the relevant works or the relevant works otherwise being used as a highway.
17. The Audit Team will review the design and prepare a written report for consideration by the Province's Representative. The Designer will review the road safety audit and prepare a written response outlining the design changes to be undertaken in response to the concerns

raised by the road safety audit, and the reasons for not following any of the road safety audit recommendations. The road safety audit and the Designer's written response will be submitted to the Province for review.

18. Except as otherwise expressly agreed in writing by the Province's Representative, the Concessionaire shall implement after each road safety audit all recommendations made by the Audit Team.
19. The Concessionaire shall, after implementation of all recommendations (other than those expressly agreed by the Province's Representative), submit to the Province's Representative a Road Safety Audit Certificate in relation to the relevant road safety audit validation stage signed by the Designer, the Audit Team, the Contractor and the Concessionaire's Representative. The Concessionaire's Substantial Completion Certificate shall not be issued unless a Stage 5 Road Safety Audit Certificate has been submitted.

Construction

20. During the construction of any Works or any other works that are the subject of a Proposal, the Designer shall, in accordance with the procedures set out in the Design Management Plan and the relevant Quality Documentation or other Technical Requirements, examine the same and satisfy itself that such works and every part thereof have been designed, constructed, completed, commissioned, tested and maintained in all respects so as to accord with:
 - 20.1 Design Data in respect of which Design Certificates have been issued and to which there has been no objection in accordance with the Review Procedure; and
 - 20.2 all applicable Technical Requirements,and otherwise to comply in all respects with the requirements of this Agreement.
21. The Concessionaire shall, from time to time in accordance with the procedures set out in the Design Management Plan and the relevant Quality Documentation or other Technical Requirements, provide Construction Certificates to the Province's Representative. All Construction Certificates shall be signed by the Concessionaire's Representative, the Designer and the Contractor.

Substantial Completion Certificates and Final Completion Certificates

22. The Concessionaire shall provide to the Province's Representative a Concessionaire's Substantial Completion Certificate in respect of the Works. The Concessionaire's Substantial Completion Certificate shall only be issued after:
 - 22.1 all Construction Certificates in respect of the Works have been issued;
 - 22.2 a Stage 5 Road Safety Audit Certificate in respect of the Highway Improvement has been issued; and
 - 22.3 all relevant quality assurance audits have been satisfactorily completed in accordance with the Design Management Plan and the Quality Documentation and all other relevant provisions of this Agreement, and provided to the Province

showing that the Works have been Substantially Completed in accordance with all applicable Technical Requirements and other requirements of this Agreement.

A Concessionaire's Substantial Completion Certificate must be issued prior to an application by the Concessionaire under Section 13.1 [Substantial Completion Certificate] of this Agreement for the issue of a Substantial Completion Certificate.

23. The Concessionaire shall provide to the Province's Representative a Concessionaire's Final Completion Certificate upon Final Completion of all of the Works. The Concessionaire's Final Completion Certificate shall only be issued after:

- 23.1 Construction Certificates in respect of all of the Works have been issued;
- 23.2 a Stage 5 Road Safety Audit Certificate in respect of the Highway Improvement has been issued; and
- 23.3 all relevant quality assurance audits have been satisfactorily completed in accordance with the Design Management Plan, the Quality Documentation and all other relevant provisions of this Agreement, and provided to the Province showing that all of the Works have been Finally Completed in accordance with all applicable Technical Requirements and other requirements of this Agreement.

A Concessionaire's Final Completion Certificate must be issued prior to an application by the Concessionaire under Section 13.2 [Final Completion Certificates] of this Agreement for the issue of a Final Completion Certificate, and prior to an application by the Concessionaire under Section 20.7.3.1 for a Reinstatement Certificate, as applicable.

24. The Concessionaire's Substantial Completion Certificate and the Concessionaire's Final Completion Certificate shall be signed by the Concessionaire's Representative, the Designer and the Contractor.

Checking Requirements for Structures and Strengthened Earthworks

25. The Category of a Structure shall determine the degree of independence of checking of Design Data required for that Structure. Every Structure shall be placed in one of the Categories referred to in paragraph 26.

26. The Categories of Structure are as follows:

Category 0. Minor individual Structures provided they conform to one of the following:

- (i) a Structure with a single span of less than 10 metres and which is statically determinate;
- (ii) a buried Structure less than 3 metres clear span/diameter, or multicell buried Structure where the cumulative span is less than 5 metres and having more than 1 metre cover;
- (iii) a retaining wall with less than 3 metres retained height; or
- (iv) an environmental barrier not greater than 3 metres high.

Category I. Simple individual Structures provided they conform to one of the following:

- (i) an environmental barrier more than 3 metres high;
- (ii) a retaining wall with 3 metres or more than 3 metres and less than 7 metres retained height;
- (iii) a buried concrete box or corrugated steel buried Structure with less than 8 metre span; or
- (iv) a Structure with a simply supported single span of less than 20 metres and having less than 25 degrees skew.

Category II. All those Structures not within the parameters of Categories 0, I or III.

Category III. Structures which:

- (i) require sophisticated analysis; or
- (ii) contain high structural redundancy; or
- (iii) contain unconventional design aspects; or
- (iv) have any span exceeding 50 metres; or
- (v) have a skew exceeding 45 degrees; or
- (vi) have difficult foundation problems,

and in any event including bridges with suspension systems, cable stayed bridges, steel bridges with orthotropic decks, floating structures, hinged arch structures and all tunnels, movable bridges and bridge access gantries.

27. Subject to paragraph 28 below, as soon as sufficient Design Data for a Structure has been prepared to allow the determination of a Category, the Concessionaire shall submit its proposed Category (together with such Design Data as necessary to support that proposal) to the Province's Representative in accordance with the Review Procedure. The Province's Representative shall be entitled to object to such proposed Category only on the ground that the proposal is not consistent with the definitions of Categories in paragraph 26.
28. The assessment of existing Structures (whether existing on the date of this Agreement or constructed as part of the Works) and the renewal or strengthening work affecting structural integrity of existing Structures shall be categorized on the basis of the original Structure unless otherwise agreed by the Province's Representative.
29. Design Data relating to each Structure or Strengthened Earthwork (including without limitation assessments, drawings and bar schedules) shall be checked as follows:
- 29.1 Category 0 and Category I Structures require an independent check by a Professional Engineer other than the engineer who designed the Structure. The checking engineer may be from the original Design Team.

- 29.2 Strengthened Earthworks, Category II Structures and Category III Structures require a check by a Checking Team which may be from the Designer but shall be independent of the Design Team.

All Structures shall have a Concept Review.

30. [Not Used]

Design Checking Procedure

31. The form and detail of the design check is for the checking engineer or Checking Team (as applicable) to decide.
32. The Design Team, Designer, checking engineer and Checking Team shall each satisfy itself as to the applicability and accuracy of all computer programs used and shall ensure the validity of the program for each application. The checking engineer and Checking Team shall each also be responsible for its own interpretation of the relevant ground information.
33. Independence of the Design Team and Checking Team shall be maintained at all times. The method of analysis they employ need not be the same. They may consult each other to ensure that the results they are obtaining are directly comparable.

Technical Appraisal Submissions

34. Without limiting paragraph 5 above, no Design Data relating to any Structure other than those in Category 0 and no Design Data relating to any Strengthened Earthwork shall be submitted to the Province's Representative unless:
- 34.1 a completed TAF has already been provided; or
- 34.2 the submission includes a completed TAF.
35. If the Concessionaire makes a submission of Design Data relating to a Structure or a Strengthened Earthwork at a time when there is no completed TAF in respect of such Structure or Strengthened Earthwork to which there has been no objection under the Review Procedure, then the time period for review under the Review Procedure of such submission of Design Data shall not begin to run until the date on which a completed TAF has been submitted in respect of such Structure or Strengthened Earthwork and there has been no objection to it under the Review Procedure.
36. Any submission of a TAF shall be made to the Province's Representative in accordance with the Review Procedure and shall include the information required by the Model Technical Appraisal Form set out in Appendix 2(1) to this Part 3. The TAF shall be signed by the Designer and the Concessionaire's Representative.

37. The time periods set out in Appendix 3 or Appendix 4 (as applicable) to this Part 3 shall apply in relation to a submission of a TAF under the Review Procedure and take account of the requirement for the relevant Technical Appraisal Authority to be involved in the review of the TAF under the Review Procedure. The Province's Representative may make comments in respect of a TAF submitted under the Review Procedure only on the grounds that:
- 37.1 the TAF is incomplete;
 - 37.2 the proposals in the TAF are not in accordance with the Technical Requirements or the other provisions of this Agreement; or
 - 37.3 the proposals in the TAF are not in accordance with Good Industry Practice.
38. Acceptance of each TAF shall be confirmed by countersignature of the TAF by the Province's Representative.
39. Without limiting paragraph 3 of Section B below, any variation which the Designer wishes to make to a TAF which has been subject to the Review Procedure during design, assessment or construction shall be submitted in accordance with the Review Procedure as an addendum to the TAF, and there shall have been no objection thereto under the Review Procedure before it is implemented.
40. In any case where a Structure (including a road tunnel, movable bridge or access gantry) involves mechanical or electrical functions, the Concessionaire shall, if requested by the Province's Representative, submit to the Province's Representative an M&E TAF in addition to the TAF in respect of such Structure. The provisions of paragraphs 34 to 39 above shall apply with the necessary changes to such M&E TAF, as though references therein to a TAF were references to an M&E TAF and references to Design Data relating to a Structure were references to Design Data relating to the mechanical and electrical functions in respect of such Structure. The check of the Design Data in respect of mechanical and electrical functions shall be equivalent to the check required by paragraph 29.2.

Assessment of Structures

41. For greater certainty, the technical appraisal, checking and certification procedures in this Part 3 shall apply to:
- 41.1 any assessment of a Structure forming part of the Project Facilities; and
 - 41.2 any resulting proposals for design and construction of alteration and strengthening works in respect of any such Structure.
42. Without limiting the generality of paragraph 41:
- 42.1 a TAF shall be submitted in accordance with paragraphs 34 to 40 in respect of each assessment referred to in paragraph 41.1 and proposal referred to in paragraph 41.2; and
 - 42.2 the Designer shall submit each such assessment and the Design Data in respect of each such proposal to be checked in accordance with this Part 3.

43. Promptly following the assessment of any Structure, the Designer shall issue an Assessment Certificate (Structures) in respect of such Structure.

Temporary Works

44. The provisions of paragraph 5 above shall apply to all Design Data prepared or adopted in connection with any Temporary Works over, supporting any Structure over, under, supporting, alongside or otherwise affecting or potentially affecting any highway or other road or area used by or accessible to the public.
45. In respect of any Temporary Works referred to in paragraph 44 which is a Structure (or involves the complete or partial demolition of an existing Structure), a TAF shall be submitted in accordance with paragraph 36, and the provisions of paragraphs 34 and 35 and 37 to 39 shall apply with the necessary changes to any such TAF, provided that the reference in paragraph 37 above to the time periods set out in Appendices 3 and 4 to this Part 3 shall be deemed to be a reference to the time periods set out in the relevant part of Appendix 5 to this Part 3.
46. Design Data relating to any Temporary Works referred to in paragraph 45 shall be checked as follows:
 - 46.1 any such Design Data prepared by or on behalf of the Contractor requires an independent check by the Designer; and
 - 46.2 any such Design Data prepared by the Designer requires an independent check by a Checking Team which may be from the Designer but shall be independent of the Design Team.

The provisions of paragraphs 25 to 29 shall not apply to any such Design Data.

47. In performing the check pursuant to paragraph 46 the Designer shall satisfy itself that:
 - 47.1 the Design Data meets the Technical Requirements and otherwise complies with the requirements of this Agreement;
 - 47.2 the Temporary Works (as a whole and the constituent parts) are satisfactory for the safe and proper discharge of the Concessionaire's relevant obligations; and
 - 47.3 the Design Data reflects the requirements of the relevant authorities for all affected highways or other roads or areas used by or accessible to the public other than the Concession Highway.
48. If the Concessionaire proposes to vary or amend the Technical Requirements in respect of any Temporary Works, such proposal together with an explanation of the reason for the proposed change shall be submitted to the Province's Representative in accordance with the Review Procedure. Such proposal shall be dealt with in accordance with the provisions of this Agreement applicable to a Concessionaire Change or an Alternative Proposal, as the case may be, provided that the Province's Representative shall be entitled to make comments in respect of any such proposal under the Review Procedure only on the ground that the conduct of any Temporary Works in accordance with the proposal may endanger public or worker safety or the structural integrity of any related primary Structure or any adjacent Structures.

49. Where any Temporary Works may endanger public safety on any highway or other road or area used by or accessible to the public other than the Concession Highway, the Concessionaire shall consult the relevant highway authority and the Design Data shall reflect their requirements.

Section B: Alternative Proposals

1. An "Alternative Proposal" means one of the following:
 - 1.1 a Proposal in connection with a Concessionaire Change; or
 - 1.2 a Proposal in connection with an Improvement, Maintenance Works, Reinstatement Works, Renewal Works or otherwise (other than a Concessionaire Change) which proposes a variation in the design, quality or scope of any of the Project Facilities or any addition, deletion, substitution, alteration in design or variation in the Technical Requirements.
2. Subject to paragraphs 3 and 4 below, the Concessionaire shall submit any proposal for an Alternative Proposal to the Province's Representative under the Review Procedure in accordance with the applicable provisions of this Agreement.
3. If the Concessionaire intends to make an Alternative Proposal in relation to a Structure or in relation to any Temporary Works referred to in paragraph 44 of Section A above or in relation to any Strengthened Earthwork, the Designer shall propose such Alternative Proposal in the relevant TAF, which shall be accompanied by an Alternative Proposal Report in accordance with paragraph 4 below. Notwithstanding any other provision of this Agreement, the time periods set out in Appendix 4 or Appendix 5 (as applicable) to this Part 3 shall apply in relation to any submission under the Review Procedure of such an Alternative Proposal.
4. Without limitation to the provisions of Part 2 of Schedule 8, the submission of an Alternative Proposal under the Review Procedure shall be in writing and contain all the relevant data and information, which shall be assembled in a written report (an "Alternative Proposal Report"). The nature and scope of the information required shall vary with the proposal under consideration but shall at a minimum include relevant aspects of the following:
 - 4.1 detailed information (including plans) about the existing circumstances and the impact of the Alternative Proposal;
 - 4.2 detailed information (including plans) of possible options or schemes that would not require an Alternative Proposal;
 - 4.3 reasons for proposing the Alternative Proposal (for example, cost, environmental factors, value for money, economics);
 - 4.4 details of the Alternative Proposal together with the corresponding existing provisions in the Technical Requirements. Clause numbers in standards or specifications relevant to the submission shall be quoted in full, and all proposed changes to existing requirements highlighted;

- 4.5 details of design methodology and specification of the composition, and performance criteria of component materials (including all relevant parameters, such as elastic modulus, creep and deformation characteristics and fatigue resistance);
 - 4.6 specific features of the site or location of the Alternative Proposal that might have a bearing on its effectiveness;
 - 4.7 evidence of satisfactory long term performance and corresponding maintenance requirements of the resulting works based on use in circumstances and conditions (including climatic and loading conditions) typical of those for the Alternative Proposal; and
 - 4.8 evidence of deterioration characteristics or long term assessment criteria sufficient to establish the condition and remaining service life of Project Facilities constructed in accordance with the Alternative Proposal at the end of the Contract Period.
5. No Alternative Proposal shall be incorporated into the design or construction of the relevant works until there has been no objection to such Alternative Proposal under the Review Procedure.
 6. Each Alternative Proposal to which there has been no objection under the Review Procedure shall be considered to be unique to the particular site and circumstances and shall not entitle the Concessionaire to adopt the Alternative Proposal in other sites or circumstances.

Appendix 1 to Part 3 of Schedule 5**INDEX OF CERTIFICATES**

1. Design Certificate (General)
2. Design Certificate (Geotechnical)
3. Design Certificate (Structures)
4. Road Safety Audit Certificate (Stage 1)
5. Road Safety Audit Certificate (Stage 2)
6. Road Safety Audit Certificate (Stage 3)
7. Road Safety Audit Certificate (Stage 4)
8. Road Safety Audit Certificate (Stage 5)
9. Concessionaire Change Certificate
10. Province Change Certificate
11. Alternative Proposal Certificate
12. Construction Certificate
13. Concessionaire's Substantial Completion Certificate
14. Substantial Completion Certificate
15. Concessionaire's Final Completion Certificate
16. Final Completion Certificate
17. End of Term Certificate
18. Assessment Certificate (Structures)

Appendix 1(1) to Part 3 of Schedule 5

Certificate Ref No. []

DESIGN CERTIFICATE (GENERAL)

In respect of :..... (Provide details e.g., Highway / Rock Retention / Drainage / Environmental)

Agreement between Her Majesty the Queen in Right of the Province of British Columbia, BC Transportation Financing Authority and Trans-Park Highway General Partnership dated [] ("the Agreement") relating to the Kicking Horse Canyon Project. Expressions used in the Agreement have the same meanings in this Certificate.

Form of Certificate to be used by the Designer for certifying the design of the Works or any other works the subject of a Proposal in accordance with Sections 11.3 and 14.6 of the Agreement and Part 3 of Schedule 5 to the Agreement.

1. We certify that we have the requisite professional qualifications, skill and experience to prepare the Design Data referred to herein in accordance with the requirements of the Agreement and all relevant Technical Requirements.
2. We certify that we have prepared the Design Data for [.....] listed in the Schedule hereto in accordance with all applicable requirements contained in the Design Management Plan and the Design Quality Management Plan and utilizing the standards of care, skill and diligence that, in accordance with the standards of our profession, are required of experienced professionals undertaking the preparation of such Design Data, and that in our professional opinion such Design Data:
 - i. complies with all applicable Technical Requirements, as amended by the following:
[List, if any, the changes made by the issue of Change Certificates and Alternative Proposal Certificates];
 - ii. complies with all applicable design requirements of the Agreement;
 - iii. complies with all applicable standards, codes and current Good Industry Practice; and
 - iv. accurately describes and depicts the work to be undertaken.

SCHEDULE

[Include here drawing numbers and titles, reports, calculations, etc.]

Signed:
Designer/Contractor (Principal)⁺
Name:
Title:
Date:
Professional Registration Number:
Affix Professional Seal

- 2. This Certificate is:
 - i. received*
 - ii. received with comments as follows*
 - iii. returned marked "comments" as follows:
* delete as appropriate

Signed:
Province's Representative
Name:
Date:

Notes: For geotechnical elements use Certificate at Appendix 1(2), for Structures use Certificate at Appendix 1(3), and for road safety audits use Certificate at Appendices 1(4), 1(5), 1(6), 1(7) and 1(8), as applicable.

⁺ The Contractor may sign only in respect of Temporary Works. Delete as appropriate.

Appendix 1(2) to Part 3 of Schedule 5

Certificate Ref. No []

DESIGN CERTIFICATE (GEOTECHNICAL)

Agreement between Her Majesty the Queen in Right of the Province of British Columbia, BC Transportation Financing Authority and Trans-Park Highway General Partnership dated [] ("the Agreement") relating to the Kicking Horse Canyon Project. Expressions used in the Agreement have the same meanings in this Certificate.

Form of Certificate to be used by the Designer for certifying the design of geotechnical elements in accordance with Sections 11.3 and 14.6 of the Agreement and Part 3 of Schedule 5 to the Agreement.

1. We certify that we have the requisite professional qualifications, skill and experience to prepare the Design Data referred to herein in accordance with the requirements of the Agreement and all applicable Technical Requirements.
2. We certify that the Design Data for geotechnical elements listed in the Schedule hereto and annexed incorporates the results of the relevant ground investigations and their interpretation, that the said Design Data has been prepared by us in accordance with all applicable requirements contained in the Design Management Plan and the Design Quality Management Plan and utilizing the standards of care, skill and diligence that, in accordance with the standards of our profession, are required of experienced professionals undertaking the preparation of such Design Data, and that in our professional opinion such Design Data:
 - i. constitutes an adequate and appropriate design and complies with all applicable Technical Requirements, as amended by the following:

[List, if any, the changes made by the issue of Change Certificates and Alternative Proposal Certificates];
 - ii. complies with all applicable design requirements of the Agreement;
 - iii. complies with all applicable standards, codes and current Good Industry Practice;
 - iv. incorporates solutions to all of the reasonably foreseeable geotechnical problems; and
 - v. accurately describes and represents the work intended.

SCHEDULE

[Include here drawing numbers and titles and Geotechnical Report, including site data and testing]

Signed:
Designer/Contractor (Principal)⁺
Name:
Title:
Date:
Professional Registration Number:
Affix Professional Seal

- 2. This certificate is:
 - i. received*
 - ii. received with comments as follows:*
 - iii. returned marked "comments" as follows:*
- *delete as appropriate

Signed:
Province's Representative
Name:
Date:

Notes: Geotechnical aspects of Structures are covered by the Technical Appraisal Form and Design Certificate (Structures) and not by this Certificate.

+ The Contractor may sign only in respect of Temporary Works. Delete as appropriate.

Appendix 1(3) to Part 3 of Schedule 5

Certificate Ref No. []

DESIGN CERTIFICATE (STRUCTURES)

Agreement between Her Majesty the Queen in Right of the Province of British Columbia, BC Transportation Financing Authority and Trans-Park Highway General Partnership dated [] ("the Agreement") relating to the Kicking Horse Canyon Project. Expressions used in the Agreement have the same meanings in this Certificate.

Form of certificate to be used by the Designer for certifying the design of Structures incorporated in the Works, in accordance with Sections 11.3 and 14.6 of the Agreement and Part 3 of Schedule 5 to the Agreement.

1. We certify that we have the requisite professional qualifications, skill and experience to prepare the Design Data referred to herein in accordance with the requirements of the Agreement and all relevant Technical Requirements.
2. We certify that we have prepared the Design Data for [.....] **[Name and Category of the Structure and list of all elements of the Structure included in the Design Data]** listed in the Schedule hereto and annexed in accordance with all applicable requirements contained in the Design Management Plan and the Design Quality Management Plan and utilizing the standards of care, skill and diligence that, in accordance with the standards of our profession, are required of experienced professionals undertaking the preparation of such Design Data, and that in our professional opinion:
 - i. the said Design Data complies with all applicable Technical Requirements, including Technical Appraisal Form No. [.....] dated [.....], as amended by the following:
[List, if any, the changes made by the issue of Change Certificates, Alternative Proposal Certificates, and Addenda to the foregoing Technical Appraisal Form];
 - ii. the said Design Data complies with all applicable design requirements of the Agreement;
 - iii. the said Design Data complies with all applicable standards, codes and current Good Industry Practice; and
 - iv. all due account has been taken of the Geotechnical Report for the Structure **[reference number]** [and agreed amendments] **[reference numbers]**.

SCHEDULE

[Include here drawing numbers and titles and reports, calculations, etc.]

Signed:
Designer/Contractor (Principal)⁺
Name:
Title:
Date:
Professional Registration Number:
Affix Professional Seal

- 2. This Certificate is:
 - i. received*
 - ii. received with comments as follows*
 - iii. returned marked "comments" as follows:^{*}
 - * delete as appropriate

Signed:
Province's Representative
Name:
Date:

Notes: ⁺ *The Contractor may sign only in respect of Temporary Works. Delete as appropriate.*

Appendix 1(4) to Part 3 of Schedule 5

Certificate Ref. No. []

ROAD SAFETY AUDIT CERTIFICATE (STAGE 1)

Agreement between Her Majesty the Queen in Right of the Province of British Columbia, BC Transportation Financing Authority and Trans-Park Highway General Partnership dated [] ("the Agreement") relating to the Kicking Horse Canyon Project. Expressions used in the Agreement have the same meanings in this Certificate.

Form of Certificate to be used by the Designer for certifying that a Stage 1 Road Safety Audit has been carried out in accordance with Part 3 of Schedule 5 to the Agreement.

1. We certify that the preliminary design of [.....] has been the subject of a Stage 1 road safety audit in accordance with Part 3 of Schedule 5 to the Agreement, the Design Management Plan, the Design Quality Management Plan and all other relevant provisions of the Agreement and that, except as expressly agreed in writing by the Province's Representative (copies of which are attached hereto), all recommendations in the Audit Team's report have been incorporated in the preliminary design.

2. The Audit Team's report and statement certifying the audit has been carried out are attached.

Signed:
 Designer (Principal)
 Name:
 Title:
 Date:
 Professional Registration Number:
 Affix Professional Seal

Signed:
 Audit Team (Principal)
 Name:
 Title:
 Date:
 Professional Registration Number:
 Affix Professional Seal

Signed:
 Contractor (Principal)
 Name:
 Title:
 Date:
 Professional Registration Number:
 Affix Professional Seal

Signed:
Concessionaire's Representative
Name:
Date:

3. Receipt of this Certificate is acknowledged.

Signed.....
Province's Representative
Name.....
Date.....

Appendix 1(5) to Part 3 of Schedule 5

Certificate Ref. No. []

ROAD SAFETY AUDIT CERTIFICATE (STAGE 2)

Agreement between Her Majesty the Queen in Right of the Province of British Columbia, BC Transportation Financing Authority and Trans-Park Highway General Partnership dated [] ("the Agreement") relating to the Kicking Horse Canyon Project. Expressions used in the Agreement have the same meanings in this Certificate.

Form of Certificate to be used by the Designer for certifying that a Stage 2 Road Safety Audit has been carried out in accordance with Part 3 of Schedule 5 to the Agreement.

1. We certify that the 50% Detailed Design for [.....] has been the subject of a Stage 2 road safety audit in accordance with Part 3 of Schedule 5 to the Agreement, the Design Management Plan, the Design Quality Management Plan and all other relevant provisions of the Agreement and that, except as expressly agreed in writing by the Province's Representative (copies of which are attached hereto), all recommendations in the Audit Team's report have been incorporated in the Detailed Design.

2. The Audit Team's report and statement certifying the audit has been carried out are attached.

Signed:
 Designer (Principal)
 Name:
 Title:
 Date:
 Professional Registration Number:
 Affix Professional Seal

Signed:
 Audit Team (Principal)
 Name:
 Title:
 Date:
 Professional Registration Number:
 Affix Professional Seal

Signed:
 Contractor (Principal)
 Name:
 Title:
 Date:
 Professional Registration Number:
 Affix Professional Seal

Signed:
Concessionaire's Representative
Name:
Date:

3. Receipt of this Certificate is acknowledged.

Signed.....
Province's Representative
Name.....
Date.....

Appendix 1(6) to Part 3 of Schedule 5

Certificate Ref. No. []

ROAD SAFETY AUDIT CERTIFICATE (STAGE 3)

Agreement between Her Majesty the Queen in Right of the Province of British Columbia, BC Transportation Financing Authority and Trans-Park Highway General Partnership dated [] ("the Agreement") relating to the Kicking Horse Canyon Project. Expressions used in the Agreement have the same meanings in this Certificate.

Form of Certificate to be used by the Designer for certifying that a Stage 3 Road Safety Audit has been carried out in accordance with Part 3 of Schedule 5 to the Agreement.

1. We certify that the 100% Detailed Design for [] has been the subject of a Stage 3 road safety audit in accordance with Part 3 of Schedule 5 to the Agreement, the Design Management Plan, the Design Quality Management Plan and all other relevant provisions of the Agreement and that, except as expressly agreed in writing by the Province's Representative (copies of which are attached hereto), all recommendations in the Audit Team's report have been implemented.

2. The Audit Team's report and statement certifying the audit has been carried out are attached.

Signed:
 Designer (Principal)
 Name:
 Title:
 Date:
 Professional Registration Number:
 Affix Professional Seal

Signed:
 Audit Team (Principal)
 Name:
 Title:
 Date:
 Professional Registration Number:
 Affix Professional Seal

Signed:
 Contractor (Principal)
 Name:
 Title:
 Date:
 Professional Registration Number:
 Affix Professional Seal

Signed:
Concessionaire's Representative
Name:
Date:

3. Receipt of this Certificate is acknowledged.

Signed.....
Province's Representative
Name.....
Date.....

Appendix 1(7) to Part 3 of Schedule 5

Certificate Ref. No. []

ROAD SAFETY AUDIT CERTIFICATE (STAGE 4)

Agreement between Her Majesty the Queen in Right of the Province of British Columbia, BC Transportation Financing Authority and Trans-Park Highway General Partnership dated [] ("the Agreement") relating to the Kicking Horse Canyon Project. Expressions used in the Agreement have the same meanings in this Certificate.

Form of Certificate to be used by the Designer for certifying that a Stage 4 Road Safety Audit has been carried out as part of any design change during construction in accordance with Part 3 of Schedule 5 to the Agreement.

1. We certify that the design change during construction [reference relevant design change] has been the subject of a Stage 4 road safety audit in accordance with Part 3 of Schedule 5 to the Agreement, the Design Management Plan, the Design Quality Management Plan and all other relevant provisions of the Agreement and that, except as expressly agreed in writing by the Province's Representative (copies of which are attached hereto), all recommendations in the Audit Team's report have been implemented.
2. The Audit Team's report and statement certifying the audit has been carried out are attached.

Signed:
 Designer (Principal)
 Name:
 Title:
 Date:
 Professional Registration Number:
 Affix Professional Seal

Signed:
 Audit Team (Principal)
 Name:
 Title:
 Date:
 Professional Registration Number:
 Affix Professional Seal

Signed:
 Contractor (Principal)
 Name:
 Title:
 Date:
 Professional Registration Number:
 Affix Professional Seal

Signed:
Concessionaire's Representative
Name:
Date:

3. Receipt of this Certificate is acknowledged.

Signed.....
Province's Representative
Name.....
Date.....

Appendix 1(8) to Part 3 of Schedule 5

Certificate Ref. No. []

ROAD SAFETY AUDIT CERTIFICATE (STAGE 5)

Agreement between Her Majesty the Queen in Right of the Province of British Columbia, BC Transportation Financing Authority and Trans-Park Highway General Partnership dated [] ("the Agreement") relating to the Kicking Horse Canyon Project. Expressions used in the Agreement have the same meanings in this Certificate.

Form of Certificate to be used by the Designer for certifying that a Stage 5 Road Safety Audit has been carried out in accordance with Part 3 of Schedule 5 to the Agreement.

- 1. We certify that the Highway Improvement as constructed, tested and commissioned has been the subject of a Stage 5 road safety audit in accordance with Part 3 of Schedule 5 to the Agreement and all other relevant provisions of the Agreement, the Design Management Plan, the Design Quality Management Plan and that, except as expressly agreed in writing by the Province's Representative (copies of which are attached hereto), all recommendations in the Audit Team's report have been implemented.
- 2. The Audit Team's report and statement certifying the audit has been carried out are attached.

Signed:
 Designer (Principal)
 Name:
 Title:
 Date:
 Professional Registration Number:
 Affix Professional Seal

Signed:
 Audit Team (Principal)
 Name:
 Title:
 Date:
 Professional Registration Number:
 Affix Professional Seal

Signed:
 Contractor (Principal)
 Name:
 Title:
 Date:
 Professional Registration Number:
 Affix Professional Seal

Signed:
Concessionaire's Representative
Name:
Date:

3. Receipt of this Certificate is acknowledged.

Signed.....
Province's Representative
Name.....
Date.....

Appendix 1(9) to Part 3 of Schedule 5

Certificate Ref. No. []

CONCESSIONAIRE CHANGE CERTIFICATE

Agreement between Her Majesty the Queen in Right of the Province of British Columbia, BC Transportation Financing Authority and Trans-Park Highway General Partnership dated [] (“the Agreement”) relating to the Kicking Horse Canyon Project. Expressions used in the Agreement have the same meanings in this Certificate.

Form of Certificate to be used by the Concessionaire’s Representative for recording a Concessionaire Change in accordance with Section 11.4 of the Agreement.

- 1. The following changes are recorded as a Concessionaire Change to which there has been no objection in accordance with the Review Procedure. The submission of the proposal for this Concessionaire Change is dated [] [and was returned marked [“received”] [“received with comments” (the submission having been amended in accordance with such comments)] on [date]] [and the submission was not returned within 30 days of actual receipt by the Province’s Representative].

Signed:
 Concessionaire’s Representative
 Name:
 Date:

- 2. Receipt of this Certificate is acknowledged.

Signed:
 Province’s Representative
 Name:
 Date:

Appendix 1(10) to Part 3 of Schedule 5

Certificate Ref. No. []

PROVINCE CHANGE CERTIFICATE

Agreement between Her Majesty the Queen in Right of the Province of British Columbia, BC Transportation Financing Authority and Trans-Park Highway General Partnership dated [] ("the Agreement") relating to the Kicking Horse Canyon Project. Expressions used in the Agreement have the same meanings in this Certificate.

Form of Certificate to be used by the Designer for recording a Province Change in accordance with Schedule 13.

- 1. The following Province Change has been agreed or determined in accordance with Schedule 13: [.....].

Signed:
 Concessionaire's Representative
 Name:
 Date:

Signed:
 Designer (Principal)
 Name:
 Title:
 Date:
 Professional Registration Number:
 Affix Professional Seal

- 2. Countersignature by Province's Representative:

Signed:
 Province's Representative
 Name:
 Date:

Appendix 1(11) to Part 3 of Schedule 5

Certificate Ref. No. []

ALTERNATIVE PROPOSAL CERTIFICATE

Agreement between Her Majesty the Queen in Right of the Province of British Columbia, BC Transportation Financing Authority and Trans-Park Highway General Partnership dated [] (“the Agreement”) relating to the Kicking Horse Canyon Project. Expressions used in the Agreement have the same meanings in this Certificate.

Form of Certificate to be used by the Concessionaire’s Representative for recording an Alternative Proposal in accordance with Section 14.6 of the Agreement.

- 1. The following changes are recorded as an Alternative Proposal to which there has been no objection in accordance with the Review Procedure. The submission of the proposal for this Alternative Proposal is dated [.....] [and was returned marked [“received”] [“received with comments”] on [date]] [and the submission was not returned within 30 days of actual receipt by the Province’s Representative].

Signed:
 Concessionaire’s Representative
 Name:
 Date:

- 2. Receipt of this Certificate is acknowledged.

Signed:
 Province’s Representative
 Name:
 Date:

Appendix 1(12) to Part 3 of Schedule 5

Certificate Ref. No. []

CONSTRUCTION CERTIFICATE

Agreement between Her Majesty the Queen in Right of the Province of British Columbia, BC Transportation Financing Authority and Trans-Park Highway General Partnership dated [] (“the Agreement”) relating to the Kicking Horse Canyon Project. Expressions used in the Agreement have the same meanings in this Certificate.

Form of Certificate to be used by the Designer, Contractor and Concessionaire for certifying the construction of the Works or other works in accordance with paragraph 20 of Part 3 of Schedule 5 to the Agreement.

Contractor’s and Concessionaire’s Statement

- 1. We certify that **[name and element of construction]** has been designed, constructed, [Substantially Completed] [Finally Completed], commissioned and tested in all respects in accordance with:
 - (i) the relevant Design Data and Design Certificates in each case to which there has been no objection under the Review Procedure; and
 - (ii) the provisions of the Agreement including all applicable Technical Requirements [as amended by the following Concessionaire Changes, Province Changes and Alternative Proposals: [.....]].

Signed.....
 Contractor (Principal)
 Name.....
 Title.....
 Date.....
 Professional Registration Number:
 Affix Professional Seal

Signed.....
 Concessionaire’s Representative
 Name.....
 Date.....

Designer’s Statement

2. We certify that we have examined the **[name and element of construction]** in accordance with the requirements for examination of the Works contained in the Design Management Plan, the Design Quality Management Plan and the Construction Quality Management Plan and utilizing the standards of care, skill and diligence that, in accordance with the standards of our profession, are required of experienced professionals undertaking such examinations, and that in our professional opinion the said element of the Works or other works has been designed, constructed, [Substantially Completed] [Finally Completed], commissioned and tested in all respects in accordance with:

- (i) the relevant Design Data and Design Certificates in each case to which there has been no objection under the Review Procedure; and
- (ii) the provisions of the Agreement including all applicable Technical Requirements [as amended by the Concessionaire Changes, Province Changes and Alternative Proposals listed in paragraph 1 above].

Signed.....
 Designer (Principal)
 Name.....
 Title.....
 Date.....
 Professional Registration Number:
 Affix Professional Seal

3. Receipt of this Certificate is acknowledged.

Signed.....
 Province’s Representative
 Name.....
 Date.....

Appendix 1(13) to Part 3 of Schedule 5

Certificate Ref. No. []

CONCESSIONAIRE’S SUBSTANTIAL COMPLETION CERTIFICATE

Agreement between Her Majesty the Queen in Right of the Province of British Columbia, BC Transportation Financing Authority and Trans-Park Highway General Partnership dated [] (“the Agreement”) relating to the Kicking Horse Canyon Project. Expressions used in the Agreement have the same meanings in this Certificate.

Form of Certificate to be used by the Concessionaire in accordance with Part 3 of Schedule 5 to the Agreement when the Works have been Substantially Completed.

We certify that all of the Works were Substantially Completed in accordance with the Agreement on [date] and that the Works are suitable and safe for use by members of the public without traffic management restrictions.

Signed:
Designer (Principal)
Name:
Title:
Date:
Professional Registration Number:
Affix Professional Seal

Signed:
Contractor (Principal)
Name:
Title:
Date:
Professional Registration Number:
Affix Professional Seal

Signed:
Concessionaire’s Representative
Name:
Date:

Appendix 1(14) to Part 3 of Schedule

Certificate Ref No. []

SUBSTANTIAL COMPLETION CERTIFICATE

Agreement between Her Majesty the Queen in Right of the Province of British Columbia, BC Transportation Financing Authority and Trans-Park Highway General Partnership dated [] ("the Agreement") relating to the Kicking Horse Canyon Project. Expressions used in the Agreement have the same meanings in this Certificate.

Form of Substantial Completion Certificate to be used by the Independent Certifier in accordance with Section 13.2 of the Agreement.

- 1. Confirmation was given on [date] by the Concessionaire that the Works have been Substantially Completed in accordance with the Agreement and that the Works are suitable and safe for use by members of the public without traffic management restrictions.
- 2. A Road Safety Audit Certificate (Stage 5) for the Highway Improvement was issued on [date].
- 3. A Concessionaire's Substantial Completion Certificate for the Works was issued on [date].
- 4. This document shall serve as the Substantial Completion Certificate for the Works.

Signed.....
 Independent Certifier
 Name.....
 Title.....
 Date.....
 Professional Registration Number:
 Affix Professional Seal

Appendix 1(15) to Part 3 of Schedule 5

Certificate Ref. No. []

CONCESSIONAIRE’S FINAL COMPLETION CERTIFICATE

Agreement between Her Majesty the Queen in Right of the Province of British Columbia, BC Transportation Financing Authority and Trans-Park Highway General Partnership dated [] (“the Agreement”) relating to the Kicking Horse Canyon Project. Expressions used in the Agreement have the same meanings in this Certificate.

Form of Certificate to be used by the Concessionaire in accordance with Part 3 of Schedule 5 to the Agreement when the whole of the Works have been Finally Completed.

We certify that the whole of the Works were Finally Completed in accordance with the Agreement on [date].

Signed:
Designer (Principal)
Name:
Title:
Date:
Professional Registration Number:
Affix Professional Seal

Signed:
Contractor (Principal)
Name:
Title:
Date:
Professional Registration Number:
Affix Professional Seal

Signed:
Concessionaire’s Representative
Name:
Date:

Appendix 1(16) to Part 3 of Schedule 5

Certificate Ref. No. []

FINAL COMPLETION CERTIFICATE

Agreement between Her Majesty the Queen in Right of the Province of British Columbia, BC Transportation Financing Authority and Trans-Park Highway General Partnership dated [] ("the Agreement") relating to the Kicking Horse Canyon Project. Expressions used in the Agreement have the same meanings in this Certificate.

Form of Final Completion Certificate to be used by the Independent Certifier in accordance with Section 13.3 of the Agreement.

- 1. Confirmation was given on [date] by the Concessionaire that the whole of the Works have been Finally Completed in accordance with the Agreement.
- 2. This document shall serve as the Final Completion Certificate for the Works.

Signed.....
 Independent Certifier
 Name.....
 Title.....
 Date.....
 Professional Registration Number:
 Affix Professional Seal

Appendix 1(17) to Part 3 of Schedule 5

Certificate Ref. No. []

END OF TERM CERTIFICATE

Agreement between Her Majesty the Queen in Right of the Province of British Columbia, BC Transportation Financing Authority and Trans-Park Highway General Partnership dated [] ("the Agreement") relating to the Kicking Horse Canyon Project. Expressions used in the Agreement have the same meanings in this Certificate.

Form of Certificate to be issued by the Province's Representative in accordance with Section 19.6 of the Agreement.

- 1. The Expiry Date for the Agreement was [].
- 2. A joint inspection of the Project Facilities was carried out on [] as required by Section 19.6 of the Agreement.
- 3. This Certificate shall serve as the End of Term Certificate as referred to in Section 19.6 of the Agreement.

Signed

Province's Representative

Name

Date

Appendix 1(18) to Part 3 of Schedule 5

Certificate Ref. No. []

ASSESSMENT CERTIFICATE (STRUCTURES)

Agreement between Her Majesty the Queen in Right of the Province of British Columbia, BC Transportation Financing Authority and Trans-Park Highway General Partnership dated [] ("the Agreement") relating to the Kicking Horse Canyon Project. Expressions used in the Agreement have the same meanings in this Certificate.

Form of Certificate to be used by the Designer for certifying the assessment of Structures, in accordance with paragraph 43 of Part 3 of Schedule 5.

1. We certify that in assessing [.....] **[Name and Category of the Structure and list of all elements of the Structure included in the assessment]** listed in the Schedule hereto and annexed we have complied with all applicable requirements contained in the Design Management Plan, the Design Quality Management Plan and the Construction Quality Management Plan and have utilized the standards of care, skill and diligence that, in accordance with the standards of our profession, are required of experienced professionals undertaking such assessments, and that in our professional opinion:

i the said assessment complies with all applicable Technical Requirements, including Technical Appraisal Form No. [.....] dated [.....], as amended by the following:

[List, if any, the changes made by the issue of Change Certificates, Alternative Proposal Certificates, and addenda to the foregoing Technical Appraisal Form];

and the said assessment complies in all other respects with the Agreement; and

ii the assessed capacity of each element of the Structure is as follows:

SCHEDULE

[Include here drawing numbers and title used for the assessment.]

Signed.....
Designer (Principal)
Name.....
Title.....
Date.....
Professional Registration Number:
Affix Professional Seal

2. This Certificate is:

- i. received *
- ii. received with comments as follows*
- iii. returned marked "comments" as follows:*

* delete as appropriate

Signed:
Province's Representative
Name:
Title:
Date:

Appendix 2(1) to Part 3 of Schedule 5**MODEL TECHNICAL APPRAISAL FORM ("TAF")**

Ref. No.....

1. NAME OF PROJECT.....

- 1.1 Type of highway
 1.2 Permitted traffic speed (for a bridge give over and/or under).

2. NAME OF STRUCTURE.....

- 2.1 Obstacles crossed.

3. PROPOSED STRUCTURE

- 3.1 Description of Structure.
 3.2 Structural type) Include reasons
 3.3 Foundation type) for choice
 3.4 Span arrangements)
 3.5 Articulation arrangements.
 3.6 Parapet type.
 3.7 Proposed arrangements for inspection and maintenance.
 3.8 Materials and finishes.
 3.9 Sidewalk width and location.
 3.10 Bearing and joint type.

4. DESIGN/ASSESSMENT CRITERIA

- 4.1 Live Loading, Headroom.
- 4.1.1 BC Bridge Code loading:
 4.1.2 Design Vehicle.....
 4.1.3 Footway or footbridge live loading.
 4.1.4 Provision for exceptional abnormal loads.
- 4.1.4.1 Gross weight tonnes on vehicle no.metre(s).
 4.1.4.2 Axle load and spacing.
 4.1.4.3 Air cushion tonnes over metres(s) xmetre(s).
 4.1.4.4 Location of vehicle track on deck cross-section.
- 4.1.5 Any special loading not covered above.
 4.1.6 MOT heavy or high load route requirements and arrangements being made to preserve the route.
 4.1.7 Minimum headroom provided metre(s) and navigational clearances and rail clearance envelopes.
 4.1.8 Authorities consulted and any special conditions required.
- 4.2 List of relevant design documents.
 4.3 Proposed Alternative Proposals.

5. STRUCTURAL ANALYSIS

- 5.1 Methods of analysis proposed for superstructure, substructure and foundations.
- 5.2 Description and diagram of idealised structure to be used for analysis.
- 5.3 Assumptions intended for calculation of structural element stiffness.
- 5.4 Proposed earth pressure coefficients (k_a , k_o , or k_p) to be used in design of earth retaining elements.

6. GROUND CONDITIONS

- 6.1 Acceptance of interpretative recommendations of the soils report to be used in the design and reasons for any proposed departures.
- 6.2 Describe foundations fully including the reasons for adoption of allowable and proposed bearing pressures/pile loads, strata in which foundations are located, provision for skin friction effects on piles and for lateral pressures due to compression of underlying strata, etc.
- 6.3 Differential settlement to be allowed for in design of structure.
- 6.4 Anticipated ground movements or settlement due to embankment loading, mineral extraction, flowing water, measures proposed to deal with these defects as far as they affect the structure.
- 6.5 Results of tests of ground water (e.g., pH value, chloride or sulphate content) and any counteracting measures proposed.
- 6.6 Anticipated ground movements or settlement due to seismic loading, measures proposed to deal with these impacts as far as they affect the structure.

7. CHECKING

- 7.1 Proposed Category of structure.
- 7.2 Temporary Works for which the Concessionaire will be required to arrange an independent check listing the parts of the structure affected.

8. DRAWINGS AND DOCUMENTS

- 8.1 List of drawings (including numbers) and documents accompanying the submission. To include (without limitation):
 - 8.1.1 a location plan;
 - 8.1.2 a preliminary general arrangement drawing; and
 - 8.1.3 relevant parts of the ground investigation report.

9. THE ABOVE DESIGN AND CONSTRUCTION PROPOSALS ARE SUBMITTED FOR REVIEW

Signed:
Designer/Contractor⁺ (Principal)
Name:
Engineering Qualifications:.....
Date:
Professional Registration Number:
Affix Professional Seal

Signed:.....
Concessionaire's Representative
Name:.....
Date:.....

Note: ⁺ The Contractor may sign only in respect of Temporary Works.

10. THE ABOVE TAF IS:

- i. received*
 - ii. received with comments as follows:*
 - iii. returned marked "comments" as follows:*
- *delete as appropriate.

Signed:.....
Province's Representative
Name:
Date:.....

Appendix 3 to Part 3 of Schedule 5**REVIEW TIMES FOR TECHNICAL APPRAISAL FORMS**(No Alternative Proposals)

STRUCTURE GROUP	FIRST SUBMISSION OF TECHNICAL APPRAISAL FORM				RE-SUBMISSION OF TECHNICAL APPRAISAL FORM			
	Cat 0	Cat 1	Cat 2	Cat 3	Cat 0	Cat 1	Cat 2	Cat 3
Structures	N/A	4.0	4.0	5.0	N/A	2.0	2.0	3.0

Notes:

- (a) This Appendix 3 applies only to those TAFs that do not include any Alternative Proposals.
- (b) The above times are in place of those given in paragraph 1.3 of Part 2 of Schedule 8.
- (c) The review time commences when the Province's Representative actually receives the completed TAF.
- (d) All review times are quoted in weeks.
- (e) Where the number of Technical Appraisal Forms submitted or resubmitted in any two week period exceeds 12, the review time for each of the forms submitted during that period shall be determined as follows: (review time from the above Table) \times ^(Number of Forms Submitted/12).
- (f) To aid the review process it is suggested that the Concessionaire informally discusses proposed submissions with the Province's Representative prior to making a formal submission.

Appendix 4 to Part 3 of Schedule 5**REVIEW TIMES FOR TECHNICAL APPRAISAL FORMS**(Alternative Proposals Included)

STRUCTURE GROUP	FIRST SUBMISSION OF TECHNICAL APPRAISAL FORM				RE-SUBMISSION OF TECHNICAL APPRAISAL FORM			
	Cat 0	Cat 1	Cat 2	Cat 3	Cat 0	Cat 1	Cat 2	Cat 3
Structures	N/A	5.0	5.0	6.0	N/A	2.0	2.0	3.0

Notes:

- (a) This Appendix 4 applies only to those TAFs that include an Alternative Proposal.
- (b) The above times are in place of those given in paragraph 1.3 of Part 2 of Schedule 8.
- (c) The review time commences when the Province's Representative actually receives the completed TAF.
- (d) All review times are quoted in weeks.
- (e) Where the number of Technical Appraisal Forms submitted or resubmitted in any two week period exceeds 12, the review time for each of the forms submitted during that period shall be determined as follows: (review time from the above Table) \times ^(Number of Forms Submitted/12).
- (f) To aid the review process it is suggested that the Concessionaire informally discusses proposed submissions with the Province's Representative prior to making a formal submission.

Appendix 5 to Part 3 of Schedule 5**REVIEW TIMES FOR TECHNICAL APPRAISAL FORMS**(Temporary Works)

No Alternative Proposals

STRUCTURE GROUP	FIRST SUBMISSION OF TECHNICAL APPRAISAL FORM	RE-SUBMISSION OF TECHNICAL APPRAISAL FORM
Structures	4.0	2.0

Alternative Proposals

STRUCTURE GROUP	FIRST SUBMISSION OF TECHNICAL APPRAISAL FORM	RE-SUBMISSION OF TECHNICAL APPRAISAL FORM
Structures	6.0	2.0

Notes:

- (a) This Appendix 6 applies only to TAFs in respect of Temporary Works.
- (b) The above times are in place of those given in paragraph 1.3 of Part 2 of Schedule 8.
- (c) The review time commences when the Province's Representative actually receives the completed TAF.
- (d) All review times are quoted in weeks.
- (e) Where the number of Technical Appraisal Forms submitted or resubmitted in any two week period exceeds 12, the review time for each of the forms submitted during that period shall be determined as follows: (review time from the above Table) \times $\frac{\text{Number of Forms Submitted}}{12}$.
- (f) To aid the review process it is suggested that the Concessionaire informally discusses proposed submissions with the Province's Representative prior to making a formal submission.

SCHEDULE 5

DESIGN AND CONSTRUCTION REQUIREMENTS

Part 4

NOT USED

SCHEDULE 5

DESIGN AND CONSTRUCTION REQUIREMENTS

Part 5

CONSTRUCTION DRAWINGS

A listing of the Construction Drawings is set out below. Copies of the Construction Drawings are contained in a separate volume entitled "Construction Drawings Listed in Part 5 of Schedule 5 [Construction Drawings]" and which forms part of this Agreement.

The drawings included as Construction Drawings for the purposes of this Part 5 are extracted from the drawings forming part of the Concessionaire's proposal attached as part of Schedule 23 [Concessionaire Proposal Extracts] and as such represent preliminary drawings only and are subject to changes required pursuant to the clarifications forming part of Appendix 2 to Schedule 23 [Concessionaire Proposal Extracts]. All drawings relating to the construction of the Works shall be subject to the Design Certification Procedure and the Review Procedure.

<u>DRAWING No.</u>	<u>DESCRIPTION</u>
<u>COVER SHEET</u>	
R2-NNN-0000	DRAWING INDEX – TECHNICAL SUBMISSION
<u>SCHEDULE</u>	
(REFERENCE SECTION 1.2 – SCHEDULING AND REPORTING)	
(REFERENCE SECTION 5.2 – ASSEST MANAGEMENT PLAN)	
SHEET 1 TO 8	CONSTRUCTION SCHEDULE – GANT CHART
SHEET 1 TO 6	CONSTRUCTION SCHEDULE – LOGIC DIAGRAM (PROVIDED SEPARATELY FULL SIZE FOR READABILITY)
TABLE 5.2-1	MAINTENANCE AND REHABILITATION SCHEDULE FOR PAVEMENT
TABLE 5.2-2	MAINTENANCE AND REHABILITATION SCHEDULE FOR STRUCTURES
<u>RAFTERS PULLOUT TO BRAKE CHECK – ROADS</u>	
(REFERENCE SECTION 3.1 – ROAD DESIGN REPORT & SECTION 3.7 DRAINAGE DESIGN REPORT)	
R2-NNN-0001	COVER SHEET, KEY PLAN AND DRAWING INDEX
R2-NNN-0002	LEGEND
R2-NNN-0101 to 0122	PLAN SHEETS
R2-NNN-0201 to 0210	PROFILE SHEETS
R2-NNN-0301	TYPICAL SECTIONS
R2-NNN-0401 to 0416	GEOMETRICS AND LANING
R2-NNN-0501 to 0504	DRAINAGE AND AVALANCHE MAPS, NOTES AND DETAILS
<u>RAFTERS PULLOUT TO BRAKE CHECK – CONSTRUCTION SEQUENCE AND STAGING</u>	
(REFERENCE SECTION 4.1 – CONSTRUCTION MANAGEMENT PLAN	
SECTION 4.2 – CONSTRUCTION STAGING PLAN	
SECTION 4.3 – TRAFFIC MANAGEMENT PLAN)	
R2-NNN-2001	CONSTRUCTION SEQUENCE – RAFTERS PULLOUT
R2-NNN-2002	CONSTRUCTION SEQUENCE – BRAKE CHECK TO MOUNT HUNTER CREEK
R2-NNN-2003 to 2005	DETOURS AND STAGING – WEST CONFORM: STAGE 1
R2-NNN-2006 to 2008	DETOURS AND STAGING – WEST CONFORM: STAGE 2
R2-NNN-2009	DETOURS AND STAGING – WEST CONFORM: STAGE 3
R2-NNN-2010 to 2012	DETOURS AND STAGING – EAST CONFORM: STAGE 1
R2-NNN-2013	DETOURS AND STAGING – EAST CONFORM: STAGE 2
R2-NNN-2014 to 2015	CONSTRUCTION ACCESS DETAILS
<u>RAFTERS PULLOUT TO BRAKE CHECK – GEOTECHNICAL</u>	
(REFERENCE SECTION 3.6 – GEOTECHNICAL DESIGN REPORT)	
R2-NNN-5000	COVER SHEET, KEY PLAN AND DRAWING INDEX
R2-NNN-5001 to 5008	BORHOLE LOCATION PLAN SHEETS
R2-NNN-5009 to 5010	GEOTECHNICAL PROFILE
R2-NNN-5011 to 5018	TYPICAL CROSS SECTIONS
R2-NNN-5020	GEOTECHNICAL INFORMATION AND REFERENCES

DRAWING No.DESCRIPTIONPARK BRIDGE - STRUCTURAL

(REFERENCE SECTION 3.2 - STRUCTURAL DESIGN REPORT)

R2-NNN-4000	COVER SHEET, KEY PLAN AND DRAWING INDEX
R2-NNN-4101 TO 4103	GENERAL ARRANGEMENT
R2-NNN-4201 to 4206	CONSTRUCTION STAGING, ERECTION SEQUENCE
R2-NNN-4301	FOUNDATION PLAN
R2-NNN-4401 to 4402	ABUTMENT PLANS, ELEVATIONS AND SECTIONS
R2-NNN-4501 to 4510	PIER ELEVATIONS, SECTIONS, DETAILS, ALTERNATE FOOTING PLANS, PILE DETAILS CP RAIL IMPACT, AND PILE TABLE
R2-NNN-4601 to 4605	TYPICAL SECTIONS, FRAMING PLANS, AND PRELIMINARY GIRDER ELEVATIONS
R2-NNN-4701 to 4704	BRIDGE TYPICAL CROSS SECTION, PRECAST PANEL DECK FORM AND BRIDGE DETAILS
R2-NNN-4800 to 4802	MISCELLANEOUS
R2-NNN-4900 to 4904	RETAINING WALLS

RAFTERS PULLOUT TO BRAKE CHECK - AESTHETICS AND LANDSCAPING

(REFERENCE SECTION 3.9 - AESTHETICS AND LANDSCAPE DESIGN REPORT)

R2-NNN-9001	LANDSCAPE PLAN - RAFTERS PULLOUT AREA
R2-NNN-9002	RETAINING WALL AESTHETIC TREATMENT

RAFTERS PULLOUT TO MOUNT HUNTER CREEK - DESIGN CROSS SECTIONS SHEETS

(REFERENCE SECTION 3.1 - ROAD DESIGN REPORT)

DESIGN CROSS SECTIONS

SCHEDULE 5**DESIGN AND CONSTRUCTION REQUIREMENTS****Part 6****TRAFFIC MANAGEMENT OUTPUT SPECIFICATIONS (ORIGINAL SERVICE PERIOD)****1. DEFINITIONS AND RESOURCE DOCUMENTS**

Capitalized terms used herein not otherwise defined in Schedule 1 [Definitions and Interpretation] shall have the meaning given to such terms as set out in Appendix 1. A list of the resource documents referred to in this Part 6 is set out in Appendix 2.

2. TRAFFIC MANAGEMENT AND DETOUR CONSTRUCTION

Traffic management and detour construction will meet the requirements of the Standard Specifications for Highway Construction (latest edition) (SS 194) except as specified below.

2.1 Traffic Stoppages

The following terms describe traffic stoppages:

- ***Scheduled Stoppage(s)*** means stoppage(s) of traffic in one or both directions for the purposes of the construction and commissioning of the Works.
- ***Random Minor Interruption(s)*** means brief stoppage(s) of no more than 2-minutes in one or both directions; and
- ***Queue Clearing Time*** means the time it takes the last vehicle stopped in the queue to completely clear the Work Zone from the time the Work Zone is opened to traffic (i.e. time it takes for the last vehicle to begin moving due to queue lag + time to travel the length of the queuing area + time to travel through the Work Zone).

Scheduled Stoppages will be permitted for blasting work or for other purposes as may be permitted by the Province's Representative in its sole discretion, except that no Scheduled Stoppages will be permitted from 10:00 p.m. to 6:00 a.m. for the period from June 24 to September 19.

The Concessionaire will not initiate a Scheduled Stoppage or Random Minor Interruption unless delays resulting from any previous Scheduled Stoppage or Random Minor Interruption have been completely dissipated and the traffic is moving freely throughout the Site.

Scheduled Stoppages and Random Minor Interruptions will not be allowed outside of the times described in Table 2.1 unless approval to do so is received in writing from the Province's Representative. Work in time periods labelled "Not Permitted" must not introduce any delays to traffic. After a stoppage is complete, lanes will be opened to clear traffic queues in both directions simultaneously.

The Concessionaire must demonstrate to the Province's Representative that the construction activity causing the traffic delay will be cleared within the maximum queue clearing time specified in Table 2.1. The Concessionaire must demonstrate acceptable traffic delay by instituting a progressive build-up of construction activities that will prove to the Province's Representative that the queue can be cleared within the specified times identified in Table 2.1. For example, during blasting activities blast sizes may be gradually built-up from 50% to 75% to 90% and then 100% of estimated design blasts. Blast designs and associated activities will be assessed by the Concessionaire and modified at each stage to ensure that all requirements of the Concession Agreement have been met (i.e. traffic management, construction safety, etc.) before progressing to a higher blast size. The Concessionaire will not proceed with the next increased blast size unless the blast plan is accepted by the Province's Representative.

**Table 2.1
Allowable Times and Durations**

Type of Stoppage	Stoppage Duration	Allowable Stoppage Times and Durations ¹			
		Monday To Thursday	Friday	Saturday & Sunday	Maximum Queue Clearing Time
Scheduled Stoppage (Day)	30 Minutes	9:00 am to 10:00 am & 12:00 pm to 1:00 pm & 3:00 pm to 4:00 pm	9:00 am to 10:00 am	9:00 am to 10:00 am & 12:00 pm to 1:00 pm	10 Minutes
Scheduled Stoppage (Evening) ²	1 Hour	7:00 pm to 8:00 pm	Not Permitted	Not Permitted	
Scheduled Stoppage (Night)	3 Hours	10:00 pm to 2:00 am & 3:00 am to 6:00 am	10:00 pm to 2:00 am & 3:00 am to 6:00 am	10:00 pm to 2:00 am & 3:00 am to 6:00 am	15 minutes
Random Minor Interruption (Day or Night)	2 Minutes	9:00 am to 5:00 pm & 8:00 pm to 6:00 am	9:00 am to 5:00 pm & 8:00 pm to 6:00 am	9:00 am to 5:00 pm & 8:00 pm to 6:00 am	5 Minutes

Notes:

1. No stoppages will be permitted on Statutory Holidays or after 2:00 pm Thursdays preceding long weekends and Statutory Holidays until the following normal workday after the Statutory Holiday, unless approved by the Province’s Representative.
2. No Scheduled Stoppages in the evening will be permitted from and including June 24 to and including September 19. The permitted times described in the table are for days outside that period of time.

The Concessionaire will schedule, coordinate and plan the Works within the time windows specified in Table 2.1. The Concessionaire will not allow Queue-Clearing Times to exceed the times specified in Table 2.1. The time windows and durations identified in Table 2.1 may be adjusted at the discretion of the Province's Representative in consideration of circumstances such as, but not limited to the following:

- excessive traffic delays,
- special events,
- incidents, or
- accidents.

2.2 Notification and Advertisement of Scheduled Traffic Stoppages

For each pre-approved Scheduled Stoppage, the Concessionaire will provide advance notification to the travelling public and other stakeholders of the Scheduled Stoppage by means of advertisement, including but not limited to advertisement in the following ways:

- the Provincial Highways Conditions Centre,
- the local radio station(s),
- the local news paper,
- two (2) construction notification signs providing notice in advance of the Work Zone in each travelled direction (eastbound and westbound),
- two (2) Changeable Message Signs during the day of the Scheduled Stoppage in advance of the Work Zone in each traveled direction (eastbound at the Highway 95 intersection in Golden and westbound at the intersection of Highway 1 and Highway 93 at Castle Junction),
- all emergency services including but not limited to fire, police and ambulance, and
- as directed by the Province's Representative.

The amount of advance notice to be given by the Concessionaire of the Scheduled Stoppage is as follows:

- two (2) weeks in advance of any Scheduled Stoppage greater than one (1) hour,
- one (1) week in advance of any Schedule Stoppage greater than two (2) minutes and less than one (1) hour, and
- immediately upon actual installation of the Scheduled Stoppage and upon its removal.

In order for the notification and advertisement to comply with the public notification requirements, the placement through the Public Affairs Bureau must be arranged at least a week earlier and must include for additional time for publication in the local weekly newspaper to achieve the required advance notice.

2.3 Concessionaire's Deliverables

- Traffic Control Supervisor

The Concessionaire will appoint a Traffic Control Supervisor(s), Traffic Engineer and Traffic Manager as detailed in Sections 21.4, 21.5 and 21.6 of this Part 6. In addition, the Traffic Control Supervisor will not be the Concessionaire designated site representative.

- Traffic Management Plan

Traffic Management Plan requirements are described in Section 19 of this Part 6.

- Schedule of Lane Closures

The Concessionaire will submit Schedules of Lane Closures in accordance with Sections 15.2B and 15.3 of the Concession Agreement.

Contrary to the Traffic Management Guidelines for Works on Roadways, a lane closure request/permit is not required.

2.4 Stoppage Compliance

A Scheduled Stoppage or Random Minor Interruption will be considered to be over once the Concession Highway is opened to traffic in both directions. A Scheduled Stoppage or Random Minor Interruption will be deemed non-compliant if any part of a Schedule Stoppage or Random Minor Interruption is outside of the permitted dates, times, or durations as shown on Table 2.1.

If a Scheduled Stoppage or Random Minor Interruption is determined to be non-compliant, Traffic Disruption Charges will be applied in accordance with Schedule 10 [Payments].

After a Scheduled Stoppage or Random Minor Interruption is declared non-compliant by the Province's Representative, the Concessionaire will assess the situation and determine whether the cause of the non-compliance was due to:

- improper and/or incomplete implementation of the Traffic Management Plan or construction process; or
- inadequate and/or inappropriate requirements in the Traffic Management Plan or construction process.

If the Concessionaire determines that the non-compliance was due to improper and/or incomplete implementation of the Traffic Management Plan or construction process, then the Concessionaire will provide the Province's Representative with a letter that identifies the problem and details what new process will be implemented to ensure that the Traffic Management Plan or construction process will be properly and fully implemented in the future. No further Scheduled Stoppages or Random Minor Interruptions will be allowed until the Province's Representative reviews the letter, accepts the problem definition and the new construction process to resolve the problem, and informs the Concessionaire in writing that Scheduled Stoppages and Random Minor Interruptions can commence. The Province's Representative will provide a response to the Concessionaire within 48 hours of receipt of the Concessionaire's letter.

2.5 Conditions for Stoppages

The Concessionaire will adhere to the permitted dates, times and durations for Scheduled Stoppages and Random Minor Interruptions, as shown on Table 2.1 and will adhere to the maximum queue clearing times based on Scheduled Stoppages and Random Minor Interruptions, as shown in Table 2.1. At the end of a Scheduled Stoppage or Random Minor Interruption, lanes will be opened to clear traffic queues in both directions simultaneously. Once a free flow traffic condition exists and queues have been eliminated, another Scheduled Stoppage or Random Minor Interruption may be implemented if allowed under these specifications.

The Concessionaire will not implement Scheduled Stoppages or Random Minor Interruptions on Statutory Holidays.

The Concessionaire will ensure that traffic queues that form at Scheduled Stoppages and Random Minor Interruptions are not located within or extend into a rock fall hazard zone or into any area deemed to be unsafe by the Province's Representative.

The Concessionaire will ensure that traffic queues that form at a Scheduled Stoppage or Random Minor Interruption does not extend into the Work Zones of other contractors or access/egress points for Accesses and Connecting Roads or Side Roads.

2.6 Traffic Disruption Charges

Except where specifically permitted, either by these specifications or by prior written permission of the Province's Representative, whenever, in the opinion of the Province's Representative, the Concessionaire causes or permits, either by action or inaction, a Lane Closure, the Province's Representative will reserve the right to assess the Concessionaire a Traffic Disruption Charge in accordance with Schedule 10 [Payments].

The Traffic Disruption Charge payable by the Concessionaire will apply to all Scheduled Stoppages or Random Minor Interruptions outside the permitted dates, time or durations as defined in Table 2.1. The assessed Traffic Disruption Charges will be as set out in Schedule 10 [Payments].

2.7 Accommodation of Railway Traffic

The Concessionaire will ensure the safety of, and minimize interference with, traffic on the CP Rail Lands. The Concessionaire's Railway Impact Assessment Report will be reviewed with CP Rail to obtain this assurance. Railway impacts and their mitigation are expected to include, but not be necessarily limited to:

- safe access for railway operations, railway personnel and the public (where required) in the design and construction of the Works;
- maintaining safety clearances necessary for proper rail operations during design and construction of the Works; and
- coordinating with CP Rail to schedule construction in such a way as to address concerns related to train traffic schedules and railway operation and maintenance impacts. The Concessionaire will be responsible for all costs for track protection procedures needed during construction of the Works.

3. TRAFFIC MANAGEMENT PLAN

The Concessionaire will use the dates and times for Scheduled Stoppages and Random Minor Interruptions as the basis for development of its Traffic Management Plan. The Concessionaire's Traffic Management Plan will show how the Concessionaire will ensure that stopped traffic will not be allowed to queue through rock fall or other natural hazard zones. The Concessionaire will obtain written acceptance of its Traffic Management Plan from the Province's Representative in accordance with the Review Procedure prior to the commencement of any traffic stoppages.

The Concessionaire's Traffic Management Plan will incorporate and address notification and advertisement of Scheduled Stoppages and will be adjusted, as directed by the Province's Representative in accordance with the Review Procedure.

In accordance with SS194.12 of Standard Specifications for Highway Construction, the Concessionaire will prepare and submit a written Traffic Management Plan to the Province's Representative a minimum of fifteen (15) working days prior to commencement of any work affecting traffic. The Concessionaire will update and resubmit that plan as necessary for acceptance by the Province's Representative. No work that effects traffic will be permitted until the Province's Representative accepts the Traffic Management Plan.

The Concessionaire must take steps to rectify the following situations immediately:

- any aspects of the Traffic Management Plan, including sub-plans, that result in traffic impacts and reductions in performance outside of the limits identified in the Concession Agreement;
- a condition that does not provide for the safe passage and control of traffic; and
- an unsatisfactory condition upon being so advised by the Province's Representative.

4. TRAFFIC MANAGEMENT PLAN OVERVIEW

The Traffic Management Plan will be fully integrated with the Concessionaire's applicable Construction Staging Plan and Project Management Plan provided in accordance with SS 204.04.05 of the Standard Specifications for Highway Construction, and with the applicable blast design as provided by the Concessionaire in advance of each blast in accordance with SS 204.04.07 of the Standard Specifications for Highway Construction. Submission requirements, notification requirements, sign off and acceptance of the Traffic Management Plan prior to each blast is defined in the Concession Agreement.

The Concessionaire will provide, to the satisfaction of the Province's Representative, qualified Traffic Control Supervisors, Traffic Engineer and Traffic Manager. The Concessionaire will notify the Province's Representative of the Traffic Control Supervisors, Traffic Engineer and Traffic Manager prior to the commencement of any Works or Operations.

All traffic control measures will be in accordance with the requirements of this Part 6, the *Traffic Control Manual for Work on Roadways*, *Ministry Traffic Management Guidelines for Work on Roadways* and SS194 of Standard Specifications for Highway Construction. In the case of conflict, the TCM will prevail over SS194 and the publications cited therein.

The TCM standard is modified as shown in the following table.

Table 4.1

Further to TCM 1.2.3: Responsibility	The Concessionaire is assigned such responsibility for, and will at all times make provision for, traffic to pass through the Works at a sufficiently high standard in accordance with this Part 6, that will ensure the convenience and safety of the public, vehicular and pedestrian traffic, and the workers on the Works, and the protection of the Works.
Further to TCM 1.4: Traffic Control (Work) Zones	Any one or more of the advance warning areas, transition areas, buffer spaces, work areas and termination areas of the traffic control zone may be outside the Site, but this will in no way diminish the Concessionaire's responsibility to meet the requirements of the TCM.
Further to TCM 1.5: Installation, Maintenance and Inspection of Traffic Control	Construction signs, specific to an operation, will be either removed or effectively covered so that their message is obscured whenever such operation is not in progress.

Further to SS 194.11 of Standard Specifications for Highway Construction, the Ministry has assessed the Project to be a Category 4 Project in accordance with Part 2, Clauses 4 to 6, of the TMG. The Concessionaire will prepare the Traffic Management Plan in accordance with definitions and guidelines provided in the TMG. The following traffic management sub-plans are required in accordance with the TMG for the Concessionaire's Traffic Management Plan:

- Traffic Control Plans (see Section 6.1)
- Incident Plans (see Section 15)
- Implementation Plan (see Section 16)
- Public Information Plan (see Section 17)
- Risk Assessment Plan (see Section 20)
- Advisory Signing Plan (see Section 18)

5. TRAFFIC MANAGEMENT PLAN SUBMISSION AND REVIEW

The Traffic Management Plan will comply with the provisions of Section 15.2A of the Concession Agreement. The Concessionaire must not conduct the Operations or any construction activity with respect to the Works that affects traffic without a current Traffic Management Plan that has been accepted and sealed by the Traffic Engineer and reviewed by the Province's Representative in accordance with Section 15.2A of the Concession Agreement.

6. TRAFFIC CONTROL

6.1 Traffic Control Plans

For each stage in the construction of the Works and the Operations that affects traffic, the Concessionaire will prepare a customized Traffic Control Plan that addresses stage-specific

activities and requirements. Such plan will form part of the Traffic Management Plan. The Traffic Engineer will approve and seal the Concessionaire's Traffic Control Plan(s).

Further to the Category 4 Traffic Management Plan requirements in the TMG, the Concessionaire will conduct a traffic analysis on the Traffic Control Plans for each stage in the construction of the Works. The traffic analysis will identify the pertinent hourly traffic volumes at the time of implementation and determine the effect of each Traffic Control Plan on the capacity and operation of the Works, including the resulting vehicle delays and queue lengths. The traffic analysis will be conducted for the hours and days that each traffic control plan will be in operation.

The Concessionaire will not undertake any work without a current accepted Traffic Control Plan.

If the Concessionaire fails to provide for the safe passage and control of vehicular, pedestrian, or cyclist traffic or fails to correct forthwith an unsatisfactory condition upon being so directed by the Province's Representative, the Province's Representative will issue a Stop Work Order and any impediments to traffic will be removed immediately. The Province's Representative will not issue a Resume Work Order until the Province's Representative is satisfied that the situation has been rectified and is safe for road users, pedestrians and cyclists.

6.2 Schedules

The Concessionaire will prepare detailed weekly construction schedules and submit them to the Province's Representative on a weekly basis, at least 10 days in advance of that week's work. The schedule will be accompanied by a description of the work anticipated during that week and will identify how that information was used to develop the Traffic Management Plan. The schedule will provide descriptions of the traffic control activity (e.g. lane stoppage, lane shift, detour), its location, and approximate implementation date and duration. The schedule will identify how the subject work will be coordinated with adjacent work undertaken by either the Concessionaire or others, including the Phase 1 Section Contractor. The schedule will respect the key objective to ensure stoppages are minimized.

6.3 Documentation

The Concessionaire will document traffic control measures and activities in accordance with Clause 1.5.3 of the *Traffic Control Manual for Work on Roadways* (except that photo logging is not required). This will include completion of the following records:

- Traffic Control Supervisor's Daily Activity Report – to be kept on site and submitted within 24 hours if requested by the Province's Representative.
- Incident Management Report – to be submitted to the Province's Representative within 12 hours of the incident.
- Traffic Control Supervisor's Daily Report of Traffic Control - to be kept on site and submitted within 24 hours if requested by the Province's Representative.

Forms that may assist in keeping the above records can be found in the *Ministry Traffic Management Guidelines for Work on Roadways*.

6.4 Traffic Control Devices

6.4.1 Construction and Advisory Signs

Supply, installation, relocation, maintenance, and removal of all works related to signing will be the responsibility of the Concessionaire and will be considered incidental to the work. The location and type of each sign will be indicated on the Traffic Control Plan, in accordance to SS 635 Part D of the Standard Specifications for Highway Construction and the Manual of Standard Traffic Signs and Pavement Markings.

Signs will include all regulatory, warning, guide and directional signs, both permanent, as indicated on the Traffic Control Plan drawings or specifications, and temporary, as may be directed by the Province's Representative during construction.

The Concessionaire will supply all sign support materials subject to the material specifications contained within SS 635.29 Part D Signing of the Standard Specifications for Highway Construction.

The Concessionaire will check all signs daily for visibility, damage, suitability and location. Signs and delineators will be cleaned as frequently as necessary to ensure full legibility and reflectance.

Sign supports for lane closure will be "Windmaster" type or accepted equivalent, complete with "high level warning devices".

6.4.2 Project Signs

Contrary to SS 194.21 of Standard Specifications for Highway Construction, all standard signs, new and replacement, will meet Ministry specifications which may be found at the Ministry web page at:

http://www.th.gov.bc.ca/publications/eng_publications/geometsigns.htm

The Concessionaire will supply all signs, including C-018's (Construction ahead) and Z210's (Traffic Fines Double), with the exception of the C-035 (project sign).

If directed by the Province's Representative to remove the C-035 project signs after completion of the work, the Concessionaire will remove and deliver the signs to a location as directed by the Province's Representative.

6.4.3 Changeable Message Signs

Further to SS 194.46 of Standard Specifications for Highway Construction, the Concessionaire will provide a minimum of two portable changeable message signs (CMSs) for each stoppage, closure and traffic control, and will use the signs to provide advance notification of all stoppages, closures and traffic pattern changes. The number of CMSs required to be in use at any time will be adjusted in accordance with the Concessionaire's Construction Staging Plan and the work undertaken. The Concessionaire must provide one (1) sign for each direction of traffic flow at each closure, stoppage and traffic control location. The

Concessionaire must install and activate CMSs a minimum of two weeks in advance of the closure or stoppage. Sign locations and messages will be shown on the Traffic Control Plan. In addition, the Concessionaire will use the CMSs to provide notification of incidents or unplanned traffic pattern changes, as deemed necessary by the Incident Plans or as may be requested by the Province's Representative.

When in operation, the bottom of each portable CMS will be a minimum of 2 m above the road surface, and will be level and capable of pivoting for sighting purposes. Additional specifications for CMSs are as set out in the following table:

**Table 6.4.3
Changeable Message Signs Specifications**

Sign unit:	Yellow LED display
Sign display:	3 lines with 8 characters per line
Character size:	450 mm
Character matrix:	5 x 7
Remote dial-up access:	By cellular phone or equivalent (where "shadows" in cellular coverage exist, will manually control electronic messages on a timely basis)

A full matrix sign may be used provided that it has the display parameters noted above.

The Concessionaire will be responsible for providing appropriate and timely means to display and/or change messages on the CMS when the Concessionaire is not on the Site.

7. **DETOURS**

The minimum design requirements for a two-lane detour are provided in the following table.

**Table 7
Minimum Design Requirements for Two-Lane Detours**

Design Speed/Posted Speed	60 km/hr, or as accepted by MOT
Design Vehicle	WB-20
Maximum Grade	8% on highway
Maximum Superelevation	6%
Stopping Site Distance	To meet TAC requirements commensurate with design speed
Vertical Clearance	5.0 m minimum except where existing is less
Lane Width	Existing, or minimum 3.6m travel lanes
Shoulder (Open)	Existing, or 1.0m (minimum) paved
Shoulder (Closed by Barrier)	Existing, or 1.0m (minimum) paved

The Concessionaire will prepare an engineered design for each detour, including lane shifts that will conform to the minimum design requirements stated in Table 7. The engineered design will provide detail drawings for detour construction that will include, as a minimum: the design speed, the horizontal and vertical geometry, evidence that the design vehicle is accommodated for all movements and that all the requirements of this section are satisfied. The Concessionaire will submit the engineered design to the Province's Representative a minimum of twenty (20) days in advance of the planned construction of that detour. The Province's Representative will review the design drawings pursuant to the Review Procedure for compliance with the requirements of the Concession Agreement only. Once the Province's Representative accepts the design drawings, the Concessionaire will have the "For Construction" design drawings signed and sealed by a Professional Engineer.

Where detours and lane shifts are required for the execution of the Works, the Concessionaire will provide a paved surface to facilitate passage of traffic around the construction area. The Concessionaire will accept full responsibility for all signs, maintenance of signs and maintenance of the detour or temporary road.

The Concessionaire will maintain a uniform and even pavement surface for detours and lane shifts to prevent any adverse impacts to the safety and function of the Concession Highway. On some pavement surfaces, permanent markings that have been effectively removed, based on dry daylight conditions, may under certain conditions (e.g., wet road surface) still appear to be in place. Where these conditions are anticipated or found to exist, the Concessionaire will eliminate that condition by providing either a new pavement surface or milled surface to form a uniform surface and eradicate existing pavement markings.

The Concessionaire will provide detours and lane shifts with adequate drainage facilities to prevent pooling of water on and flow of water across the roadway. The Concessionaire will clean milled surfaces to facilitate adequate drainage. Where the detour shifts lanes toward the upslope rock face and alters the existing drainage system, the Concessionaire will design and construct drainage facilities to adequately accommodate storm water runoff.

The Concessionaire will supplement temporary directional dividing lines with raised or recessed pavement markers consisting of reflective yellow bi-directional markers placed at 2 m spacing, the Concessionaire will utilize "L" shaped flexible reflectorized markers on milled pavement surfaces. The Concessionaire will re-apply temporary pavement markings and raised pavement markers that are faded, or damaged, as required to maintain complete delineation or whenever deemed necessary by the Province's Representative.

The Concessionaire will provide illumination along the entire length of all detours and lane shifts. The luminaries will be cobra head style roadway type fixtures with 400-watt high-pressure sodium clear lamp or equivalent and a Type IV distribution pattern. The luminaries will be mounted 10 m to 12 m above the roadway and spaced at approximately 60 m. The illumination will provide a minimum 1.0 foot-candles and a uniformity ratio of 1:3.

8. **CONCRETE ROADSIDE BARRIER REQUIREMENTS**

As a minimum, the Concessionaire will supply and install temporary concrete roadside barriers in the following circumstances:

- between (detour) traffic and median wall construction;
- between (detour) traffic and rock cut excavations;
- to meet drop-off delineation requirements;
- where required by the Concessionaire's TCP; and
- at additional locations requested by the Province's Representative.

The Concessionaire may use existing barriers for detours and lane shifts. Existing barrier units damaged during usage for detours will be disposed off-site in accordance with SS 145.27.02 of the Standard Specifications for Highway Construction and replaced by the Concessionaire. All temporary barriers will be installed so as to provide a minimum offset distance of 1.0m between the lane line and the face of barrier. In curves, the temporary barrier offset distance will be increased to accommodate the appropriate stopping sight distance for tail light design for a minimum 60-km/hr design speed.

Traffic barriers used for detours and lane shifts, or used for the protection of the Site, will be continuous or adequately protected by terminals, flares, or impact attenuators to current MOT standards, (NCHRP Report 350). Temporary barriers will have reflectors installed in accordance with the Manual of Standard Traffic Signs and Pavement Markings.

Where traffic barriers are placed on both sides of the roadway, the Concessionaire will make adequate provision for drainage and removal of snow and ice.

9. **DROP-OFFS**

The Concessionaire will conduct all construction work so as to minimize any drop-offs (abrupt changes in roadway elevation) left exposed to traffic during non-working hours. Unless otherwise specified in the TCP, drop-offs left exposed to traffic during non-working hours will be delineated as follows:

- (a) Drop-offs up to 60 mm, unless otherwise specified on the TCP, may remain exposed with appropriate traffic control devices alerting motorists of the condition. However, no drop-offs will be allowed between adjacent lanes of traffic.
- (b) Drop-offs greater than 60 mm that are in the roadway or shoulder will be delineated with appropriate traffic control devices and further delineated as described in Clause 9(c). The Province's Representative will consider the use of channelizing devices as listed in Clause 9(c) provided that the Concessionaire's TCP can demonstrate its effectiveness and the drop-off is less than 100 mm.

- (c) Drop-offs greater than 60 mm but less than 300 mm that are not within the roadway or shoulder will be delineated with appropriate traffic control devices and further delineated in accordance with the following:
1. A wedge of compacted stable material (25 mm well graded base course aggregate or better) placed at a slope of 4:1 or flatter.
 2. Channelizing devices (Type 1 barricades, plastic safety drums, or other devices 1 m or more in height) placed along the traffic side of the drop-off and a new edge-of-pavement stripe placed a minimum of 2 m from the drop-off. Appropriate traffic control devices will be placed in advance of and throughout the drop-off treatment.
 3. Temporary concrete barrier, or other accepted barrier, installed on the traffic side of the drop-off with 300 mm between the drop-off and the back of the barrier and a new edge-of-pavement stripe painted a minimum of 500 mm from the face of the barrier. An accepted terminal, flare, or impact attenuator will be required at the beginning of the section. For night use, the barrier will have reflective markers and/or warning lights.
- (d) Drop-offs more than 300 mm that are not within the roadway or shoulder will be delineated with appropriate traffic control devices and further delineated as indicated in Clause 9(c) if all of the following conditions are met:
1. the drop-off is less than 600 mm;
 2. the drop-off does not remain for more than three consecutive days;
 3. the drop-off is not present on any Statutory Holiday or event day; and
 4. the drop-off is only on one side of the roadway.
- (e) Drop-offs more than 300 mm that are not within the roadway or shoulder and are not otherwise covered by (d) above will be delineated with appropriate traffic control devices and further delineated as indicated in Clause 9(c) above.
- (f) Open trenches within the pavement and shoulder will be covered with an anchored steel plate cover. A wedge of suitable material, if required, will be placed to provide a smooth transition between the pavement and the steel plate. Excavations within the roadway will be backfilled and paved to match the existing adjacent pavement prior to returning the lane to traffic.
- (g) Any drop-off over 300 mm in height will be protected with concrete roadside barrier with end treatments as required by TCM.

All areas of excavation and their proposed safety measures will be shown in the TCP.

10. **ACCOMMODATION OF CYCLISTS**

The Concessionaire will make provision for cyclists to have safe access and passage through the Concession Highway during the execution of the Works.

11. PUBLIC WASHROOM FACILITIES

The Concessionaire will provide portable washroom facilities for public use at each approach to a stoppage location.

12. TEMPORARY PAVEMENT MARKINGS

Further to TCM 2.2.1, the Concessionaire will accept full responsibility for the application and removal of all temporary pavement markings and reflective devices. Permanent paint lines will be applied to the final pavement surface within 24 hours of placement of the final pavement.

When traffic lanes are to be redefined for long duration work (more than one daytime shift), the Concessionaire will eradicate all redundant temporary or permanent pavement markings that are not required for the intended traffic patterns and install revised markings.

Notwithstanding SS 194.45 of Standard Specifications for Highway Construction, the Concessionaire will supply all temporary pavement markings. The material used for temporary pavement markings will be paint with glass bead or thermoplastic marking supplemented with raised or recessed pavement markers.

The Concessionaire will apply all pavement markings in accordance with the signing and pavement markings drawings and the detour and lane shift design drawings.

The Concessionaire will re-apply temporary pavement markings and raised pavement markers that are faded or damaged, as required to maintain complete delineation or whenever deemed necessary by the Province's Representative.

13. COMPLETED SECTIONS OF NEW ROADWAY

The Concessionaire will prepare a Traffic Control Plan for all of the Works not being utilized by the traveling public that are completed before the physical completion of all the Works. Such sections will be delineated with flexible drums and Class 1 barricades in an alternating pattern.

14. PROTECTION OF ROADWAYS

Vehicles hauling material on any part on the pavement structure that is not intended to be fully reconstructed will be subject to the following restrictions:

- vehicles which are licensed or which could be licensed will not exceed the gross weight for which they can be licensed;
- vehicles which cannot be licensed will be subject to load restriction by the Province's Representative, based on pavement loading intensities less than or equal to those imposed by licensed vehicles, and when so required by the Province's Representative, the Concessionaire will provide the necessary vehicle and tire specifications that the Province's Representative may require to determine the equivalency; and
- Provincial load restrictions must be adhered to.

15. **INCIDENT PLANS**

The Concessionaire will organize and implement an Incident Management Plan and an Incident Response Plan in accordance with Ministry Traffic Management Guidelines for Work on Roadways, which plans will form part of the Traffic Management Plan. The primary objectives of an Incident Management Plan and Incident Response Plan are to facilitate incident response and move traffic safely and expeditiously through or around the incident. The plans will specify how the Concessionaire will provide access for emergency vehicles and assistance to emergency response personnel. An incident includes, but is not limited to, passage of emergency vehicles, motor vehicle accidents, emergency road repairs, disabled vehicles, and debris on the road. The immediate response to an emergency must, by necessity, make use of all available devices and equipment.

The initial Incident Management Plan and Incident Response Plan will be prepared to address the general requirements of the Works. The Concessionaire will prepare stage-specific Incident Management Plans and Incident Response Plans whenever deemed necessary by the Province's Representative.

The Concessionaire will contact Emergency Services through the Traffic Control Supervisor. In anticipation of the requirement for emergency vehicles to pass through the Concession Highway during construction of the Works, the Concessionaire will have adequate equipment and labour available to clear a passage should a stoppage be in effect. Whenever the Traffic Control Supervisor is notified by emergency services personnel of an emergency, the Concessionaire will act immediately to provide safe passage for responding vehicles. The Concessionaire will have adequate resources available to ensure safe passage is provided immediately upon request of the emergency responder.

Emergency Services include, but are not limited to:

- fire;
- police;
- ambulance;
- utility companies;
- search and rescue;
- Ministry of Forests fire centre; and
- conservation agencies.

The Concessionaire will maintain a reliable communication system between the Traffic Control Supervisor and the Province's Representative, including a back-up communication system, during blasting operations. The same communication system will also be accessible to the appropriate emergency services to provide three-way communications.

The Concessionaire will coordinate and cooperate with all emergency service providers. If additional emergency equipment and/or labour is required by the emergency provider the Concessionaire will be responsible for satisfying the emergency service provider's requirements.

The Concessionaire will provide travel information, tire changing assistance, the pushing or towing of vehicle to safe refuge, arrangement for towing assistance, and placement of safety flares and cones for the driver of any motor vehicle that is stopped within the Concession Highway during execution of the Works. For unoccupied vehicles and for any vehicle that cannot move under its own power after assistance, the Concessionaire will immediately notify the police and a towing service. The dates and times of assistance for any event will be recorded in a logbook, as well as the time that police and towing service were notified.

The Concessionaire will coordinate the details of the Incident Management Plan and Incident Control Plan with the Traffic Control Plan. The Incident Management Plan and Incident Control Plan will include procedures for coordination with Emergency Services.

16. IMPLEMENTATION PLAN

The Concessionaire will prepare and submit an Implementation Plan in accordance with the Ministry Traffic Management Guidelines for Work on Roadways, which plan will form part of the Traffic Management Plan. This plan will identify the Traffic Control Supervisor, Traffic Engineer and Traffic Manager for these Works, along with the qualifications and experience of those named individuals. This plan will also define processes to ensure that the Traffic Control Plan and Incident Management Plan and Incident Control Plan are developed and implemented efficiently and appropriately, and that they are kept up to date with necessary modifications during construction.

17. PUBLIC INFORMATION PLAN

The Concessionaire will prepare and submit a Public Information Plan in accordance with the Ministry Traffic Management Guidelines for Work on Roadways, which plan will form part of the Traffic Management Plan. This plan will indicate how the Province's Representative will be kept informed of planned traffic pattern changes, including, but not limited to, the following: closures, detours, lane shifts, Lane Closures, access restrictions, schedule changes, and other traffic control procedures which may delay traffic or disrupt traffic flow. Procedures for disseminating information related to unplanned traffic pattern changes (e.g. due to incidents such as emergency repairs, motor vehicle accidents) will be addressed by the Concessionaire in the Incident Management Plan and Incident Control Plan.

The Concessionaire will inform the Province's Representative of planned changes in traffic patterns caused by the Works.

18. ADVISORY SIGNING PLAN

The Concessionaire will organize and implement an Advisory Signing Plan, which plan will form part of the Traffic Management Plan. The primary objective of an Advisory Signing Plan is to notify the traveling public in advance of the Concessionaire's Scheduled Stoppages and Closures.

The Advisory Signing Plan will include the supply and installation of temporary project information signs along the Concession Highway at the following locations to notify Users of the time and date of traffic stoppages:

- approximately 1.0 km from each construction limit of each Work Zone;
- in Golden, immediately east of the Highway 95 intersection for Highway 1 eastbound traffic; and
- at the junction of Highway 1 and Highway 93 at Castle Junction in Banff National Park.

The temporary project information signs will provide current information throughout the duration of the construction of the Works. Each sign will be fully reflective, 1,220 mm by 2,440 mm in size, and will have messaging approved by the Province's Representative.

19. TRAFFIC MANAGEMENT PLAN SUBMISSION AND REVIEW

Submission requirements, notification requirements and procedures for sign off and acceptance of the Traffic Management Plan and all sub-plans are required to be met prior to the commencement of any work affecting traffic flow.

The Traffic Management Plan, fully integrated with the Construction Staging Plan, will address the number and scheduled date of all Scheduled Stoppages for the Contract Period. It will also address all other minor traffic delays.

20. RISK ASSESSMENT PLAN

The Province has performed a risk assessment and identified risks that must be considered in the Concessionaire's Traffic Management Plan. These risks include but are not limited to the following:

Physical Risks

- falling rocks, earth material and other objects;
- power lines;
- roadway surface condition during construction;
- winter shut-down period;
- avalanches; and
- roadway cross-section elements;

Work Risks

- nature of work activity;
- construction equipment movement in the work zone;

- storage of and movement of construction equipment or materials; and
- night-time work;

Traffic Risks

- abandoned and immobilized vehicles;
- accommodation of emergency vehicles;
- accommodation of cyclists;
- vehicles queue hazards;
- posted speed through work zone and speed control;
- traffic impacts extend beyond work zone;
- volume/capacity ratio and traffic delays;
- impact of Holidays or Events; and
- advisory signing.

Further definitions of these risks are contained in the Ministry Traffic Management Guidelines for Work on Roadways.

Notwithstanding the risk assessment performed by the Province, the Concessionaire will prepare and submit a Risk Assessment Plan to identify any other risks not identified by the Province, or special conditions that must be addressed to the Province's Representative's satisfaction through the Concessionaire's Traffic Management Plan. The Concessionaire will identify all risks and state the measures to be implemented to manage or eliminate the risks.

21. RESPONSIBILITIES FOR THE TRAFFIC MANAGEMENT PLAN

21.1 Concessionaire Responsibilities

The Concessionaire will accept full responsibility for quality control and quality assurance of all activities affecting the Traffic Management Plan. The Traffic Manager, as described in Section 21.6, will be responsible for acting on the results of Quality Audits undertaken by the Province's Representative and acting on the resulting recommendations. The Traffic Management Plan quality control process will be included in the Construction Quality Management Plan.

21.2 Province's Responsibilities

The Province's Representative may review, and accept or reject sub-plans within the Traffic Management Plan as work proceeds. The Province's Representative will advise the Concessionaire on acceptance, rejection or modification of Traffic Management Plan including sub-plans. The Province will have no obligation to the Concessionaire for additional work required in order to obtain the Province's Representative's acceptance.

The Province's Representative will not control or direct the traffic control activities of the Concessionaire, but may require an immediate stop to any work where, in the Province's Representative's opinion, the traffic control does not meet the requirements of the Concession Agreement, including this Part 6.

21.3 Traffic Control Personnel

All traffic control personnel will be qualified in accordance with WCB Regulations.

21.4 Traffic Control Supervisor(s)

The Concessionaire will designate a Traffic Control Supervisor, acceptable to the Province's Representative, who has the Concessionaire's authority to respond to traffic control requirements and who will personally perform all the duties of the TCS, in accordance with this Part 6.

Further to SS 194.04 of Standard Specifications for Highway Construction, a TCS will be on site full time while the Works are underway. The TCS will have direct line authority over all of the Concessionaire's traffic control personnel and procedures on the Site. The Concessionaire will not designate the site superintendent as the TCS. The TCS may have no other duties.

The duties of the TCS will include the following:

- (a) directing all traffic control operations and coordinating with other contractors for any adjacent construction or maintenance operation;
- (b) liaising with the Province's Representative, as required;
- (c) directing the Concessionaire's Incident Management Plans and Incident Control Plans. The TCS will report immediately to the Province's Representative on traffic/construction incidents involving damage, injuries or fatalities, or on complaints from residents or the traveling public. The TCS will ensure that the Incident Management Report is accurately completed for traffic/construction incidents involving damage, injuries or fatalities. The report will be submitted to the Province's Representative by the next working day;
- (d) directing the installation, maintenance and inspection of all traffic control measures, in accordance with TCM Clause 1.5;
- (e) inspecting nighttime lighting and minimizing the impact of its glare on the traveling public;
- (f) recording the actual duration of delays and forwarding this information, on a daily, basis to the Province's Representative for review;
- (g) monitoring queue lengths during active construction and implementing appropriate measures when such queues become excessive, or as may be directed by the Province's Representative;

- (h) documenting traffic control measures and activities in accordance with this Schedule; and
- (i) inspecting the condition of all temporary signs and ensuring that these are maintained in accordance with Clause 1.5.2 of the TCM. Overseeing all requirements of the Concessionaire under the Concession Agreement that contribute to the convenience, safety, and orderly movement of vehicular and pedestrian traffic.

The Concessionaire will designate an alternative TCS who will assume the duties of the primary TCS in the event of that person's inability to undertake the primary role. The alternative TCS will be adequately trained and qualified to the same degree as the primary TCS.

Traffic control supervision will be provided by the TCS on site on a 24 hours per day basis whenever there is active construction under way. During non-work periods the TCS will be on-site within 45 minutes of being notified. Once on Site the TCS will commence with the implementation of appropriate traffic control measures as defined in the accepted Traffic Management Plan. The TCS will have appropriate personnel and equipment available on call, at all times.

The Concessionaire will provide a vehicle for the TCS on site. The vehicle used by the TCS will be equipped with a roof or post-mounted flashing amber light visible for 360 degrees.

21.5 Traffic Engineer

The Concessionaire will designate a Traffic Engineer who has the Concessionaire's authority to review and seal the Traffic Management Plan and associated sub-plans and take responsibility for ensuring that all traffic engineering issues and requirements are taken into account.

The Concessionaire will designate a Traffic Engineer with the following qualifications:

- Professional Engineer;
- minimum of five (5) years of relevant construction related traffic engineering experience on high volume rural roadway projects in Canada or abroad.

21.6 Traffic Manager

The Concessionaire will designate a Traffic Manager, which must be approved by the Province's Representative.

The Concessionaire will designate a Traffic Manager with the following qualification:

- minimum of ten (10) years of relevant construction related traffic management experience on high volume rural roadway projects in Canada or abroad.

The duties of the Traffic Manager will include the following:

- (a) finalizing proposed traffic control measures as approved by the Traffic Engineer and directing the implementation of the accepted Traffic Control Plan (TCP);

- (b) ensuring that appropriate modifications are made to the accepted TCP and are approved by the Traffic Engineer, if the specified traffic control measures are not achieving the desired effect. The TCS will mark-up the accepted TCP to indicate all modifications, as installed, and maintain a complete record of all original and modified TCPs, a copy of which will be provided to the Province's Representative;
- (c) liaising with the Province's Representative, as required;
- (d) responding to incidents within the Work Zone and completing the Incident Management Reports to be submitted to the Province's Representative within 12 hours of the Incident;
- (e) attending weekly meetings with the Concessionaire and the Province's Representative to discuss traffic control for the following week. In addition the TCS will attend all pertinent Project meetings with corridor stakeholders, as requested by the Province's Representative, where the Traffic Management Plan and traffic control are discussed;
- (f) communicating updates related to traffic management to the Province's Representative;
- (g) submitting to the Province's Representative a daily log of all delays and opening times, plus a report summarizing traffic queue lengths, traffic control issues, number and nature of calls from the general public, and action(s) proposed or taken in consultation with the Province's Representative. This information will be made available to the Province's Representative upon request;
- (h) reviewing the Traffic Control Supervisor's Daily Activity Report and Daily Report of Traffic Control and making field modifications as required. All Modifications are to be submitted and accepted by the Province's Representative;
- (i) coordinating all stoppages and delays on the Concession Highway during the construction of the Works and ensuring that all requirements as contained in this Part 6 are satisfied;
- (j) coordinating with adjacent work areas including but not limited to the Phase 1 Section, maintenance, utilities;
- (k) preparing and submitting to the Province's Representative weekly schedules, which provide a minimum of 10 days notice of any closure or stoppage; and
- (l) responding in writing to the Province's Representative within 24 hours of receipt of a Quality Audit identifying non-conformance. The Traffic Manager will respond with corrective measures, actions and timelines to the satisfaction of the Province's Representative.

21.7 Location and Storage of Materials and Equipment

The Concessionaire will not store equipment on the roadway or shoulder of the Works at any time. The Concessionaire will protect traffic from collision with any equipment stored within 6.0 m of the outside edge of the shoulder with barrier and impact attenuators.

21.8 Speed Limits and Safe Passage through the Site

Further to Clause 1.4.6 of the Traffic Control Manual for Work on Roadways, the Province, at its discretion, will determine speed limits within the area in which the Works are being constructed.

Where the Province's Representative, considers it appropriate, an overall reduction in the speed limit may be granted to a speed of not less the 60 km/h through a Work Zone.

Reduction in speed limits will only be permitted where:

- (a) It is not practicable to achieve a design speed equal to the existing posted speed on a temporary detour, and where accepted by the Province's Representative, a construction speed zone will be established and an appropriate lower speed limit will be posted through the temporary alignment during the whole period that it is in operation.
- (b) A Temporary Speed Zone, accepted by the Province's Representative that has been established within active Work Zones for Short Duration Work (not more than one shift), but only during the hours during which the condition exists.

In the event that additional RCMP enforcement is required to maintain the safety of the public and workers, the Concessionaire will enter into an agreement directly with the RCMP. All cost associated with securing the additional enforcement throughout the corridor will be borne by the Concessionaire.

Appendix 1 to Part 6 of Schedule 5

Definitions and Abbreviations

“Advisory Signing Plan” means the plan organized and implemented by the Concessionaire referred to in Section 18 of this Part 6.

“Category 4 Project” means a project defined as such in the Ministry Traffic Management Guidelines for Work on Roadways.

“CMS” means changeable message sign.

“Concessionaire’s Quality Manual” is the manual prepared by the Concessionaire setting out its quality management system.

“Construction Staging Plan” means a plan that shows construction staging in respect of the Works.

“Design Speed” means a speed selected for purposes of design and correlation of the geometric features of a road and is a measure of the quality of design offered by the road. It is the highest continuous speed at which individual vehicles can travel with an acceptable level of safety on a road when weather conditions are favourable and traffic density is so low that the safe speed is determined by the geometric features of the road. (source: TAC BC supplement)

“Design Vehicle” means a selected vehicle whose physical characteristics will control the geometric design of the intersection. The design will allow the design vehicle to make all turning movement without encroaching on adjacent lanes, opposing lanes, curbs, or shoulders. (source: TAC BC supplement)

“DSD” means Decision Sight Distance, which is the distance required for a driver to detect an information source or hazard which is difficult to perceive in a roadway environment which might be visually cluttered; to recognize the hazard or its potential threat, select appropriate action, and complete the manoeuvre safely and efficiently. See TAC, Manual of Geometric Design Standards for Canadian Roads, 1986 Metric Edition, Section B.2.4.

“Emergency Services” means services provided by service providers in the event of an emergency including those listed in Section 15 of this Part 6.

“Highway Maintenance Specifications for Highway Concessions” means the document located on the Resource Documents DVD.

“Implementation Plan” means the plan prepared and submitted by the Concessionaire in accordance with Section 16 of this Part 6.

“Incident Management Plan(s)” means the plan referred to as such in Section 15 of this Part 6.

“Incident Response Plan” means the plan referred to as such in Section 15 of this Part 6.

“Provincial Highways Conditions Centre” or **“PHCC”** means the on-line service offered by the British Columbia Ministry of Transportation (through the organization “Provincial Highways Conditions Centre”) indicating the location and cause of any serious incident and the estimated time it will take to reopen the road.

“Public Information Plan” means the plan proposed and submitted by the Concessionaire under Section 17 of this Part 6.

“Quality Audit Report” means written reports prepared for the Province in accordance with the Quality Management System.

“Queue Clearing Time” has the meaning set out in Section 2.1 of this Part 6.

“Railway Impact Assessment Report” means the report referred to in Section 1.6.10 of Part 1 of Schedule 5 [Construction Output Specifications].

“Random Minor Interruption(s)” has the meaning set out in Section 2.1 of this Part 6.

“Resume Work Order” means a written order issued by the Province in the form prescribed by the Province, requiring the Concessionaire to resume work in respect of the Works, in whole or in part, following a Stop Work Order issued by the Province.

“Scheduled Stoppage(s)” has the meaning set out in Section 2.1 of this Part 6.

“Short Duration Work” means the duration of work in respect of the Works limited to not more than one eight-hour shift.

“Statutory Holidays” has the meaning set out in the *Employment Standards Act*, R.S.B.C. 1996, c. 113 as amended.

“Stop Work Order” means a written order issued by the Province in the form prescribed by the Province to the Concessionaire, requiring the Concessionaire to stop work, in whole or in part, on the Works.

“TAC” means Transportation Association of Canada.

“Temporary Speed Zone” means a temporary speed limit within active Work Zones.

“Traffic Control Plans” or **“TCP”** mean the subplans forming part of the Traffic Management Plan as referred to in Section 6.1 of this Part 6 and as defined in the Ministry Traffic Management Guidelines for Work on Roads.

“Traffic Control Supervisor” or **“TCS”** means the person identified by the Concessionaire in Section 21.4 of this Part 6 and as defined in the Ministry Traffic Management Guidelines for Work on Roads.

“Traffic Engineer” means the individual designated as such by the Concessionaire under Section 21.5 of this Part 6.

“Traffic Manager” means the individual designated as such by the Concessionaire under Section 21.6 of this Part 6.

“WCB” means the Workers’ Compensation Board of British Columbia.

“Work Zone” means those parts of the Concession Highway in which construction activities in connection with the Works is occurring including any further parts of the Concession Highway necessary for construction speed zones.

Appendix 2 to Part 6 of Schedule 5

Resource Documents

“**AASHTO**” means American Association of State Highway and Transportation Officials.

“**All Technical Bulletins**” issued by the Ministry.

“**AREMA Chapter 8**” means The American Railway Engineering and Maintenance of Way Association.

“**BC Ministry of Transportation ‘Electrical and Traffic Engineering Manual’**” is a technical manual prepared by the Ministry.

“**BC Supplement to TAC Geometric Design Guide**” means British Columbia Supplement to the Transportation Association of Canada Geometric Design Guide for Canadian Roads (TAC Guide), dated February, 2001. This manual replaces the Highway Engineering Design Manual.

“**Best Management Practices Guide**”.

“**Best Management Practices Manual**”.

“**Cycling Policy and Guidelines**”.

“**Electrical and Signing Materials Standards Manual**”.

“**Electrical and Traffic Engineering Manual - Guidelines for the Design of Lighting, Signal and Sign Installations**” and all associated Technical Bulletins.

“**Manual of Standard Traffic Signs and Pavement Markings**” means document found on the Resource Documents DVD.

“**Manual of Test Procedures for Paving Materials and Mixes**”.

“**Manual of Uniform Traffic Control Devices**”.

“**Ministry Manual of Standard Electrical Equipment**”.

“**Ministry Traffic Management Guidelines for Work on Roadways**” or “**TMG**” means the Traffic Management Guidelines for Work on Roadways established by the MOT found on the Resource Documents DVD.

“**Ministry’s Utility Policy Manual**” means the MOT Utility Policy Manual available from the Queen’s Printer.

“**NCHRP Report 350**” means National Cooperative Highway Research Program (NCHRP) Report 350 regarding traffic control devices in a Work Zone.

“**Policy Manual for Supplemental Signs**”.

“**Quality Management Program Manual**”.

“**Service and Attraction Sign Manual**”.

“Sign Pattern Manual”.

“Standard Specifications for Highway Constructions” means the Standards Specifications for Highway Construction document found on the Resource Documents DVD.

“Traffic Control Manual for Work on Roadways” or **“TCM”** means a manual prepared by the Ministry relating to traffic control during construction on roadways to be found on the Resource Documents DVD.

SCHEDULE 5

DESIGN AND CONSTRUCTION REQUIREMENTS

Part 7

TRAFFIC MANAGEMENT REQUIREMENTS (ORIGINAL SERVICE PERIOD)

In addition to complying with the minimum traffic management criteria set forth in Part 6 of Schedule 5 [Traffic Management Output Specifications (Original Service Period)], the Concessionaire shall, during the Original Service Period comply with the traffic management requirements set forth in this Part 7. For greater certainty, the requirements set out in this Part 7 shall supplement and enhance but shall not detract from the Concessionaire's obligations under Part 6 of Schedule 5 [Traffic Management Output Specifications (Original Service Period)] and Schedule 23 [Concessionaire Proposal Extracts]. Commitments of the Concessionaire relating to traffic management during the Original Service Period in Schedule 23 [Concessionaire Proposal Extracts] shall be included as Traffic Management Requirements during the Original Service Period for the purposes of the Concession Agreement and this Part 7 whether or not specifically referred to in this Part 7. In the event of conflicting specifications or requirements, the specifications or requirements setting out a higher standard or the more onerous specification or requirement shall apply. Headings and numbered paragraphs contained in this Part 7 are provided for clarification and convenience only and in no way limit the obligations of the Concessionaire.

1. **Temporary Haul Bridge**

The Concessionaire shall construct a temporary haul bridge as referred to Figures 4.1-2A and B in Schedule 23 [Concessionaire Proposal Extracts] over the Existing Highway for use during the main grading operation as part of construction of the Works. This haul bridge will be used by rock trucks to haul surplus excavation material from the east end of the bridge approach to the Mount Hunter Creek disposal site without impacting traffic on the Existing Highway as more particularly referred to in Figures 4.1-1 and 4.1-2 of the Concessionaire's proposal forming part of Schedule 23 [Concessionaire Proposal Extracts]. For greater certainty, the final design of the temporary haul bridge will be subject to the Design and Certification Procedure and the Review Procedure.

2. **Detours - General**

In addition to the traffic control measures set forth in Part 6 of Schedule 5 [Traffic Management Output Specifications (Original Service Period)] or elsewhere in the Concession Agreement including the commitments of the Concessionaire set forth in Schedule 23 [Concessionaire Proposal Extracts], as part of the traffic control measures to be implemented by the Concessionaire during the Original Service Period, the Concessionaire shall ensure that at each detour location, the travelled way will be reduced to two lane, two-way travel with 3.6 m lanes and 1 m shoulders and concrete roadside barriers on both sides as depicted in Figure 4.3-1 of the Concessionaire's proposal attached as part of Schedule 23 [Concessionaire Proposal Extracts]. Any and all speed zone conditions within such detours are subject to the requirements of Part 6 of Schedule 5 [Traffic Management Output Specifications (Original Service Period)].

3. **Embankment Detour – West Side**

In addition to the traffic control measures set forth in Part 6 of Schedule 5 [Traffic Management Output Specifications (Original Service Period)] or elsewhere in the Concession Agreement including the commitments of the Concessionaire set forth in Schedule 23 [Concessionaire Proposal Extracts], to aid in the construction of the Works, the Concessionaire shall construct an embankment in 2006 to allow access to the west side of the new Park Bridge for launching of the girders for the new Park Bridge. The Concessionaire will restrict traffic to two lanes on the Existing Highway through this section to provide additional space to allow construction work to progress. The two-lane roadway detour will be configured with barriers, temporary lights and a reduced speed limit, so as to permit the Concessionaire to conduct the majority of its construction work with very limited traffic stoppages.

SCHEDULE 5

DESIGN AND CONSTRUCTION REQUIREMENTS

Part 8

[NOT USED]

SCHEDULE 5**DESIGN AND CONSTRUCTION REQUIREMENTS****Part 9****FORM OF INDEPENDENT CERTIFIER CONTRACT**

The following is the form of Independent Certifier Contract agreed upon between the Province and the Concessionaire to be executed by the Province, the Concessionaire and the Independent Certifier following the Closing Date. The Province and the Concessionaire acknowledge that the Independent Certifier Contract remains subject to modification following review by the Independent Certifier with any such modifications to be agreed by the Province and the Concessionaire acting reasonably. In addition, the Independent Certifier may be required to provide reports / information / certificates under the Federal Cost Contribution Agreement.

THIS CONTRACT is made as of the <> day of <> 2005

AMONG:

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA, as represented by the **MINISTER OF TRANSPORTATION**
(the "**Province**")

AND:

TRANS-PARK HIGHWAY GENERAL PARTNERSHIP, a general partnership established under the laws of the Province of British Columbia
(the "**Concessionaire**")

AND:

<> a <> incorporated under the laws of <>
(the "**Independent Certifier**")

WHEREAS:

- A. The Province, BC Transportation Financing Authority and the Concessionaire (the Province and the Concessionaire being herein collectively and individually referred to as the "**CA Parties**") have entered into the Concession Agreement.
- B. Pursuant to the terms of the Concession Agreement, the CA Parties wish to appoint the Independent Certifier, and the Independent Certifier wishes to accept such appointment, to perform certain services in connection with the Concession Agreement.

- C. The CA Parties and the Independent Certifier wish to enter into this Contract in order to record the terms upon which the Independent Certifier shall perform such services.

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

1. DEFINITIONS

1.1 Definitions

In this Contract including the recitals and Appendices, unless the context indicates a contrary intention, terms which are defined in the Concession Agreement (and not otherwise defined in this Contract) shall have the meanings given to them in the Concession Agreement and the following terms shall have the following meanings:

- (i) **"Concession Agreement"** means the agreement entitled "Kicking Horse Canyon Project Phase 2 Concession Agreement" made between the Province, BC Transportation Financing Authority and the Concessionaire and dated as of the <> day of <>, 2005, as the same may be amended from time to time.
- (ii) **"Contract"** means this Contract, as the same may be amended from time to time.
- (iii) **"Contract Material"** means all material:
 - (A) provided to the Independent Certifier or created or required to be created by any CA Party; and
 - (B) provided by or created or required to be created by the Independent Certifier as part of, or for the purpose of, performing the Functions,

including documents, equipment, reports, technical information, plans, charts, drawings, calculations, tables, schedules and data (stored and recorded by any means).
- (iv) **"Fee"** means the fees payable by the CA Parties to the Independent Certifier for the Functions, as such fees are specified and made payable in Appendix B.
- (v) **"Functions"** means:
 - (A) all of the functions and obligations conferred on and to be performed by the Independent Certifier under the Concession Agreement;
 - (B) all of the functions and obligations conferred on and to be performed by the Independent Certifier under this Contract, including the functions described in Appendix A to this Contract; and
 - (C) all other things or tasks which the Independent Certifier must do to comply with its obligations and discharge its duties under this Contract and to comply

with the obligations and discharge the duties of the Independent Certifier under the Concession Agreement.

- (vi) **“Functions Variation”** is any change to the Functions.
- (vii) **“Intellectual Property”** means any and all intellectual property rights throughout the world, whether subsisting now or in the future, including rights of any kind in inventions, patents, copyright, trademarks, service marks, industrial designs, integrated circuit topography rights, applications for registration of any of the foregoing, and know-how, trade secrets, confidential information and trade or business names.
- (viii) **“CA Parties”** has the meaning given in recital A hereto.

2. INTERPRETATION

2.1 Interpretation

This Contract will be interpreted according to the following provisions, save to the extent that the context or the express provisions of this Contract otherwise require:

- (a) the headings and sub-headings and references to them in this Contract are for convenience of reference only, do not constitute a part of this Contract, and shall not be taken into consideration in the interpretation or construction of, or affect the meaning of, this Contract;
- (b) the words “herein”, “hereto”, “hereof”, and “hereunder” and other words of like import refer to this Contract as a whole and not to the particular provision in which such word may be used;
- (c) all references to Sections are references to Sections of this Contract unless otherwise indicated;
- (d) words importing the singular include the plural and vice versa;
- (e) words importing a particular gender include all genders;
- (f) references to any contract, document, standard, principle or other instrument include (subject to all relevant approvals and any other provision of this Contract or the Concession Agreement expressly concerning such contract, document, standard, principle or other instrument or amendments thereto) a reference to that contract, document, standard, principle or instrument as amended, supplemented, substituted, novated or assigned;
- (g) “person” includes an individual, corporation, partnership, joint venture, association, trust, pension fund, union, government, governmental body, governmental agency, authority, board, tribunal, commission or department and the heirs, beneficiaries, executors, personal or other legal representatives or administrators of an individual, and the receivers and administrators of a corporation;
- (h) all monetary amounts are expressed in Canadian Dollars;

- (i) whenever the terms “will” or “shall” are used in this Contract they are to be construed and interpreted as synonymous and are to be read as “shall”;
- (j) the words “includes” or “including” are to be construed as being without limitation;
- (k) general words are not given a restrictive meaning:
 - (i) if they are introduced by the word “other”, by reason of the fact that they are preceded by words indicating a particular class of act, matter or thing; or
 - (ii) by reason of the fact that they are followed by particular examples intended to be embraced by those general words;
- (l) if the time for doing an act falls or expires on a day that is not a Working Day, the time for doing such act will be extended to the next Working Day;
- (m) all references to any statute or statutory provision (including any subordinate legislation) include any statute or statutory provision which amends, extends, consolidates or replaces the same or which has been amended, extended, consolidated or replaced by the same and include any orders, regulations, by-laws, ordinances, orders, codes of practice, instruments or other subordinate legislation made under the relevant statute; and
- (n) the words of this Contract are to be given their natural meaning. The CA Parties and the Independent Certifier have had the opportunity to take legal advice on this Contract and no term is, therefore, to be construed *contra proferentem*.

2.2 Obligations and Exercise of Rights by CA Parties

- (a) All obligations of the CA Parties under this Contract are and will be several and not joint or joint and several.
- (b) Except as specifically provided for in this Contract or in the Concession Agreement, the rights of the CA Parties under this Contract will be jointly exercised by the CA Parties.

3. ROLE OF THE INDEPENDENT CERTIFIER

3.1 Engagement

The CA Parties hereby jointly appoint the Independent Certifier, and the Independent Certifier hereby accepts such appointment, to carry out the Functions in accordance with this Contract and the provisions of the Concession Agreement and as applicable, the provisions of the Federal Cost Contribution Agreement. The Independent Certifier shall perform the Functions in accordance with this Contract and the provisions of the Concession Agreement and as applicable, the provisions of the Federal Cost Contribution Agreement. The CA Parties and the Independent Certifier further acknowledge and agree that the Independent Certifier shall, to the degree the Functions relate to the inspections, investigations and calculations relating to the issuance of a Pre-Completion Performance Payment Certificate, Substantial Completion Certificate and Final Completion Certificate in respect of the Works, such certificates shall form the basis for funding received by the

Province from Her Majesty the Queen in right of Canada under the Federal Cost Contribution Agreement.

3.2 Qualifications and Standard of Skill, Care and Diligence

The Independent Certifier represents and warrants to the CA Parties that:

- (i) it has and will continue to have all requisite professional qualifications, skill, knowledge and expertise;
- (ii) it holds and will continue to hold all requisite permits, licences, consents and authorizations; and
- (iii) it has and will continue to have all requisite expertise, qualifications, facilities, materials and equipment in addition to those referred to in paragraphs (i) and (ii) above,

required to undertake and perform the Functions and its obligations under this Contract in accordance with the terms of this Contract and the Concession Agreement. The Independent Certifier shall exercise and ensure that all of its staff members engaged in the performance of the Functions exercise the standard of skill, care and diligence in the performance of the Functions that would be expected of an expert professional experienced in providing services in the nature of the Functions for projects similar to the Project.

3.3 Duty of Independent Judgement

(a) In performing the Functions, the Independent Certifier must:

- (i) act impartially, honestly and independently in representing the interests of both CA Parties in accordance with the terms of the Concession Agreement and this Contract;
- (ii) act reasonably and professionally;
- (iii) act in a timely manner:
 - (A) in accordance with the times prescribed in this Contract and in the Concession Agreement; or
 - (B) where no times are prescribed, within a reasonable time so as to enable the CA Parties to exercise their rights and perform their respective obligations under the Concession Agreement; and
- (iv) act in accordance with the joint directions of the CA Parties provided that the directions are not inconsistent with the other terms of this Contract or the terms of the Concession Agreement and do not vary or prejudice the Independent Certifier's authority or responsibilities or the exercise by the Independent Certifier of its professional judgement and impartiality under this Contract.

(b) Although the Independent Certifier may take account of any opinions or representations made by the CA Parties, the Independent Certifier shall not be bound to comply with any

opinions or representations made by either of them in connection with any matter on which the Independent Certifier is required to exercise its professional and impartial judgement.

- (c) The Independent Certifier acknowledges that the CA Parties may rely on the Functions, including determinations, findings and certifications made by the Independent Certifier, and accordingly the Independent Certifier, without limiting its obligations under Section 3.2, will use its best skill and judgment in performing the Functions.

3.4 Authority to Act

The Independent Certifier:

- (i) is an independent consultant and is not, and must not purport to be, a partner, joint venturer or agent of any CA Party;
- (ii) has no authority to give any directions to a CA Party or its officers, directors, members, employees, contractors, consultants or agents; and
- (iii) has no authority to waive or alter any terms of the Concession Agreement, nor to discharge or release a party from any of its obligations under the Concession Agreement unless jointly agreed by the CA Parties in writing.

3.5 Knowledge of the CA Parties' Requirements

The Independent Certifier represents and warrants to the CA Parties that:

- (i) it has reviewed the Concession Agreement and informed and will be deemed to have informed itself fully of the requirements of the Concession Agreement as they relate to the performance of the Functions and as to the nature of the Works provided for under the Concession Agreement;
- (ii) it has informed or will inform itself fully of, and will be deemed to have informed itself fully of, all Laws and Regulations and Legal Requirements that relate to or may apply in respect of the performance of the Functions and the terms of this Contract;
- (iii) it will inform itself fully of the requirements of such other documents and materials as may become relevant from time to time to the performance of the Functions;
- (iv) without limiting Sections 3.5(i) to 3.5(iii), inclusive, it has and will be deemed to have informed itself fully of all time limits and other requirements for any Function which the Independent Certifier carries out under the Concession Agreement and this Contract;
- (v) it has and will be deemed to have informed itself fully of the work necessary for the performance of the Functions and the means of access to, communication with and facilities at the Project Facilities, the Site and the Adjacent Areas including restrictions on any such access or protocols that are required; and
- (vi) it has satisfied itself as to the correctness and sufficiency of its proposal for the Functions and that the Fee covers the cost of complying with all of the obligations

under this Contract and of all matters and things necessary for the due and proper performance and completion of the Functions.

3.6 Co-ordination and Information by Independent Certifier

The Independent Certifier must:

- (i) fully co-operate in good faith with the CA Parties;
- (ii) carefully co-ordinate the Functions with the work and services performed by the CA Parties;
- (iii) without limiting its obligations under Sections 3.3 and 3.6(ii), perform the Functions so as to avoid unreasonably interfering with, disrupting or delaying the work and services performed by the CA Parties; and
- (iv) provide copies to all CA Parties of all reports, communications, certificates and other documentation that it provides to any CA Party.

3.7 Ability to Fulfill Terms of Contract; Conflict of Interest

The Independent Certifier represents and warrants to the CA Parties that:

- (i) it has no knowledge of any fact, circumstance or condition that adversely affects or, so far as it can foresee, might adversely affect its ability to perform the Functions in accordance with and to fulfill the terms of this Contract; and
- (ii) at the date of signing this Contract, no actual or perceived conflict of interest exists or is likely to arise in the performance of the Functions or any of its other obligations under this Contract.

The Independent Certifier shall not (and shall at all time have and maintain in place practices and procedures to ensure that it does not) perform services for or provide advice to any other person or engage in any other activity that may or does give rise to any actual or perceived conflict of interest in the performance of the Functions or any of its other obligations under this Contract. Without prejudice to the foregoing, if during the term of this Contract any such actual or perceived conflict or risk of actual or perceived conflict of interest arises, the Independent Certifier will notify the CA Parties immediately in writing of that conflict or risk of conflict including full particulars of all relevant facts and circumstances with respect thereto and, without limiting any other rights or remedies of the CA Parties, will forthwith provide each of the CA Parties with such further information relating thereto as it may request and take such steps as may be required by each of the CA Parties to avoid or mitigate that conflict or risk.

3.8 Independent Certifier Personnel

- (a) The Independent Certifier represents and warrants to the CA Parties that it has and will continue to have expert and professional staff who are competent, experienced and qualified to perform, and who hold all requisite licences and other professional qualifications necessary to perform, the Functions in accordance with the terms of this Contract and the Concession Agreement.

- (b) Subject to Section 3.8(c), the Independent Certifier shall use the partners, directors or employees described in Appendix C hereto in connection with the performance of the Functions and such persons' services shall be available for so long as may be necessary to ensure the proper performance by the Independent Certifier of the Functions. Such persons shall have full authority to act on behalf of and bind the Independent Certifier for all purposes in connection with this Contract.
- (c) None of the persons listed in Appendix C shall be removed or replaced unless he/she ceases to work as a partner in or director or employee of the Independent Certifier due to circumstances beyond the control of the Independent Certifier or he/she is unable to work because of death or illness. The Independent Certifier shall notify the CA Parties of any such circumstances and shall be responsible for finding a replacement who shall previously have been approved in writing by the CA Parties.

4. ROLE OF THE CA PARTIES

4.1 Assistance

The CA Parties agree to co-operate with and provide reasonable assistance to the Independent Certifier to enable the Independent Certifier to carry out its obligations under this Contract.

4.2 Instructions in Writing

All formal instructions to the Independent Certifier by the CA Parties shall be given in writing.

4.3 Information and Services

Each of the CA Parties shall make available to the Independent Certifier, as soon as practicable from time to time, all information, documents and particulars necessary for the Independent Certifier to carry out the Functions, including such information, documents and particulars required in order for the Independent Certifier to determine whether Substantial Completion or Final Completion of any Works has occurred, and shall provide copies of all such information, documents and particulars provided by it to the Independent Certifier to the other CA Party. Each CA Party hereby consents to the other CA Party disclosing to the Independent Certifier any Confidential Information in connection with or for the purpose of enabling the Independent Certifier to carry out the Functions (which Confidential Information disclosed to the Independent Certifier shall, for greater certainty, form part of the Contract Material). With the exception of any communications between the Independent Certifier and Her Majesty the Queen in right of Canada or other documentation relating exclusively to the Federal Cost Contribution Agreement to which only the Province shall have access, the Independent Certifier shall upon written request by either CA Party (with a copy to the CA Party), at the requesting CA Party's option either provide such CA Party access to or provide such CA Party copies of any information, documents, particulars and other communications received from the other CA Party.

4.4 Additional Information

If any information, documents or particulars are reasonably required to enable the Independent Certifier to perform the Functions and have not been provided by the CA Parties, then:

- (i) the Independent Certifier must give notice in writing to the Concessionaire's Representative or the Province's Representative, as the case may be, of the details of the information, documents or particulars demonstrating the need and the reasons why they are required; and
- (ii) the Concessionaire or the Province, as the case may be, must arrange the provision of the required information, documents or particulars.

4.5 Right to Enter and Inspect

Upon giving reasonable notice to the Province's Representative and the Concessionaire's Representative, the Independent Certifier (and any person authorized by it) may enter upon and inspect the Works and the Project Facilities, the Site and the Adjacent Areas or any part or parts thereof at any reasonable time in connection with the exercise or performance or proposed exercise or performance of rights or obligations under this Contract, subject to:

- (i) observance of the reasonable rules of the Concessionaire as to safety and security for the Works and the Project Facilities, the Site and the Adjacent Areas;
- (ii) not causing unreasonable delay to the carrying out of the Works by reason of its presence at the Project Facilities, the Site or the Adjacent Areas; and
- (iii) not causing any damage to the Works or the Project Facilities, the Site or the Adjacent Areas or any part thereof.

4.6 CA Parties Not Relieved

Neither CA Party shall be relieved from performing or observing its obligations, or from any other liabilities, under the Concession Agreement as a result of either the appointment of, or any act or omission by, the Independent Certifier.

4.7 CA Parties Not Liable

On no account will either CA Party be liable to the other CA Party for any act or omission of the Independent Certifier whether under or purportedly under a provision of the Concession Agreement, this Contract or otherwise, provided that any such act or omission shall not extinguish, relieve, limit or qualify the nature or extent of any right or remedy of either CA Party against, or any obligation or liability of either CA Party to, the other CA Party which would have existed regardless of such act or omission.

5. QUALITY

5.1 Quality Project Plan

The Independent Certifier must:

- (i) develop and implement a quality project plan identifying the processes and outcomes of the Functions that complies with all requirements of the Independent Certifier's quality assurance accreditation, and is otherwise satisfactory to each of the Province's Representative and the Concessionaire's Representative;
- (ii) within [] days after the date of this Contract, provide such quality project plan to each of the Province's Representative and the Concessionaire's Representative;
- (iii) provided it is satisfactory to each of the Province's Representative and the Concessionaire's Representative, implement such quality project plan; and
- (iv) if such quality project plan is not satisfactory to either the Province's Representative or the Concessionaire's Representative, within [] days after receiving notice thereof from either CA Party to that effect, revise and resubmit the quality project plan to each of the Province's Representative and the Concessionaire's Representative, and, once it is satisfactory to each of the Province's Representative and the Concessionaire's Representative, implement such quality project plan as so revised.

5.2 Quality Project Plan Not to Relieve Independent Certifier

The Independent Certifier will not be relieved of any responsibilities or obligations in respect of the performance of the Functions and will remain solely responsible for them notwithstanding:

- (i) the obligation of the Independent Certifier to develop and implement a quality project plan; or
- (ii) any comment or direction upon, review or acceptance of, approval to proceed with or request to vary any part of the quality project plan by either the Province's Representative or the Concessionaire's Representative.

6. SUSPENSION

6.1 Notice

The Functions (or any part thereof) may be suspended at any time by the CA Parties:

- (i) if the Independent Certifier fails to comply with its obligations under this Contract, immediately by the CA Parties giving joint notice in writing to the Independent Certifier; or
- (ii) in any other case, by the CA Parties giving [] days joint notice in writing to the Independent Certifier.

6.2 Costs of Suspension

The Independent Certifier will:

- (i) subject to the Independent Certifier complying with Section 9, be entitled to recover the extra costs incurred by the Independent Certifier by reason of a suspension directed under Section 6.1(ii) valued as a Functions Variation under Section 9; and
- (ii) have no entitlement to be paid any costs, expenses, losses or damages arising from a suspension under Section 6.1(i).

6.3 Recommencement

The Independent Certifier must immediately recommence the carrying out of the Functions (or any part thereof) on receipt of a joint written notice from the CA Parties requiring it to do so.

7. INSURANCE AND LIABILITY

7.1 Independent Certifier's Professional Indemnity Insurance

[NTD: The following insurance is subject to confirmation by the Risk Management Branch of the Province and the Concessionaire's insurance consultant.]

- (a) The Independent Certifier must have and maintain in place:
 - (i) professional errors and omissions insurance:
 - (A) in the amount of [] per claim and in the aggregate, a deductible of not more than [] per claim and from an insurer and on terms satisfactory to each of the CA Parties;
 - (B) with a term and extended reporting period from the date of this Contract until the expiration of [] years from the cessation of the Functions; and
 - (C) covering liability which the Independent Certifier might incur as a result of a breach by it of its obligations or any breach of a duty owed by the Independent Certifier in a professional capacity to the CA Parties, or either of them, under or in connection with this Contract or the provision of the Functions; and
 - (ii) comprehensive general liability insurance in the amount of [] per claim and in the aggregate, no deductible for personal injury or bodily injury, a deductible of not more than [] per occurrence for property damage, and from an insurer and on terms and conditions satisfactory to each of the CA Parties.
- (b) The Independent Certifier must provide copies of its insurance policies and renewals to each of the CA Parties (or as either of them may direct) upon request.

7.2 Workers' Compensation Insurance

The Independent Certifier must, at its own cost, insure its liability (including its common law liability) as required under any applicable workers compensation statute or regulation in relation to its employees engaged in the performance of the Functions.

8. PAYMENT FOR SERVICES

8.1 The Fee

- (a) In consideration of the Independent Certifier performing the Functions in accordance with this Contract, the CA Parties shall pay the Independent Certifier the Fee.
- (b) The Fee includes all taxes (except for Goods and Services Tax), disbursements and expenses (including accommodation, car hire, equipment and travel expenses), overheads and profit to perform the Functions.

8.2 Payment of Fee

The CA Parties shall each pay one-half of the Fee to the Independent Certifier in accordance with the payment schedule specified in Appendix B. The obligation of each CA Party to pay its one-half of the Fee to the Independent Certifier is a several obligation and not subject to joint or joint and several liability, and neither CA Party shall have any liability whatsoever for the non-payment by the other CA Party of any fees or costs payable by such other CA Party under this Contract.

8.3 Appropriation

The Independent Certifier acknowledges that it is aware of the provisions of subsection 28(2) of the *Financial Administration Act*, R.S.B.C. 1996, c. 138.

9. FUNCTIONS VARIATIONS

9.1 Notice of Functions Variation

- (a) If the Independent Certifier believes, other than in the case of a "Functions Variation Order" under Section 9.3, that any direction by the CA Parties constitutes or involves a Functions Variation, it must:
 - (i) within [] days after receiving the direction and before commencing work on the subject matter of the direction, give notice to the CA Parties that it considers the direction constitutes or involves a Functions Variation; and
 - (ii) within [] days after giving the notice under Section 9.1(a)(i), submit a written claim to each of the Province's Representative and the Concessionaire's Representative which includes detailed particulars of the claim, the amount of the claim and how it was calculated.
- (b) Regardless of whether the Independent Certifier considers that such a direction constitutes or involves a Functions Variation, the Independent Certifier must continue to perform the Functions in accordance with this Contract and all directions, including any direction in respect of which notice has been given under this Section.

9.2 No Adjustment

If the Independent Certifier fails to comply with Section 9.1, the Fee will not be adjusted as a result of the relevant direction.

9.3 Functions Variation Procedure

- (a) The Province's Representative and the Concessionaire's Representative may jointly issue a document titled "Functions Variation Price Request" to the Independent Certifier which will set out details of a proposed Functions Variation which the CA Parties are considering.
- (b) Within [] days after the receipt of a "Functions Variation Price Request", the Independent Certifier must provide each of the Province's Representative and the Concessionaire's Representative with a written notice in which the Independent Certifier sets out the effect which the proposed Functions Variation will have on the Fee.
- (c) Each of the Province's Representative and the Concessionaire's Representative may then jointly direct the Independent Certifier to carry out a Functions Variation by written document titled "Functions Variation Order" which will state either that:
 - (i) the Fee is adjusted as set out in the Independent Certifier's notice; or
 - (ii) the adjustment (if any) to the Fee will be determined under Section 9.4.

9.4 Cost of Functions Variation

- (a) Subject to Section 9.2, the Fee will be adjusted for all Functions Variations or suspensions under Section 6.1(ii) carried out by the Independent Certifier by:
 - (i) the amount (if any) stated in the "Functions Variation Order" in accordance with Section 9.3(c);
 - (ii) if Section 9.4(a)(i) is not applicable, an amount determined pursuant to the fee schedule for Functions Variations in Appendix B; or
 - (iii) where such rates or prices are not applicable, a reasonable amount to be agreed between the CA Parties and the Independent Certifier or, failing agreement, determined by the Province's Representative and the Concessionaire's Representative jointly.
- (b) Any reductions in the Fee shall be calculated on the same basis as any increases.

10. TERM AND TERMINATION

10.1 Term

Subject to earlier termination in accordance with the provisions of this Contract, this Contract will commence [*insert Commencement Date*] and continue in full force until the later of:

- (i) [] days after Final Completion; and
- (ii) such later date as may, prior to the date referred to in subparagraph (i), be mutually agreed in writing between both CA Parties and the Independent Certifier.

10.2 Notice of Breach

If the Independent Certifier commits a breach of this Contract, the CA Parties may give written notice to the Independent Certifier:

- (i) specifying the breach; and
- (ii) directing its rectification in the period specified in the notice being a period not less than [] days from the date of service of the notice.

10.3 Termination for Breach

If the Independent Certifier fails to rectify any breach referred to in a notice issued under Section 10.2 within the period specified in the notice issued under Section 10.2, the CA Parties may, without prejudice to any other rights of the CA Parties or either of them, immediately terminate this Contract by joint written notice to the Independent Certifier to that effect.

10.4 Termination for Financial Difficulty

The CA Parties may, without prejudice to any other rights which the CA Parties or either of them may have, terminate this Contract immediately by joint written notice to the Independent Certifier to that effect if:

- (i) events have occurred or circumstances exist which, in the opinion of the CA Parties, may result in or have resulted in insolvency or the control of the Independent Certifier passing to another body or corporation; or
- (ii) the Independent Certifier has communications with its creditors with a view to entering into, or enters into, any form of compromise, arrangement or moratorium of any debts whether formal or informal, with its creditors.

10.5 Termination for Convenience

Notwithstanding anything to the contrary in this Contract, either CA Party may, in accordance with Section 13.1A.4 [Right to Change Appointment] of the Concession Agreement, at any time terminate this Contract upon 30 days written notice to the Independent Certifier and the other CA Party and notwithstanding such notice of termination, the Independent Certifier shall continue to perform its obligations hereunder until such Independent Certifier is replaced pursuant to Section 13.1A.7 [Replacement] of the Concession Agreement.

10.6 Independent Certifier's Rights upon Termination for Convenience

Upon a termination under Section 10.5, the Independent Certifier will:

- (i) be entitled to be reimbursed by the CA Parties for the value of the Functions performed by it to the date of termination; and

- (ii) not be entitled to any damages or other compensation in respect of the termination and (without limitation) any amount in respect of:
 - (A) the lost opportunity to earn a profit in respect of the Functions not performed at the date of termination; and
 - (B) any lost opportunity to recover overheads from the turnover which would have been generated under this Contract but for it being terminated.

10.7 Procedure upon Termination

Upon completion of the Independent Certifier's engagement under this Contract or earlier termination of this Contract (whether under Section 10.3, 10.4 or 10.5 or otherwise) the Independent Certifier must:

- (i) co-operate with the CA Parties;
- (ii) hand over to the CA Parties all Contract Material and all other information concerning the Project held or prepared by, or otherwise in the possession or control of, the Independent Certifier; and
- (iii) or cause the persons nominated by the Independent Certifier to provide the Functions to meet as and when required by the CA Parties, meet with them and such other persons nominated by them with a view to providing them with sufficient information to enable the CA Parties to execute the Project.

10.8 Effect of Termination

Except as otherwise expressly provided in this Contract, termination of this Contract shall be without prejudice to any accrued rights and obligations under this Contract as at the date of termination (including the right of the CA Parties to recover damages from the Independent Certifier).

10.9 Survival

Termination of this Contract shall not affect the continuing rights and obligations of the CA Parties and the Independent Certifier under Sections 7, 8, 10.6, 10.7, 10.8, 11, 12.7, 12.8 and this Section or under any other Section which is expressed to survive termination or which is required to give effect to such termination or the consequences of such termination.

11. INDEMNITY AND RELIANCE BY HER MAJESTY THE QUEEN IN RIGHT OF CANADA

11.1 Indemnity

- (a) The Independent Certifier shall indemnify and hold the CA Parties and each of them, and their respective employees, directors, officers, deputies, delegates, representatives, agents, contractors and subcontractors harmless from and against any and all losses, claims, damages, liabilities and costs (including without limitation costs and expenses incurred in retaining another person to act as the Independent Certifier under the Concession Agreement in the event of termination of this Contract pursuant to Section 10.3 or 10.4)

incurred or suffered by any of them by reason of, resulting from, in connection with, or arising out of:

- (i) the breach of any representation, warranty, covenant, term, duty or obligation of the Independent Certifier set out in or arising under this Contract or the Concession Agreement; or
 - (ii) any act or omission of the Independent Certifier in connection with the subject matters of this Contract.
- (b) For the purposes of this Section, “costs” includes reasonable lawyers’ fees and expenses, reasonable accountants’ fees and expenses, arbitration costs, court costs and all other reasonable out-of-pocket expenses on a full indemnity basis.

11.2 Reliance by Her Majesty the Queen in Right of Canada

The Independent Certifier acknowledges and agrees that Her Majesty the Queen in right of Canada is providing funding to the Province under the Federal Cost Contribution Agreement so as to permit the Province to pay the Pre-Completion Performance Payments to the Concessionaire based on the Independent Certifier’s performance of its Functions and Her Majesty the Queen in right of Canada is relying and shall be entitled to rely upon the Independent Certifier’s full and faithful performance of its Functions including those relating to the issuance of any Pre-Completion Performance Payment Certificate, any Substantial Completion Certificate and/or the Final Completion Certificate relating to the Works.

12. GENERAL

12.1 Entire Contract

This Contract and the Concession Agreement constitute the entire Contract between the CA Parties and the Independent Certifier and supersede all communications, arrangements and agreements, either oral or written, made or entered into prior to the date of this Contract between the CA Parties and the Independent Certifier with respect to the subject matter of this Contract.

12.2 Independent Contractor

- (a) The Independent Certifier, its officers, directors, members, employees, servants and agents and any other persons engaged by the Independent Certifier in the performance of the Functions, will not by virtue of this Contract or the performance of the Functions become in the service or employment of the CA Parties or either of them for any purpose.
- (b) The Independent Certifier will be responsible for all matters requisite as employer or otherwise in relation to such officers, directors, members, employees, servants and agents and other persons who are engaged by the Independent Certifier.

12.3 Waiver

Failure by any CA Party or the Independent Certifier to enforce a provision of this Contract will not be construed as a waiver by that CA Party or the Independent Certifier of any right in respect of that provision, or any other provisions of this Contract.

12.4 Notices

- (a) Any document which is to be or may be issued or given to or served upon the CA Parties or the Independent Certifier under this Contract will be deemed to have been sufficiently issued or given to or served:
- (i) if it is delivered or sent by commercial courier, upon receipt;
 - (ii) if it is sent by fax between the hours of 9:00 a.m. and 4:00 p.m. on a Working Day, upon confirmation of a successful transmission by a transmission report received by the sender,

to the addresses set out below:

If to the Concessionaire 675 Cochrane Drive, West Tower, Suite 630
Markham, Ontario L3R 0B8

Tel No.: (905) 530-2114
Fax No.: (905) 530-2214
Attn.: John McArthur

If to the Province 5B – 940 Blanshard Street
Victoria, British Columbia V8W 9T5

Tel No.: (250) 387-3260
Fax No.: (250) 387-6431
Attn.: Assistant Deputy Minister, Highways Department
Ministry of Transportation

If to the
Independent Certifier <>
Address: <>

Tel No.: <>
Fax No.: <>
Attn.: <>

- (b) Any party may change its address for notice by notice given to the other parties in accordance with this Section.

12.5 Transfer and Assignment

- (a) The Independent Certifier:
- (i) must not assign, transfer, mortgage, charge or encumber any right or obligation under this Contract without the prior written consent of the CA Parties, which each CA Party may give or withhold in its absolute and unfettered discretion; and
 - (ii) agrees that any assignment, transfer, mortgage, charge or encumbrance will not operate to release or discharge the Independent Certifier from any obligation or liability under this Contract.

- (b) For the purposes of this Section, an assignment will be deemed to have occurred where there is a change in effective control of the Independent Certifier after the date of this Contract, being a change for any reason in the person or persons controlling:
- (i) the composition of the board of directors;
 - (ii) the voting power of the board of directors;
 - (iii) any class of shareholders; or
 - (iv) more than half the issued shares in the capital of the Independent Certifier.

12.6 Governing Laws and Attornment

This Contract will be governed by and construed in accordance with the laws of the Province of British Columbia and the federal laws of Canada applicable therein without regard to conflicts of law principles that would apply a different body of law, and the CA Parties and the Independent Certifier hereby irrevocably submit and attorn to the exclusive jurisdiction of the courts of that Province and all courts competent to hear appeals therefrom with respect to any action, suit, proceeding or dispute in connection with this Contract.

12.7 Confidentiality

- (a) The Independent Certifier must ensure that:
- (i) except as required by law or as otherwise may be required under this Agreement (and in particular in respect of material and information as may be required to be disclosed or provided to Her Majesty the Queen in right of Canada for the purposes of the Federal Cost Contribution Agreement), neither it nor any of its officers, directors, members, employees, servants, agents, contractors or subcontractors of any tier (or any of their respective employees) disclose, or otherwise make public, any Contract Material or any other information or material acquired in connection with or during the performance of the Functions without the prior written approval of each of the CA Parties (which approval may be granted or withheld in the absolute and unfettered discretion of each CA Party); and
 - (ii) no Contract Material is used, copied, supplied or reproduced for any purpose other than for the performance of the Functions under this Contract.
- (b) The CA Parties may at any time require the Independent Certifier to give and to arrange for its officers, directors, members, employees, servants, agents, contractors and subcontractors of any tier (or any of their respective employees) engaged in the performance of the Functions to give written undertakings, in the form of confidentiality agreements on terms required by the CA Parties, relating to the non-disclosure of Contract Material, in which case the Independent Certifier must promptly arrange for such agreements to be made and delivered to the CA Parties.

12.8 Contract Material

- (a) The CA Parties and the Independent Certifier agree that the Independent Certifier does not and will not have any rights, including any Intellectual Property, in any Contract Material provided to the Independent Certifier or created or required to be created by any CA Party.
- (b) As between the CA Parties and the Independent Certifier, all title and ownership, including all Intellectual Property, in and to the Contract Material created or required to be created by the Independent Certifier as part of, or for the purposes of performing the Functions, is hereby assigned jointly to the CA Parties on creation, or where such title, ownership and Intellectual Property cannot be assigned before creation of the Contract Material, it will be assigned to the CA Parties on creation. In addition, to the extent that copyright may subsist in such Contract Material so created by the Independent Certifier, the Independent Certifier hereby waives all past, present and future moral rights therein and the Independent Certifier shall ensure that any agent or employee of the Independent Certifier shall have waived all such moral rights. The CA Parties acknowledge and agree that, as between themselves, title, ownership and other rights to the foregoing shall be governed by the Concession Agreement.
- (c) The Independent Certifier will do all such things and execute all such documents as reasonably requested by either of the CA Parties in order to confirm or perfect the assignment of Intellectual Property in the Contract Material referred to in Section 12.8(b).

12.9 Time of the Essence

Time will be of the essence of this Contract and of the transactions contemplated by this Contract.

12.10 Amendment

No change or modification of this Contract will be valid unless it is in writing and signed by each party to this Contract.

12.11 Severability

If any provision of this Contract shall be declared invalid, unenforceable or illegal by the courts of any jurisdiction to which it is subject, such provision may be severed and such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability or legality of the remaining provisions of this Contract.

12.12 Enurement

Subject to the restrictions on transfer contained in this Contract, this Contract will enure to the benefit of and be binding on the parties and their respective heirs, executors, administrators, successors and assigns.

12.13 Counterparts

This Contract may be executed in any number of counterparts and all counterparts taken together will constitute one and the same instrument.

IN WITNESS WHEREOF the Province, the Concessionaire and the Independent Certifier have executed this Contract.

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 in the presence of:)

(Witness)

JOHN DYBLE
Deputy Minister, Ministry of Transportation

TRANS-PARK HIGHWAY GENERAL PARTNERSHIP
by its partners:

TRANS-PARK HIGHWAY INVESTMENT INC.

Per: _____
JOHN McARTHUR
President

Per: _____
STEVE SKELTON
Vice-President

TRANS-PARK HIGHWAY INC.

Per: _____
JOHN McARTHUR
President

Per: _____
STEVE SKELTON
Vice-President

[INDEPENDENT CERTIFIER]

Per: _____
Name:
Title:

Appendix A to Part 9 of Schedule 5**Functions**

[NTD: Scope to be confirmed.]

FUNCTIONS

Without limiting the other provisions of this Contract and the Concession Agreement, the Independent Certifier shall provide the following services and perform the following functions:

- (a) Familiarize itself with drawings and other Design Data, documentation and information related to the design, construction and completion of the Works.
- (b) Review progress reports as necessary for the Independent Certifier to be and to keep itself informed as to the progress of the Works.
- (c) Prior to issuing any Pre-Completion Performance Payment Certificate, Substantial Completion Certificate or Final Completion Certificate, consider the views, comments and submissions of the Province's Representative and the Concessionaire Representative in relation to the satisfaction of the conditions for the issuance of the relevant Pre-Completion Performance Payment Certificate, Substantial Completion Certificate or Final Completion Certificate.
- (d) Upon receipt of notice from the Concessionaire given in accordance with Section 33.2.6 of the Concession Agreement requesting the issuance of a Pre-Completion Performance Payment Certificate, carry out all necessary inspections, investigations and calculations of the relevant part or parts of the Works for such purpose within the time period set out in Section 33.2.6, and within the time period set out in Section 33.2.6 issue the relevant Pre-Completion Performance Payment Certificate.
- (e) At the request of the Province provide such further information and/or documentation including work papers and other information as may be requested by Her Majesty the Queen in right of Canada under the Federal Cost Contribution Agreement relating to any Pre-Completion Performance Payment Certificate, Substantial Completion Certificate and Final Completion Certificate.
- (f) Upon receipt of notice from the Concessionaire given in accordance with the applicable provision of Section 13 of the Concession Agreement requesting the issuance of a Substantial Completion Certificate or Final Completion Certificate, as applicable, carry out all necessary inspections of the Works within the time period set out in the applicable provision of Section 13 of the Concession Agreement, consider such request and, within the time period set out in the relevant provision of Section 13 of the Concession Agreement, either:
 - (i) issue the relevant Substantial Completion Certificate or Final Completion Certificate, as the case may be, to the Province and the Concessionaire; or

- (ii) notify the Concessionaire and the Province's Representative of its decision not to issue the relevant Substantial Completion Certificate or Final Completion Certificate, as the case may be, and state the reasons for such decision.
- (g) If the Independent Certifier serves a notice under clause (ii) of paragraph (i) of this Appendix and upon the Concessionaire issuing a notice to the Independent Certifier and the Province's Representative that such further works or other measures necessary or appropriate to remedy or remove the cause of the Independent Certifier's refusal to issue the relevant Substantial Completion Certificate or Final Completion Certificate, as the case may be, have been completed, the Independent Certifier shall inspect such further works or measures within the time period set out in the relevant provision of Section 13 of the Concession Agreement and shall repeat the procedures in paragraph (i) of this Appendix until the issuance of the relevant Substantial Completion Certificate or Final Completion Certificate.
- (h) Provide advice on other matters that may arise under the Concession Agreement that both of the CA Parties may jointly require in writing.
- (i) Participate in and give the CA Parties and their counsel all reasonable cooperation, access and assistance (including providing or making available documents and information and witnesses for attendance at hearings and other proceedings) in connection with any proceedings pursuant to the Disputes Resolution Procedure relating to any of the Functions.

Appendix B to Part 9 of Schedule 5

Fee

[NTD: To be completed. This should also include a fee schedule for Functions Variations]

Appendix C to Part 9 of Schedule 5
Independent Certifier Personnel

[NTD: To be completed.]

SCHEDULE 5

DESIGN AND CONSTRUCTION REQUIREMENTS

Part 5

CONSTRUCTION DRAWINGS

Construction Drawings Listed in Part 5 of Schedule 5 [Construction Drawings]

SCHEDULE 6

QUALITY MANAGEMENT

1. DEFINITIONS

In this Schedule 6, unless the context otherwise requires, the following terms have the following meanings:

“Corrective Action” means action to eliminate the cause of an existing Nonconformity, defect or other undesirable situation to prevent recurrence.

“Disposition” means the action taken or to be taken to deal with an existing Nonconformity, defect or other undesirable situation.

“External Quality Audit” means a second party or third party Quality Audit; second party Quality Audits are Quality Audits conducted by parties having an interest in the relevant organization, such as customers; third party Quality Audits are Quality Audits conducted by external independent organizations such as certification or registration bodies.

“Internal Quality Audit” means a first party Quality Audit conducted by or on behalf of the relevant organization of its own processes.

“Nonconformity” means the non-fulfilment of a requirement, being a deficiency in characteristic, documentation or procedure which renders the quality of a product or service unacceptable or indeterminate, including any failure to comply with any provision of this Agreement, including but not limited to the following:

- a) defective repairs and/or workmanship not in compliance with the requirements of this Agreement;
- b) use of materials and/or equipment not in compliance with the requirements of this Agreement;
- c) deficient, incomplete and/or illegible Quality Records;
- d) inadequate and/or ineffective defect identification processes;
- e) failure to achieve documented response time requirements;
- f) failure to comply with Quality Management System processes;
- g) failure to take Corrective Action or Preventive Action against any such Nonconformity within the required time;
- h) failure to meet its reporting obligations under Schedule 10 [Payments],

unless such failure is caused solely by a breach of this Agreement by the Province or BCTFA.

“Nonconformity Report” means a document issued by the Province’s Representative detailing the description, proposed rectification and proposed Disposition of an identified Nonconformity.

“Nonconformity Tracking System” means a system to track Nonconformity Reports issued by the Province, including the total number and status of all the Nonconformity Reports.

“Preventive Action” means action to eliminate the cause of a potential Nonconformity, defect or other undesirable situation in order to prevent its occurrence.

“Quality Audit” means a systematic, independent and documented process for obtaining audit evidence and evaluating it objectively to determine the extent to which audit criteria are fulfilled.

“Quality Audit Plans” means the Quality Audit Plans referred to and described in paragraph 2 of this Schedule 6.

“Quality Documentation” means the Quality Manual and the Quality Management Plans that together constitute and describe the Concessionaire’s Quality Management System.

“Quality Management Plan” means a detailed quality management plan for a specific project, product, process, activity or contract, including the Design Quality Management Plan, the Construction Quality Management Plan, the Traffic Quality Management Plan, the Operation, Maintenance and Rehabilitation Quality Management Plan and the Environmental Quality Management Plan referred to and described in Appendices 2 to 6, inclusive, to this Schedule 6.

“Quality Management System” means a management system that establishes the organizational structure, procedures, processes and resources for determining and implementing Quality Policy.

“Quality Manual” means the Quality Manual referred to and described in paragraph 2 of this Schedule 6.

“Quality Objectives” means objectives related to quality that are measurable and consistent with the Quality Policy described in Appendix 1 to this Schedule 6 and which are to be formally expressed and recorded in the Concessionaire’s Quality Manual.

“Quality Policy” means the overall intentions and direction of the Concessionaire related to quality applicable to the overall organization (including the Concessionaire and its contractors, subcontractors and suppliers of any tier) involved in performing the Works and Operations described in Appendix 1 to this Schedule 6 which are to be formally expressed and recorded in the Concessionaire’s Quality Manual.

“Quality Records” means the Quality Records referred to and described in paragraphs 2 and 7 in this Schedule 6.

2. QUALITY MANAGEMENT SYSTEM AND QUALITY DOCUMENTATION

The Concessionaire will develop and implement a Quality Management System in accordance with the requirements of Section 23 [Quality Management] of this Agreement, the ISO 9001:2000 Standard and the provisions of this Schedule 6. The Concessionaire will be responsible for all quality assurance and quality control activities required to manage its own processes, as well as those of its contractors, subcontractors and suppliers of any tier for the Project.

The Concessionaire is responsible for updating its Quality Management System and all Quality Documentation from time to time, in accordance with the procedures set forth in this Agreement, to ensure that the Quality Management System and all Quality Documentation are and at all times remain in full compliance with the ISO 9001:2000 Standard and the requirements of this Agreement.

The minimum documentation requirements for the Concessionaire's Quality Management System are as follows:

- (a) a **Quality Manual** as described in Appendix 1 to this Schedule 6 outlining the Concessionaire's Quality Management System for all aspects of the Works and Operations, and for the complete organization (including the Concessionaire, and its contractors, subcontractors and suppliers of any tier) involved in performing the Works and Operations, and establishing Quality Policy and Quality Objectives and outlining the means by which the Concessionaire will establish, implement, control and continually improve processes to achieve that Quality Policy and those Quality Objectives;
- (b) **Quality Management Plans** as described in Appendices 2 to 6 to this Schedule 6 for all aspects of the Works and Operations detailing which procedures and associated resources will be applied by whom and when;
- (c) **Quality System Procedures and Process Flow Charts** documenting who does the work, what they do, and what evidence will be generated that they have done the work correctly on quality related activities;
- (d) **Work Method Statements** for critical and complex activities where the absence of written instructions could have a negative impact on product safety, worker safety, quality, consistency, cost or schedule;
- (e) **Quality Audit Plans** defining the Internal Quality Audits and the External Quality Audits that the Concessionaire will perform on its own processes and those of its contractors, subcontractors and suppliers of any tier; and
- (f) **Quality Records** providing objective evidence of conformance with all requirements and of the effective operation of the Concessionaire's Quality Management System.

The Concessionaire will submit the Quality Documentation to the Province's Representative for review in accordance with the provisions of Section 23 [Quality Management] of the Agreement. The minimum requirements and principles which apply to the Quality Documentation are set out in Appendices 1 to 6, inclusive, to this Schedule 6.

3. **BASIS OF QUALITY MANAGEMENT SYSTEM**

The Concessionaire's Quality Management System will be based on the documents referred to in paragraph 5 of this Schedule 6 and on the ISO 9004:2000 Standard principles, including the following:

- Customer focus;
- Leadership;
- Involvement of people;
- Process approach;
- System approach to management;
- Continual Improvement;
- Factual approach to decision making; and
- Mutually beneficial supplier relationships.

4. **QUALITY MANAGEMENT SYSTEM IMPROVEMENT**

The Concessionaire will initiate a program to continually improve the effectiveness and efficiency of the Quality Management System and will have mechanisms in place, such as management reviews and Quality Audit programs to allow all identified opportunities for improvement to be actioned, tracked and closed out. The Concessionaire will ensure that all of the Concessionaire's employees, contractors, subcontractors, and suppliers of any tier are aware of the importance of continuous improvement and are actively engaged in its implementation in connection with the performance of the Works and Operations.

5. **ISO REFERENCE DOCUMENTS**

- ISO 9001:2000 Quality Management Systems – Requirements
- ISO 9004:2000 Quality Management Systems – Guidelines for Performance Improvement
- ISO 9000:2000 Quality Management Systems – Fundamentals and Vocabulary
- ISO 19011:2004 Guidelines for Quality and/or Environmental Management Systems Auditing
- ISO 14001:1996 Environmental Management Systems – Specification with guidance for use

6. QUALITY AUDITS

6.1 Concessionaire Quality Audits

The Concessionaire will provide Quality Audit Plans that detail the Internal Quality Audits and the External Quality Audits that will be conducted by the Concessionaire on its own processes and those of its contractors, subcontractors and suppliers of any tier. The purpose of the Concessionaire's quality auditing process is to confirm that all activities are in compliance with those documented in the Concessionaire's Quality Manual and Quality Management Plans and to identify all necessary Corrective Actions and Preventative Actions. The Quality Management Representative will schedule Internal Quality Audits and External Quality Audits to ensure that all key processes are reviewed regularly and at least once per year. Where necessary, follow-up audits will be scheduled to ensure that identified Corrective Actions and Preventive Actions are carried out in a timely fashion. Internal Quality Audits and External Quality Audits will be scheduled taking into account the status and importance of the processes being audited as well as the results of previous audits. The Concessionaire will document or cause to be documented the results of these audits in audit reports and make them available to the Province's Representative upon request.

6.2 Province Quality Audits

The Province's Representative will, pursuant to the submission of the Quality Documentation in accordance with Section 23.1.4 of this Agreement, review the Concessionaire's Quality Documentation to identify the critical activities and processes identified in the Concessionaire's Quality Manual and Quality Management Plans on which the Province's auditing efforts and resources should be directed. The Province will determine the frequency of auditing through regular and ongoing review of the Concessionaire's performance and management systems. Work procedures and activities that show good audit performance may have the frequency of auditing decreased, while those that show poor performance may have the frequency of auditing increased. Notwithstanding the foregoing, the frequency of audits will be at a level that does not cause material disruption or delay to the Operations. The Concessionaire will provide and will ensure its contractors, subcontractors and suppliers of any tier provide the Province's Representative with all documentation, records, access, facilities and assistance for the safety and convenience of the Province's Representative. Two types of Quality Audits will be conducted by or on behalf of the Province:

Surveillance Audits – Unscheduled audits conducted on a random basis or on specific areas of interest throughout the Contract period. The objective of these surveillance audits is to monitor the Concessionaire's activities involving its work, workmanship and general quality of materials.

Quality Management System Audits – Scheduled audits conducted at specific times to assess the performance of and compliance with the Concessionaire's Quality Management System. The Province's Representative will contact the Concessionaire's Quality Management Representative and confirm the scope and schedule of the audit. At the opening meeting with the Concessionaire, the Province's Representative will review the audit scope and objectives. The Province's Representative will conduct audit interviews, and document any observations on prepared checklists. At the end of the audit interviews, the Province's Representative will evaluate the observations and identify observed procedural or performance Nonconformities that require Corrective Action. At the closing meeting with the Concessionaire, the Province's Representative will discuss the

observations and inform the Concessionaire of any observed Nonconformities and audit recommendations. The Concessionaire will prepare a Corrective Action / Preventive Action plan and submit it to the Province's Representative. The Province reserves the right to conduct follow up reviews on reasonable, but not less than 24 hours notice, to the Concessionaire, to determine if the Concessionaire's Corrective Action / Preventive Action plan has been complied with.

Additional information relating to Province Quality Audits with respect to particular Quality Management Plans is identified in the Appendices to this Schedule 6.

An independent third party review of the Province's Quality Audit (including Nonconformity Tracking System) of those activities covered by the Operation, Maintenance and Rehabilitation Quality Management Plan will be conducted on an annual basis. The review will be carried out by a suitably qualified independent organization designated by the Province and will involve input from the Concessionaire.

6.3 Third Party Certification Audits

Third party Quality Audits (as referenced in the definition of External Quality Audit in paragraph 1 in this Schedule 6) will be conducted as required under the ISO 9001:2000 Standard on the Concessionaire's Quality Management System covered by the Works and Operations, Management and Rehabilitation Quality Management Plan and Traffic Quality Management Plan by an accredited certification agency acceptable to the Province and the Concessionaire, each acting reasonably, and these audit reports will be made available to the Province's Representative upon request.

7. QUALITY RECORDS

The Concessionaire will establish and maintain, and each Quality Management Plan will require the maintenance of, complete and accurate quality management records providing evidence of conformance with this Agreement, compliance with the ISO 9001:2000 Standard and the Quality Management System. Such records must at all times remain legible, readily identifiable, and retrievable, and can be in hard or electronic format. The Concessionaire will make available the Quality Records to the Province's Representative upon not less than 24 hours' written request.

8. QUALITY MANAGEMENT SYSTEM REPORTING

The Concessionaire will prepare and submit to the Province's Representative a comprehensive monthly Quality Management System report for each month or part thereof during the Contract Period separately summarizing all quality management activities under each of the Quality Management Plans for that month. The monthly Quality Management System reports will, as a minimum, include the following information separately identified for each Quality Management Plan:

- a Nonconformity Report log providing details of each Nonconformity identified to date, their disposition and close-out status;
- Corrective Action and Preventive Action logs providing details of the Corrective Actions and Preventive Actions performed to date and their close-out status;

- for the Construction phase, the report will include signed statements from the design manager(s) stating that the works constructed in the previous month comply with the relevant drawings and specifications;
- a summary of any inspection and testing activities conducted during the month;
- Internal Quality Audits and External Quality Audits (including any third party Quality Audits as referenced in the definition of “External Quality Audit” in paragraph 1 of this Schedule 6) performed during the month;
- any continual improvement initiatives taken during the month;
- any other information required to be included in the monthly Quality Management System reports pursuant to any of the Appendices to this Schedule 6 or the terms of the relevant Quality Management Plan; and
- any changes made to the Quality Management System or the Quality Documentation in compliance with the provisions of this Agreement.

9. NONCONFORMITY REPORTS AND NONCONFORMITY TRACKING SYSTEM

- 9.1 If at any time the Province is notified or otherwise becomes aware (including pursuant to any Quality Audit conducted by the Province) that there is any Nonconformity by the Concessionaire relating to operation or maintenance of the Project Facilities or any Nonconformity that entitles the Province to withhold the Asset Condition Retention under paragraph 1.1(b) of Part 3A of Schedule 10 [Payment Retentions], the Province’s Nominee may, without prejudice to any other right or remedy available to the Province and BCTFA, by notice to the Concessionaire issue a Nonconformity Report to the Concessionaire. The Province may issue Nonconformity Reports for any Nonconformity.
- 9.2 The Province will implement a Nonconformity Tracking System to track Nonconformity Reports issued by the Province, including the total number and status of all the Nonconformity Reports. The Province will record all Nonconformity Reports issued by the Province in its Nonconformity Tracking System.
- 9.3 Where the Concessionaire produces satisfactory documentary evidence to the Province showing that:
- (a) any Nonconformity identified in a Nonconformity Report issued by the Province has been identified in the Concessionaire’s Quality Management System and the Concessionaire has taken, or is in the process of taking, appropriate action to remedy the Nonconformity; or
 - (b) the Nonconformity has been remedied within the required time,

the Province will remove that Nonconformity Report from its list of outstanding Nonconformity Reports in the Nonconformity Tracking System. If a Non-Conformity Report is removed from the outstanding list of Nonconformity Reports as aforesaid and the Concessionaire fails to remedy the Nonconformity within the required time, the relevant Nonconformity Report will be reinstated as outstanding in the Nonconformity Tracking System.

- 9.4 For greater certainty, until a Nonconformity Report is removed from the list of outstanding Nonconformity Reports in the Nonconformity Tracking System, that Nonconformity Report:
- (a) if it relates to a Nonconformity that entitles the Province to withhold the Asset Condition Retention under paragraph 1.1(b) of Part 3A to Schedule 10 [Payment Retentions], will be taken into account in the calculation of Asset Condition Retention referred to in paragraph 1.1(b) of Part 3A to Schedule 10 [Payment Retentions]; and
 - (b) if it relates to operation or maintenance of the Project Facilities, will be taken into account in the calculation of Performance Deductions referred to in Part 6 of Schedule 10 [Performance / Safety Deductions].
- 9.5 The Concessionaire must investigate all Nonconformity Reports and, where necessary, initiate Corrective Action and Preventative Action.
- 9.6 The Concessionaire must return a Nonconformity Report together with its response thereto (including the proposed Corrective Action and/or Preventive Action or its objection to the issuance of that Nonconformity Report) to the Province within 7 Working Days of the Concessionaire's receipt of the Nonconformity Report. The Concessionaire's response may be an objection to the issuance of that Nonconformity Report. If the Concessionaire fails to object to the issue of a Nonconformity Report within 7 Working Days of the Concessionaire's receipt of that Nonconformity Report, the Concessionaire is deemed to have accepted that Nonconformity Report. If such objection has not been resolved by mutual agreement between the Province's Representative and the Concessionaire within 5 Working Days of the service of such notice, then either of them may refer the matter to the Disputes Resolution Procedure for determination.
- 9.7 The Province may issue further Nonconformity Reports if a Nonconformity identified in a Nonconformity Report continues unremedied.
- 9.8 The Concessionaire will maintain records of:
- (a) each Nonconformity;
 - (b) the reference numbers of all Nonconformity Reports;
 - (c) a description of all Nonconformity Reports;
 - (d) the Nonconformity Report Points determined in accordance with paragraph 3 of Part 6 to Schedule 10 [Performance / Safety Deductions];
 - (e) the proposed actions by the Concessionaire to rectify;
 - (f) the time at which Nonconformities were identified; and
 - (g) the time at which a Nonconformity specified in a Nonconformity Report was rectified.

Appendix 1 to Schedule 6

1. QUALITY MANUAL

The Concessionaire will provide a comprehensive Quality Manual that describes the Quality Management System for all aspects of the Works and Operations throughout the Contract Period including the design and construction and the operation, maintenance and rehabilitation phases of the Project. The Quality Manual will establish the Quality Policy and Quality Objectives for all aspects of the Operations and, in accordance with the requirements of the ISO 9001:2000 Standard, will describe the processes that will be established, implemented, controlled, and continually improved to achieve the established Quality Objectives.

The Quality Objectives will be measurable, consistent with the Quality Policy and linked to meeting the needs and performance expectations of the Province in respect of the Project. The Quality Management System described in the Quality Manual will include all the activities required to achieve these Quality Objectives, including project controls such as scope, cost, schedule and general document control management activities. All of these activities will be subject to Internal Quality Audits and External Quality Audits.

The Quality Manual will describe the nature of the Concessionaire's organization involved in performing the Operations and how key management activities (such as project controls; design; construction; operation, maintenance and rehabilitation; traffic management; and environmental) will interface with each other. The Quality Manual will also show how the various levels of Quality Management System documentation are linked together.

2. MANAGEMENT RESPONSIBILITY

The Quality Manual will clearly define the reporting function and authority of the Quality Management Representative who will liaise with the Province's Representative and act as the single point representative of the Concessionaire for all matters relating to quality management. The Quality Management Representative will preferably be an independent Professional Engineer and a certified QMS2000 auditor.

The Quality Management Representative, at a minimum, will be responsible for the:

- development, implementation and maintenance of the Quality Management System, and for ensuring the effective operation of the Quality Management System;
- preparation of Quality Audit Plans, scheduling and coordination of Internal Quality Audits and External Quality Audits of key processes with the Concessionaire's personnel and with the Concessionaire's contractors, subcontractors and suppliers of any tier (including the Designer, the Contractor and the Operator);
- development and implementation of a Nonconformity and Corrective Action / Preventive Action program;
- initiation of management reviews of the Quality Management System, not less frequently than annually, and for taking other actions necessary to ensure the effective operation and continuous improvement of the Concessionaire's Quality Management System;

- continuous improvement of the Quality Management System;
- coordination of all matters and issues relating to certification of the Quality Management System;
- preparation and submission to the Province's Representative of monthly Quality Management System reports;
- conduct and report of the findings of all quality audits required under this Agreement and this Schedule 6 to the Province's Representative;
- stoppage of any work or activity which is not being performed or carried out in accordance with the Quality Documentation applicable thereto;
- retention of Quality Records in accordance with the Concessionaire's Quality Management System and in any event for the retention periods required by Section 25 [Records]; and
- any other matters which, in accordance with Section 23 [Quality Management] of this Agreement, are the responsibility of the Quality Management Representative.

Appendix 2 to Schedule 6

1. DESIGN QUALITY MANAGEMENT PLAN

The Concessionaire will provide a comprehensive Design Quality Management Plan that describes how it intends to manage the design processes for the Project in accordance with the ISO 9001:2000 Standard, the Quality Management System requirements stated in its Quality Manual and the provisions of this Agreement.

The Design Quality Management Plan will contain an organizational chart identifying key design management personnel and the linkage with the Quality Management Representative for the Concessionaire's overall Quality Management System as documented in the Concessionaire's Quality Manual. It will also contain a description of the responsibilities, qualifications, and authority of the above personnel and the organizational interfaces between other engineering groups and construction disciplines.

The Design Quality Management Plan will, at a minimum, include or reference detailed Quality System Procedures and process flow charts for the following processes:

- design input and output review;
- design verification to ensure that design input requirements have been met;
- design validation to ensure that the final product is capable of meeting its intended use;
- design changes;
- design subcontractor quality assessment and procurement;
- External Quality Audits of design subcontractors;
- Internal Quality Audits;
- Corrective Actions and Preventive Actions;
- document management; and
- control of Quality Records.

The above procedures and flow charts will document who does the work, what they do, and what evidence is generated that they have done the work correctly.

Appendix 3 to Schedule 6

1. CONSTRUCTION QUALITY MANAGEMENT PLAN

The Concessionaire will provide a comprehensive Construction Quality Management Plan that describes how it intends to manage the construction processes in connection with the Project in accordance with the ISO 9001:2000 Standard, the Quality Management System requirements stated in its Quality Manual and the provisions of this Agreement.

The Construction Quality Management Plan will contain an organizational chart identifying key construction management personnel and the linkage with the Quality Management Representative for the Concessionaire's overall Quality Management System as documented in the Concessionaire's Quality Manual. It will also contain a description of the responsibilities, qualifications, and authority of the above personnel and the organizational interfaces between the design and other disciplines such as environmental and traffic management.

The Construction Quality Management Plan will, at a minimum, include or reference detailed Quality System Procedures and Process Flow Charts for the following processes:

- construction safety audits;
- inspection and testing;
- materials identification and traceability;
- contractor, subcontractor and supplier of any tier quality assessment and procurement;
- External Quality Audits of contractors, subcontractors and suppliers of any tier;
- Internal Quality Audits;
- control of nonconforming product;
- Corrective Actions and Preventive Actions;
- document management; and
- control of Quality Records.

The above procedures and flow charts will document who does the work, what they do, and what evidence is generated that they have done the work correctly.

The procedures will be augmented with construction work method statements for critical and complex construction activities where the absence of written instructions could have a negative impact on the product safety, worker safety, quality, consistency, cost or schedule.

The Construction Quality Management Plan will also include or reference an inspection and test plan detailing all major on-site and off-site inspection and test activities for work

performed by the Concessionaire and that of its contractors, subcontractors and suppliers of any tier. The inspection and test plan will, at a minimum, include:

- description of the inspection and test activity;
- frequency of inspections and tests;
- reference to standards, codes, specifications, and acceptance criteria;
- reports and checklists required;
- personnel responsible for inspection and test activity; and
- quality assurance review, witness and hold points.

The Province's Representative, in the course of its Quality Documentation review, will pay special attention to the Concessionaire's inspection and test plan to ascertain whether the Concessionaire has taken full responsibility for all of the quality assurance functions. The Concessionaire will ensure that the inspection and test plan will be consistent with the quality control and quality assurance requirements listed in the material specification, work methodology and end product specifications listed in the Ministry's Standard Specifications for Highway Construction, 2004 edition, as updated, amended or replaced from time to time. The Province's Representative will review the inspection and test plan and specify any required witness and hold points against any inspection or test activity that the Province would like the opportunity to witness. The Concessionaire will provide at least 7 days' advance notice of any specified inspection and test activities so that they will be able to be witnessed by a representative of the Province. The Concessionaire may proceed with the activity past any specified witness or hold point if a representative of the Province is not available at the appointed time.

2. CONSTRUCTION DEFICIENCY OBSERVATIONS

Any deficiency observations noted during, construction activities, by the Province's Representative will be forwarded to the Concessionaire for evaluation and resolution.

Appendix 4 to Schedule 6

1. OPERATION, MAINTENANCE AND REHABILITATION QUALITY MANAGEMENT PLAN

The Concessionaire will provide a comprehensive Operation, Maintenance and Rehabilitation Quality Management Plan that describes how it intends to monitor and measure its operations, maintenance, and rehabilitation activities in connection with the Project in accordance with the ISO 9001:2000 Standard, the Quality Management System requirements stated in its Quality Manual and the provisions of this Agreement. The Operation, Maintenance and Rehabilitation Quality Management Plan must be aligned with all relevant Performance Measures and define the Concessionaire's approach to achieving compliance with the requirements of this Agreement relating to the operation, maintenance and rehabilitation activities.

The Concessionaire will develop documented quality system procedures and process flow charts to ensure that all performance specifications and requirements in this Agreement in respect of operation, maintenance, and rehabilitation are met or exceeded. These procedures and flow charts will document who does the work, what they do, and what evidence is generated that they have done the work correctly. The procedures will be augmented, where necessary, with documented work method statements that provide specific instructions for personnel. Work method statements may be contained within the Operation, Maintenance and Rehabilitation Quality Management Plan or be stand-alone controlled documents.

The Operation, Maintenance and Rehabilitation Quality Management Plan will detail a Performance Measures compliance monitoring process to track compliance with all Performance Measures. The Performance Measures compliance monitoring process must clearly describe the approach taken in assessing compliance, and define the frequency and method of monitoring and reporting Performance Measures compliance. The Province's Representative will review the Concessionaire's Performance Measures compliance monitoring process and may request changes that the Province's Representative considers appropriate to facilitate the accurate and appropriate monitoring and reporting of compliance with the Performance Measures and otherwise to meet the requirements of this Agreement. The Concessionaire's Performance Measures compliance monitoring process will be subject to ongoing review by the Province's Representative throughout the Contract Period.

Appendix 5 to Schedule 6

1. TRAFFIC QUALITY MANAGEMENT PLAN

The Concessionaire will provide a comprehensive Traffic Quality Management Plan that describes how it intends to administer the traffic management processes in connection with the Project in accordance with the ISO 9001:2000 Standard, the Quality Management System requirements stated in its Quality Manual and the provisions of this Agreement.

The Traffic Quality Management Plan will contain an organizational chart identifying key traffic management personnel and the linkage with the Quality Management Representative for the Concessionaire's overall Quality Management System as documented in the Concessionaire's Quality Manual. It will also contain a description of the responsibilities, qualifications, and authority of the above personnel and the organizational interfaces between the traffic management and other disciplines such as design, construction, and environmental management. The Traffic Quality Management Plan will address the design, construction, operation, maintenance and rehabilitation phases of the Project.

The Traffic Quality Management Plan will, at a minimum, include or reference detailed quality system procedures and process flow charts for the following processes:

- traffic control plan design input and output review;
- traffic control plan design verification to ensure that design input requirements have been met;
- traffic control plan design validation to ensure that the final product is capable of meeting its intended use;
- traffic control plan design changes;
- traffic control plans;
- traffic management incident plans;
- traffic management implementation plan;
- traffic management public information plan;
- Closure implementation;
- temporary road structure implementation;
- administration and control of Closure durations;
- contractor, subcontractor and supplier of any tier quality assessment and procurement;
- External Quality Audits of contractors, subcontractors and suppliers of any tier;

- Internal Quality Audits;
- control of nonconforming activities and/or product;
- Corrective Actions and Preventive Actions;
- document management; and
- control of Quality Records.

The above procedures and flow charts will document who does the work, what they do, and what evidence is generated that they have done the work correctly.

The procedures will be augmented with traffic management work method statements for Closures required for critical and complex construction activities where the absence of written instructions could have a negative impact on the product safety, worker safety, quality, consistency, cost, or schedule.

When the above processes are already covered as part of another Quality Management Plan, the process heading still needs to be identified as part of the Traffic Quality Management Plan; however the details can be minimized to a reference to the other Quality Management Plan and section or paragraph where the details are provided. The referenced Quality Management Plan and section or paragraph must indicate specific requirements with regards to the above processes as it relates to traffic quality management and be able to provide a tangible audit trail. Notwithstanding, processes that fall within the specific requirements of the Traffic Management Plan must include detailed quality system procedures and process flow charts under the Traffic Quality Management Plan.

2. TRAFFIC MANAGEMENT QUALITY AUDITS

Surveillance Quality Audits will be conducted by the Province on a random basis or on specific areas of interest throughout the Contract period. The objective of these surveillance audits is to monitor the Concessionaire's activities involving its work practices, workmanship and general quality of materials.

The Province's Representative will, during the performance of Province surveillance audits, record any observations and inform the Concessionaire of any deficiencies that require further evaluation. Any noted deficiencies will be resolved to the satisfaction of the Province's Representative through evidence of the Concessionaire's deficiency evaluation findings or Nonconformity process. If the deficiency is not resolved to the reasonable satisfaction of the Province's Representative, then the Province reserves the right to issue a Nonconformity Report to the Concessionaire.

Appendix 6 to Schedule 6

1. ENVIRONMENTAL QUALITY MANAGEMENT PLAN

The Concessionaire will provide a comprehensive Environmental Quality Management Plan that describes how it intends to manage the environmental components of the Project in accordance with ISO 14001:1996 or its equivalent, the Quality Management System requirements stated in its Quality Manual and the provisions of this Agreement. The Environmental Quality Management Plan is to apply throughout all phases of the Project including design, construction, operation, maintenance and rehabilitation.

The Environmental Quality Management Plan will contain an organizational chart identifying key environmental management personnel and the linkage with the Quality Management Representative for the Concessionaire's overall Quality Management System as documented in the Concessionaire's Quality Manual. It will also contain a description of the responsibilities, qualifications, and authority of the above personnel and the organizational interfaces between the design and other construction, operation, maintenance and rehabilitation disciplines.

The Environmental Quality Management Plan will include or reference detailed quality system procedures and process flow charts for the following processes:

- satisfying and ensuring compliance with the Concessionaire's Environmental Obligations, including the preparation and implementation of an Environmental Management Plan and specific plans as detailed elsewhere in this Agreement;
- obtaining and maintaining Permits, Licences and Approvals;
- environmental monitoring and reporting;
- environmental incident reporting and tracking;
- External Quality Audits of contractors, subcontractors and suppliers of any tier;
- Internal Quality Audits;
- control of nonconforming services or products;
- Corrective Actions and Preventive Actions;
- document management; and
- control and retention of Quality Records.

The above procedures and flow charts will document who does the work, what they do, and what evidence is generated that they have done the work correctly.

The procedures will be augmented, where necessary, with documented work method statements that provide specific instructions for personnel. Work method statements

generally apply to the responsibilities of the individual within the workplace outlining in detail the exact steps to be carried out for the activity in question. These work method statements may be contained within the Environmental Quality Management Plans or be stand-alone controlled documents.

The Province's Representative, in the course of its Quality Documentation review, will pay special attention to the Concessionaire's Environmental Quality Management Plan to verify that that the Concessionaire has taken full responsibility for all of the environmental requirements as specified in the Concessionaire's Environmental Obligations and elsewhere in the Agreement, including obtaining agency approvals and other environmental requirements as outlined in the Agreement.

2. ENVIRONMENTAL QUALITY AUDITS

Surveillance Quality Audits will be conducted by the Province on a random basis or on specific areas of interest throughout the Contract period. The objective of these surveillance audits is to monitor the Concessionaire's activities involving its work practices, workmanship and general quality of materials.

The Province's Representative will, during the performance of Province surveillance audits, record any observations and inform the Concessionaire of any deficiencies that require further evaluation. Any noted deficiencies will be resolved to the satisfaction of the Province's Representative through evidence of the Concessionaire's deficiency evaluation findings or Nonconformity process. If the deficiency is not resolved to the reasonable satisfaction of the Province's Representative, then the Province reserves the right to issue a Nonconformity Report to the Concessionaire.

3. QUALITY RECORDS

The Quality Records maintained by the Concessionaire will include records evidencing conformity to ISO 14001 and compliance with the Concessionaire's Environmental Obligations and the other environmental requirements contained in the Agreement, and all applicable approvals, permits, authorizations, monitoring reports and written correspondence with agencies, the Province, public consultation, user groups, etc.

4. QUALITY MANAGEMENT SYSTEM REPORTING

The Concessionaire's monthly Quality Management System reports will include a summary of all environmental quality management activities during each month and:

- environmental monitoring reports;
- steps taken to obtain required environmental permits and the results thereof; and
- steps taken to implement, comply with and satisfy the Concessionaire's Environmental Obligations and the other environmental requirements contained in the Agreement.

SCHEDULE 7

OPERATION, MAINTENANCE, REHABILITATION

AND END OF TERM REQUIREMENTS

Part 1

O,M&R OUTPUT SPECIFICATIONS

1. In the design, planning and execution of all works and functions associated with the operation, maintenance and rehabilitation of the Project Facilities, the Site and the Adjacent Areas, the Concessionaire shall take all such action and do all such things (including organizing itself, adopting measures and standards, executing procedures, including inspection procedures and safety patrols, and engaging and managing contractors, agents and employees) as will and in such manner as will secure:
 - 1.1 the safety of Users of the Concession Highway, workers or other persons on or about the Project Facilities, the Site and the Adjacent Areas or on land adjacent thereto or using Connecting Roads or adjoining facilities;
 - 1.2 that the ability of the Province and others with statutory duties or functions in relation to the Project Facilities, the Site and the Adjacent Areas or Connecting Roads to perform those duties and functions is unimpaired;and, subject to paragraphs 1.1 and 1.2, that:
 - 1.3 delay to Users of the Concession Highway and of Accesses and Connecting Roads or adjoining facilities will be minimised;
 - 1.4 the risk of adverse effects on the environment and on the amenity enjoyed by the owners and occupiers of land adjacent to the Project Facilities, the Site and the Adjacent Areas and to Accesses and Connecting Roads and adjoining facilities will be minimised;
 - 1.5 all accidents and emergencies will be responded to as quickly as possible and their adverse effects minimised;
 - 1.6 risk of damage or disturbance to or destruction of third party property will be minimised;
 - 1.7 members of the public will be treated with due courtesy and consideration;
 - 1.8 Users will be given adequate information and forewarning of any events on or any matters affecting the Concession Highway as will enable them to minimise any adverse consequences on them of those events or matters;
 - 1.9 traffic data and data relating to the operation, maintenance and rehabilitation of the Project Facilities, the Site and the Adjacent Areas and events occurring on or

about the Project Facilities, the Site and the Adjacent Areas will be collected and disseminated such that the Province and other persons or bodies with statutory duties or functions in relation to the Project Facilities, the Site and the Adjacent Areas or Connecting Roads will be able to perform those duties and functions;

- 1.10 the Project Facilities, the Site and the Adjacent Areas will be operated, maintained and rehabilitated in accordance with the Design and Construction Output Specifications Requirements;
- 1.11 the Project Facilities, the Site and the Adjacent Areas will be operated, maintained and rehabilitated to no lesser standard than is appropriate for a highway of the character of the Concession Highway and for use by the traffic which is reasonably to be expected to use the Concession Highway; and
- 1.12 the O,M&R Output Specifications identified in Appendix 1 to this Part 1 will be complied with, met and satisfied.

Appendix 1 to Part 1 of Schedule 7

1.1 Definitions and Interpretation

Unless specifically defined in this Section 1.1 or otherwise provided herein, capitalized terms used in this Appendix 1 shall have the meanings set out in Schedule 1 [Definitions and Interpretation] to the Concession Agreement. The following specific terms referred to in this Appendix 1 shall have the following meanings:

“Asset Management Plan” means the Asset Management Plan referred to in Section 1.12 of this Appendix 1.

“Highway Asset Preservation Performance Measures for Highway Concessions” means the reference document entitled Highway Asset Preservation Performance Measures for Highway Concessions dated October 2004 located on the Resource Documents DVD.

“Highway Corridor Management Specifications for Highway Concessions” means the reference document entitled Highway Corridor Management Specifications for Highway Concessions dated October 2004 located on the Resource Documents DVD.

“Highway Maintenance Specifications for Highway Concessions” means the reference document entitled Highway Maintenance Specifications for Highway Concessions dated October 2004 located on the Resource Documents DVD.

“Operations and Maintenance Plan” means the plan referred to in Section 1.11 of this Appendix 1.

“Reporting Specifications for Highway Concessions” means the reference document entitled Reporting Specifications for Highway Concessions dated October 2004 located on the Resource Documents DVD.

1.2 General

The scope of the operation, maintenance and rehabilitation of the Project Facilities, the Site and the Adjacent Areas includes, subject to the terms of this Appendix 1, the provision of all services associated with the management, planning and delivery of the operations, maintenance and rehabilitation activities to ensure compliance with all stated Performance Measures. This includes:

- (a) operations and corridor management;
- (b) maintenance and rehabilitation of the assets to the minimum acceptable requirements;
- (c) managing the integrity of the assets through cost effective long-term maintenance and rehabilitation;

- (d) identification, programming, prioritization and delivery of maintenance and rehabilitation services to achieve the specified Performance Measures as defined in Section 1.7 of this Appendix 1;
- (e) provision of all inspections and reporting; and
- (f) supplying and placement of all materials associated with meeting the standards.

1.3 Principles

Included below are some of the overriding principles that apply in respect of the operation and management of the Concession Highway by the Concessionaire:

- (a) the Concessionaire will be afforded as far as possible, all operational and functional responsibility and associated risks for managing and operations;
- (b) the performance measures set for the operation, maintenance and rehabilitation of the Project Facilities, the Site and the Adjacent Areas are succinct, readily defined and measurable, outcome focused and designed to reinforce the desired Concession Agreement technical outcomes;
- (c) the service levels are to be equal to or better than Comparable Controlled Access Highways and bridges comparable to those constructed as part of the Project;
- (d) the Concessionaire shall apply sound asset management practices and programs that limit the risk of the Concession Highway being consumed during the Contract Period;
- (e) the Province's road and bridge outcome based highway maintenance specifications are to be the basis of all applicable operational activities;
- (f) the Province will assume the role of performance audit and observation but will not be actively involved in service delivery; and
- (g) partnership protocols are to be established between the parties to this Agreement but not to the detriment of the required Concession Agreement outcomes.

1.4 Health and Safety

The Concessionaire shall comply with all requirements of Section 9 [Health and Safety] of this Agreement relating to operation, maintenance and rehabilitation of the Project Facilities, the Site and the Adjacent Areas during the Contract Period.

1.5 Operations, Maintenance and Rehabilitation - Scope of Services

Unless otherwise provided in these O,M&R Output Specifications, the Concessionaire shall be responsible for all of the operations, maintenance and rehabilitation of the Concession Highway for the entire Contract Period, except that prior to the completion of the Phase 1 Section Works, the Concessionaire's responsibility for operations,

maintenance and rehabilitation of the Phase 1 Section will only extend to such operations, maintenance and rehabilitation activities not otherwise required to be performed by the Phase 1 Contractor under the terms of the Phase 1 Section Contract.

Without in any way limiting the operations, maintenance and rehabilitation obligations of the Concessionaire provided in this Part 1 and in this Agreement, the Concessionaire shall provide maintenance services consistent with the level of service on highway sections adjacent to the Concession Highway and in coordination with existing contractors retained by the Province.

In respect of rehabilitation of the Concession Highway, the Concessionaire shall implement sound asset management practices and shall be guided by asset preservation performance specifications as specified in Section 1.9(c) to limit the consumption of assets during the Contract Period.

The general scope of operations, maintenance and rehabilitation required under this Agreement for the entire Contract Period includes, but is not limited to the following:

- routine operations, maintenance and rehabilitation of the entire Concession Highway;
- bridge / structure maintenance and rehabilitation;
- roadside maintenance including signs;
- drainage maintenance;
- winter maintenance;
- avalanche control and weather stations;
- emergency maintenance;
- traffic maintenance;
- line marking;
- electrical asset maintenance;
- slope stabilization;
- third party claims;
- record management and reporting;
- interface with stakeholders, communities, general public, emergency services, and the Province; and
- supply and placement of all materials to achieve the above.

1.6 Operations, Maintenance and Rehabilitation – Scope of Responsibility

1.6.1 Western Limit

The western limit of the Concessionaire's responsibility for operations, maintenance and rehabilitation of the Project Facilities, the Site and the Adjacent Areas is the junction of the Trans Canada Highway and Route 95 in Golden.

1.6.2 Eastern Limit

The eastern limit of the Concessionaire's responsibility for operations, maintenance and rehabilitation of the Project Facilities, the Site and the Adjacent Areas is the western boundary of Yoho National Park.

1.6.3 Side Roads

The Concessionaire shall in accordance with this Agreement and these O,M&R Output Specifications operate, maintain and rehabilitate the Side Roads to the specifications set out in these O,M&R Output Specifications. At present the Side Roads are all gravel surfaced with a bridge structure located on Beaverfoot Road. Information concerning the Side Roads is reproduced in Table 1.6.3 which follows.

**Table 1.6.3
Adjacent Side Roads**

Road No.	Road Name	Dir	Class	Length (km)	
				Road Class 1-7	Lane Class 1-7
198	Beaverfoot Road	N	5D	1.869	1.869
199	Kicking Horse Road	E	7D	1.900	1.900
74	Wapta Road	E	7D	1.034	1.034
Total =				4.803	4.803

1.7 Performance Measures

Performance of this Agreement will involve three levels of Performance Measures, which underpin the technical objectives and outcomes to be achieved by the Concessionaire in respect of its operation, maintenance and rehabilitation obligations over the Contract Period. They comprise:

- (a) Key Performance Measures;
- (b) Asset Preservation Performance Measures; and
- (c) Operational Performance Measures.

These levels of Performance Measures are further defined in Highway Asset Preservation Performance Measures for Highway Concessions the terms of which are incorporated by reference in these O,M&R Output Specifications.

1.8 Quality Management

The Concessionaire is required to have an ISO 9001: 2000 certified Quality Management System for the operations and maintenance aspects of the services under this O,M&R Output Specification and is required to manage and operate in conformance with the terms of that system. The Province will audit the performance of the Concessionaire in terms of its certified Quality Management System and this Agreement requirements.

Schedule 6 [Quality Management] defines the quality management requirements that apply for operations, maintenance and rehabilitation that include the requirement that the Concessionaire prepare:

- (a) Operations, Maintenance and Rehabilitation Quality Management Plan;
- (b) Environmental Quality Management Plan; and
- (c) Traffic Quality Management Plan.

1.9 Operations, Maintenance and Rehabilitation

The Concessionaire's obligations to operate, maintain and rehabilitate the Project Facilities, the Site and the Adjacent Areas during the Contract Period, in addition to those indicated in these O,M&R Output Specifications are defined and contained in the following documents, all of the provisions and requirements of which are incorporated by reference into these O,M&R Output Specifications unless specifically excluded:

- (a) Highway Maintenance Specifications for Highway Concessions;
- (b) Highway Corridor Management Specifications for Highway Concessions;
- (c) Highway Asset Preservation Performance Measures for Highway Concessions;
and
- (d) Local Area Specifications.

The Highway Asset Preservation Performance Measures for Highway Concessions do not apply for Phase 2 during the Original Service Period. The Highway Asset Preservation Performance Measures for Highway Concessions will apply to the Phase 1 Section once the Phase 1 Section Works have achieved Substantial Completion.

1.10 Reporting Requirements

Operations, maintenance and rehabilitation reporting requirements are defined and contained in the following documents the provisions and requirements of which are incorporated by reference into these O,M&R Output Specifications unless specifically excluded:

- (a) Reporting Specifications for Highway Concessions;
- (b) Highway Maintenance Specifications for Highway Concessions;
- (c) Highway Corridor Management Specifications for Highway Concessions;
- (d) Highway Asset Preservation Performance Measures for Highway Concessions;
and
- (e) Local Area Specifications.

1.11 Operations and Maintenance Plan

The Concessionaire shall provide a plan (the "Operations and Maintenance Plan") that describes the procedures for the following key categories of operational or maintenance activity delivered during the term of the Concession. Each procedure must:

- (a) be aligned with the Key Performance Measures and Operational Performance Measures;
- (b) comply with Sections 1.5 and 1.6 of this Appendix 1;
- (c) produce outcomes as prescribed in the Highway Maintenance Specifications for Highway Concessions;
- (d) produce outcomes as prescribed in the Highway Corridor Management Specifications for Highway Concessions; and
- (e) comply with the Local Area Specifications.

The procedures will address, at a minimum, the following key categories of delivery of the operations and maintenance services required under this Agreement and these O,M&R Output Specifications:

- (f) maintenance specifications;
- (g) work identification and planning;
- (h) stakeholder communication;
- (i) environmental compliance;
- (j) site safety; and
- (k) emergency response.

The Operations and Maintenance Plan must encompass all aspects of delivery of the operations and maintenance services required under this Agreement including these O,M&R Output Specifications during the Contract Period and must include at a minimum:

- (l) introduction of the service activities and their connection;
- (m) relationship to the Annual Management Plan;
- (n) for each activity the following information is required:
 - (i) key functional steps identified and described;
 - (ii) person responsible for the activity outcome;
 - (iii) person(s) providing the service;
 - (iv) resources and plant;
 - (v) inputs and outputs;
 - (vi) reporting requirements;
 - (vii) quality measures;
 - (viii) program or response times; and
 - (ix) identification if a quality method statement is required.

1.12 Asset Management Plan

The Concessionaire shall provide to the Province a plan (the "Asset Management Plan") that shall be updated annually and that describes the procedures for achieving the specified Key Performance criteria (e.g., Rutting, Roughness, etc.) delivered during the term of the Concession.

The Asset Management Plan must include as a minimum:

- (a) description of and the manner in which the Key Performance Indicators will be achieved;
- (b) identify the intervention criteria for each Key Performance Indicator;
- (c) identify the deterioration rate and factors affecting the Key Performance Indicators;
- (d) identify and describe the asset management approach in respect to maintenance versus rehabilitation;
- (e) identify any areas of risk and describe mitigation measures;

- (f) describe the approach for asset condition inspection, work identification, programming, prioritization of work;
- (g) describe the use of asset management systems and processes including any innovations to improve performance;
- (h) describe the process for deciding work programs in terms of both the Asset Management Plan and the Five-Year Management Plan as updated by the Concessionaire; and
- (i) describe the resources employed to deliver the Maintenance Works and the labour, plant, materials and facilities associated therewith and in delivering any other physical works including labour, plant, materials and facilities.

The Concessionaire must also comply with the Local Area Specifications the terms and provisions of which are incorporated by reference in these O,M&R Output Specifications unless specifically excluded.

SCHEDULE 7
OPERATION, MAINTENANCE, REHABILITATION
AND END OF TERM REQUIREMENTS

Part 2

O,M&R REQUIREMENTS

In addition to the specifications identified in Part 1 of Schedule 7 [O,M&R Output Specifications], the Concessionaire shall comply with the operation, maintenance and rehabilitation requirements identified in Appendix 1 to this Part 2. For greater certainty, the terms of Appendix 1 to this Part 2 shall supplement and enhance, but shall not detract from, the Concessionaire's obligations under Part 1 of Schedule 7 [O,M&R Output Specifications] and Schedule 23 [Concessionaire Proposal Extracts]. Commitments of the Concessionaire relating to the operations, maintenance and rehabilitation of the Project contained in Schedule 23 [Concessionaire Proposal Extracts] shall be included as O,M&R Requirements for the purposes of the Concession Agreement and this Part 2 whether or not specifically referred to in Appendix 1 to this Part 2. In the event of conflicting specifications or requirements, the specifications or requirements setting out a higher standard or more onerous specification or requirement shall apply.

Headings and numbered paragraphs contained in Appendix 1 to this Part 2 are provided for clarification and convenience only and in no way limit the obligations of the Concessionaire.

Terms utilized in Appendix 1 to this Part 2 which are not defined in Schedule 1 [Definitions and Interpretation] shall have the meanings ascribed to them in Appendix 1 to Part 1 of Schedule 7 [O,M&R Output Specifications].

Appendix 1 to Part 2 of Schedule 7

The O,M&R Requirements to be complied with by the Concessionaire as part of its obligations to the Province under the Concession Agreement shall be set out in the following parts:

1. Highway Running Surface and Winter Maintenance
2. Emergency Response
3. Asset Management System and Processes
4. Rehabilitation

1. Highway Running Surface and Winter Maintenance

1.1 If at any time additional resources are required for the Concessionaire to meet its operation, maintenance and rehabilitation obligations under the Concession Agreement including this Schedule 7, the Concessionaire will in a timely manner:

- Bring in additional staff and/or equipment from Revelstoke or Quesnel
- Hire additional operators or other staff using established hiring practices
- Acquire more or replacement equipment
- Purchase materials using bulk purchasing agreements or open quote system
- Add hired equipment
- Add subcontractors with extensions to existing contracts or advertise new tenders

2. Emergency Response

2.1 The Concessionaire will staff a radio room around the clock in Revelstoke from November 1 to March 31 to provide 24/7 toll-free access road condition information to the public, two-way communication with crews on the road, and crew call-outs as required for emergencies. A contracted answering service will provide this same service for the summer months and provides backup to the Revelstoke radio room in winter. In busy periods additional operators will be brought in by the Concessionaire.

3. Asset Management System and Processes

3.1 The Concessionaire will develop, implement, and maintain an Asset Management System (AMS) for the pavements, structures and related highway infrastructure. For the highway running surfaces, a pavement management system will be an integrated component of the AMS, with the overall AMS covering the running surfaces, bridges and

structures, signs, lighting, etc. At the outset, this will involve setting up a simple inventory of all assets, their location and current condition.

The AMS will be used to track all routine maintenance activities, and the condition and disposition of pavement assets. The Concessionaire will maintain files of all structure inspection records and associated remedial work so that a continuous history of each structure is available throughout the concession duration.

4. Rehabilitation

- 4.1 Project-level evaluations will be completed by a qualified pavement engineer to establish the most appropriate major maintenance and rehabilitation approach.
- 4.2 Rehabilitation contractors will be selected at time of performance in part upon their ability to provide an ISO 9001:2000 certified process.

SCHEDULE 7

OPERATION, MAINTENANCE, REHABILITATION

AND END OF TERM REQUIREMENTS

Part 3

CONCESSION HIGHWAY INTELLECTUAL PROPERTY

None.

SCHEDULE 7
OPERATION, MAINTENANCE, REHABILITATION
AND END OF TERM REQUIREMENTS

Part 4

END OF TERM REQUIREMENTS

Capitalized terms used in this Part 4 that are defined in the Highway Asset Preservation Performance Measures for Highway Concessions included in the Ministry's Standards and that have not been otherwise defined in Schedule 1 [Definitions and Interpretation] shall have the meanings ascribed to them in the Highway Asset Preservation Performance Measures for Highway Concessions (located on the Resource Documents DVD) which forms part of the Ministry's standards.

Upon the Expiry Date each element of the Project Facilities must comply in all respects with the relevant requirements specified in this Part 4.

1. COMPLIANCE WITH ASSET PRESERVATION AND OTHER PERFORMANCE MEASURES

In addition to and without limiting any other requirements under this Part 4 applicable to particular elements of the Project Facilities, at the Expiry Date each element of the Project Facilities must be in the condition in which it is required to be maintained in accordance with the provisions of the O,M&R Output Specifications and the O,M&R Requirements and the other provisions of this Agreement and in accordance with the Ministry's standards including the following which are located on the Resource Documents DVD:

- Highway Asset Preservation Performance Measures for Highway Concessions;
- Highway Maintenance Specifications for Highway Concessions;
- Highway Corridor Management Specifications for Highway Concessions; and
- Local Area Specifications.

2. DETERMINATION OF REMAINING SERVICE LIFE ("RSL")

For purposes of this Part 4, the RSL of an asset component will be determined in accordance with the following:

RSL = (Expected Service Life x Condition Adjustment) – Age

Where:

Expected Service Life	is the expected service life of the asset component in years taking into account the historic performance of similar construction. The expected service life will be a function of treatment type, design, materials, and construction workmanship.
Age	is the age of the asset component in years between the date of establishment and the current date.
Condition Adjustment	is the adjustment to Expected Service Life to account for current asset condition, past utilization and historic performance of the asset component. The adjustment process will be carried out using Ministry accepted methodologies that exist at the Commencement Date (as amended pursuant to a Province Change) in consultation with the Concessionaire.

The RSL is assessed for each homogeneous section of the Concession Highway and the lengths of the Concession Highway with the same RSL are accumulated to produce a profile line over the entire range of RSL's (the "RSL Distribution").

3. HIGHWAY RUNNING SURFACES

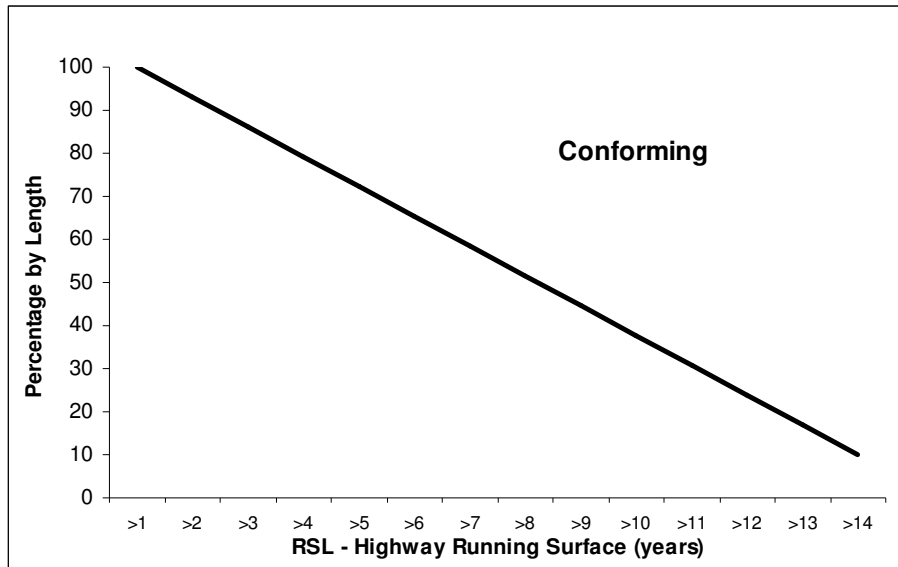
The following requirement applies to all asphalt paved highway running surfaces at the Expiry Date:

- RSL Distribution - The RSL Distribution must ensure a consistent forward rehabilitation program beyond the Expiry Date.

Calculated on a lane-km basis, the distribution of RSL at the Expiry Date must exist on or above the limits described in Figure 3.1. The calculations include asphalt paved traffic lanes and asphalt paved bridge deck wearing surfaces. Patches (areas less than 400 m²) within the traffic lane will be deemed to have a surface age the same as the adjacent surface. Where this is not clearly discernable, then the oldest surface age at the location will be used in the calculations.

At the Expiry Date, the following criteria must be achieved with respect to the RSL Distribution (see Figure 3.1):

- all surfacing (100% of the Concession Highway) must have an RSL exceeding 1 year;
- 10% of the Concession Highway must have an RSL in excess of 14 years; and
- the RSL for the remainder of the highway asphalt running surface must not fall below a straight line interpolation at any point between the two points described.

Figure 3.1: Remaining Service Life Distribution

4. **STRUCTURES – COMPONENT CONDITION**

The requirements in this paragraph 4 apply to all bridges, major retaining walls, major culverts, tunnels, snowsheds and major sign structures.

At the Expiry Date, the following provisions for all Structures (as that term is defined in the Highway Asset Preservation Performance Measures for Highway Concessions) will apply:

- Structure components condition – Component Condition Rating less than or equal to 3.0 as in accordance with the requirements described in the Highway Asset Preservation Performance Measures for Highway Concessions document.
- The bridge deck wearing surface RSL for asphalt wearing surfaces at the Expiry Date will be based on the criteria described in paragraph 3 above;

In addition, at the Expiry Date, the following requirements for any Structures for which construction was completed after the year 2000 will apply:

- Structure components condition – No portion of any component type will have a Condition State - Structures worse than Fair condition (3.0) and the average Component Condition Rating of each component type must be lower than 2.5 as described in the Highway Asset Preservation Performance Measures for Highway Concessions document.
- The bridge deck wearing surface RSL for concrete wearing surfaces at the Expiry Date must be at least 15 years.

5. **STRUCTURES – NETWORK COMPONENT CONDITION**

The requirements in this paragraph 5 apply to all bridges, major retaining walls, major culverts, tunnels and major sign structures.

At the Expiry Date, the following provisions for all Structures will apply:

- Network component condition – the condition must be such that no action (i.e., physical works or remediation strategies) is required at the Expiry Date for all Network Component Measures described in Table 3.3.4 of the Highway Asset Preservation Performance Measures for Highway Concessions document.

6. **DRAINAGE AND DEBRIS CONTROL STRUCTURES**

At the Expiry Date, the following requirements for Drainage and Debris Control Structures will apply:

- Structure condition – Structure Condition Index (Drainage Structures) less than or equal to 3.4 as described in the Highway Asset Preservation Performance Measures for Highway Concessions document.
- Network component condition – the condition must be such that no action (i.e., physical works or remediation strategies) is required at the Expiry Date for all Network Component Measures described in Table 3.4.4 of the Highway Asset Preservation Performance Measures for Highway Concessions document.

7. **ROCKFALL CATCHMENT STRUCTURES**

At the Expiry Date, the following provision for the Concession Highway will apply:

- Rockfall catchment structures must function as intended in the original design criteria set out in the Concessionaire's Design and Construction Requirements and Design and Construction Output Specifications and must be in good condition.

8. **AVALANCHE CONTROL STRUCTURES**

At the Expiry Date, the following provision for the Concession Highway will apply:

- Avalanche control structures must function as intended in the original design criteria set out in the Concessionaire's Design and Construction Requirements and Design and Construction Output Specifications and must be in good condition.

9. **ELECTRICAL SYSTEMS**

At the Expiry Date, the following requirement for Electrical Systems will apply:

- The Concessionaire is required to achieve or exceed the design life expectations based on Good Industry Practice and standards of the electrical system components as described in the Highway Asset Preservation Performance Measures for Highway Concessions document.

10. INSPECTIONS

The Initial Inspection, the Second Inspection and the End of Term Inspection, and all assessments and inspections in connection therewith, will be carried out using the Ministry's current assessment and inspection methodology as more particularly described in Part 1 of Schedule 7 [O,M&R Output Specifications] and the data inputs for such methodology shall be based on information obtained over the Contract Period. To the extent there is a dispute between the Province and the Concessionaire as to the final result of the application of such assessment, such dispute shall be resolved in accordance with the Disputes Resolution Procedure set out in Schedule 16 [Disputes Resolution Procedure].

SCHEDULE 7
OPERATION, MAINTENANCE, REHABILITATION
AND END OF TERM REQUIREMENTS

Part 5

TRAFFIC MANAGEMENT OUTPUT SPECIFICATIONS (ENHANCED SERVICE PERIOD)

During the Enhanced Service Period, the Concessionaire shall provide traffic management for the entire Concession Highway in accordance with the requirements set out in the Local Area Specifications.

SCHEDULE 7
OPERATION, MAINTENANCE, REHABILITATION
AND END OF TERM REQUIREMENTS

Part 6

TRAFFIC MANAGEMENT REQUIREMENTS (ENHANCED SERVICE PERIOD)

There are no requirements under this Part 6 other than the requirement that the Concessionaire comply with the provisions of Part 5 of Schedule 7 [Traffic Management Output Specifications (Enhanced Service Period)] and with its commitments under Schedule 23 [Concessionaire Proposal Extracts].

SCHEDULE 8

REPRESENTATIVES

Part 1

PROVINCE'S REPRESENTATIVE

The functions to be performed by the Province's Representative under this Agreement include the following:

1. monitor the design, construction, completion, commissioning, testing and maintenance of the Works by means of the system of inspection, testing, surveys, certification and review set out, *inter alia*, in Sections 11 [Design and Construction], 13 [Inspection and Completion], 14 [Operation, Maintenance and Rehabilitation], 15 [Traffic Management and Police Services], 16 [Signing, Traffic Control Devices and Communications], 23 [Quality Management], 25.2 [Audit and Inspection], 26 [Monitoring of Performance], Part 3 of Schedule 5 [Design and Certification Procedure], and Part 2 of this Schedule 8 [Review Procedure];
2. attend site and other progress and technical meetings (including in the company of such other Province representatives, consultants, contractors and/or advisors as the Province's Representative considers appropriate) and receive and review minutes and reports;
3. review reports and records of safety, health and welfare and damage or injury to persons and to property;
4. audit the Concessionaire's Quality Management System in accordance with Section 23 [Quality Management] and monitor and verify the operation of such Quality Management System by, *inter alia*, carrying out spot checks and making independent inspections and tests of any Plant or material including any Plant or material which fails any test or is suspected of not complying with the requirements of this Agreement;
5. review and comment upon the Quality Documentation and any additional parts of or changes to the Quality Documentation submitted by the Concessionaire in accordance with Section 23 [Quality Management] and periodically review the Quality Documentation with the Concessionaire;
6. monitor and review schedules prepared by the Concessionaire or the Contractor, including the Project Schedule and the Works Schedule, and all amended or varied versions thereof, and require reports or revised Project Schedules in accordance with Section 12.2 [Variations to Project Schedule] and reports or revised Works Schedules in accordance with Section 12.3 [Preparation of Works Schedule];
7. receive, consider and make decisions with respect to applications by the Concessionaire and other matters relating to delay under Section 12.6 [Delay];

8. receive and consider and, where the Province's Representative considers it appropriate, provide the Independent Certifier with submissions with respect to applications for the issue of Substantial Completion Certificates, and cause to be made all necessary inspections to be carried out in connection therewith and with the Concessionaire, jointly cause the Independent Certifier to carry out the functions set out in Section 13.1 [Substantial Completion Certificate];
9. receive and consider and, where the Province's Representative considers it appropriate, provide the Independent Certifier with submissions with respect to applications for the issue of Final Completion Certificates, and cause to be made all necessary inspections to be carried out in connection therewith and with the Concessionaire, jointly cause the Independent Certifier to carry out the functions set out in Section 13.2 [Final Completion Certificate];
10. receive, consider and make decisions with respect to applications in respect of traffic and other signage and traffic control devices and take other actions required in accordance with Section 16 [Signing, Traffic Control Devices and Communications];
11. settle with the Concessionaire the form of and receive from the Concessionaire the reports referred to in Part 2 of Schedule 15 [Reports] (including construction progress reports, Monthly Reports, Annual Reports and such other reports as may be required in accordance with the provisions of this Agreement, including to comply with the Requirements of Interested Parties) and any other reports or information provided by the Concessionaire and, where applicable, serve notices of objection to such reports in accordance with Section 24.4.1;
12. inspect and audit the records referred to in Part 1 of Schedule 15 [Records];
13. monitor and review the obtaining and, where applicable, renewal or extension by the Concessionaire of Permits, Licences and Approvals and compliance by the Concessionaire with Permits, Licences and Approvals and the Requirements of Interested Parties;
14. monitor the performance by the Concessionaire of the Concessionaire's Environmental Obligations and compliance by the Concessionaire with its other obligations under Section 8.13 [Concessionaire's Environmental Obligations] and Section 8.18 [Environmental Matters];
15. [not used];
16. request Province Changes and Additional Works where the Province so instructs and receive and negotiate on behalf of the Province consequential applications by the Concessionaire relating to additional payment, and countersign Province Change Certificates;
17. notify the Concessionaire when a Concessionaire Change is required in order that the Concessionaire will comply with its obligations under this Agreement;
18. receive, consider and make decisions with respect to applications by the Concessionaire for revisions to or substitutions for the O,M&R Requirements;

19. receive and deal with any request by the Concessionaire for a revision to the Traffic Management Requirements and submissions by the Concessionaire of the Traffic Management Plan and Schedules of Lane Closures and revisions thereto in accordance with Section 15 [Traffic Management and Police Services];
20. negotiate with the Concessionaire the need for or location of any Measurement Points in accordance with the provisions of Part 8 of Schedule 10 [Monitoring and Measurement] and receive and deal with any notice of installation or replacement of any Measuring Equipment;]
21. monitor the measurement of traffic by means of the system of inspections, verifications, testing, surveys, certification, review and correction of defects set out in, and deal with any other matters arising under, Part 8 of Schedule 10 [Monitoring and Measurement];
22. receive and deal with all matters submitted in accordance with the Review Procedure, including requests for a Concessionaire Change;
23. receive notification of discovery of any items referred to in Section 18.2 [Items of Geological, Historical or Archaeological Interest or Value] and give instructions to the Concessionaire in accordance with Section 18.2 [Items of Geological, Historical or Archaeological Interest or Value] as to the manner of dealing with the same;
24. receive notices and other information and give instructions in respect of environmental matters in accordance with Section 8.18 [Environmental Matters], including notification of discovery of any Existing Contamination referred to in Section 8.18.12 and instructions given to the Concessionaire in accordance with Section 8.18.12 as to the manner of dealing with the same;
25. receive details of, review and comment on insurances in accordance with Section 20.1 [Insurance Cover];
26. receive policies or other documents relating to insurances and evidence of insurances in accordance with Section 20 [Insurance] and Part 1 of Schedule 11 [Insurance Requirements];
27. inspect the register of insurance claims kept by the Concessionaire in accordance with Section 20.6 [Claims];
28. receive and respond to proposed amendments to the Project Documents in accordance with Section 2.3.2 or any appointment of or change in the identity of the Contractor, Designer, Checking Team, Operator, Quality Management Representative or Audit Team;
29. receive or give any notice in accordance with Section 26 [Monitoring of Performance] and take any actions in respect of any such notice or any remedial measures;
30. receive and deal with matters submitted in respect of any Eligible Change in accordance with Schedule 13 [Changes];
31. negotiate on behalf of the Province the amount of any compensation payable under Section 44 [Compensation on Termination];

32. receive and, as instructed by the Province, deal with any request by the Concessionaire in respect of a Subsequent Scheme or an Improvement;
33. receive and deal with all matters in respect of a claim of Force Majeure;
34. liaise with the Concessionaire and other persons, including Interested Parties, as required by any Liaison Procedure;
35. perform any functions under the Technical Requirements which are to be carried out by the Province's Representative, the Province or a representative of the Province;
36. receive notification of the discovery of any protected species and how the Concessionaire intends to deal with them;
37. receive and consider any certificates of compliance required by the Technical Requirements;
38. participate in any Initial, Second or End of Term Inspection and exercise the other functions specified in Section 19 [End of Term];
39. receive and consider applications for the issue of Reinstatement Certificates and Renewal Certificates, make or cause to be made all necessary inspections in connection therewith, and issue Reinstatement Certificates and Renewal Certificates when appropriate;
40. receive, consider and make decisions with respect to any applications for approval of any matters referred to in the Technical Requirements or any other provisions of this Agreement as requiring the approval of the Province or the Province's Representative;
41. conduct any other general or specific inspections of the Project Facilities (including the Works), the Site and the Adjacent Areas in the discretion of the Province's Representative;
42. perform such other functions as may be ascribed to the Province's Representative under this Agreement including the Technical Requirements; and
43. such other functions under this Agreement as may from time to time be designated by the Province, acting reasonably,

all in accordance with the provisions of this Agreement.

SCHEDULE 8**REPRESENTATIVES****Part 2****REVIEW PROCEDURE****1. REVIEW PROCEDURE**

A submission by or through the Concessionaire pursuant to Section 47.1 [Review Procedure] will be made to the Province's Representative, accompanied by the proposed document (including any Design Data) or statement of a proposed course of action, and the following procedure will apply:

- 1.1 The Province's Representative will as soon as practicable and in any event within 15 Working Days (or such other period as may be specified in this Agreement for any particular case and, in respect of complex issues, such longer period as the Province may require, acting reasonably) of actual receipt thereof return one copy of the relevant submission document endorsed "received" or (subject to paragraph 3 of this Part 2) "received with comments" or (subject to paragraph 3 of this Part 2) "comments" as appropriate. In the case of any submission document returned endorsed with "comments" or "received with comments", the Province's Representative may also transmit any such comments to the Concessionaire by fax. In the event the Province determines that a particular issue is sufficiently complex so as to require a longer time period for review, it will so notify the Concessionaire as soon as practicable and in any event within the 15 Working Day period, or other specified period, as applicable.
- 1.1A The Concessionaire shall review the context of the submission with the Province's Representative in advance of making the submission. The Province's Representative will determine (acting reasonably) if the submission represents a complex issue. If the Province's Representative determines the submission to represent a complex issue, the Concessionaire shall provide the Province's Representative with 10 Working Days advance notice of its intent to submit. In the case of a complex issue, the 15 Working Days period for review will commence only after the 10 Working Days advance notice period has ended.
- 1.2 The Concessionaire may proceed to implementation in the case of a submission document endorsed "received". The documents or proposed course of action accompanying a submission document endorsed "received with comments" will be amended by the Concessionaire in accordance with such comments but need not be re-submitted to the Province's Representative. The documents or proposed course of action accompanying a submission document endorsed "comments" will be revised by the Concessionaire and re-submitted to the Province's Representative together with the relevant submission document, unless the Concessionaire disputes that any such comment is on grounds permitted by this Agreement, in which case either the Concessionaire or the Province's Representative may refer the matter to the Disputes Resolution Procedure. For greater certainty, any comment made by the Province's

Representative on grounds permitted by this Agreement will be deemed to have been reasonably made.

- 1.3 If the Province's Representative fails to return any such submission document (including any re-submitted submission document) duly endorsed within 15 Working Days (or such other period as may be specified in this Agreement for any particular case and, in respect of complex issues, such longer period as the Province may require, acting reasonably) of actual receipt thereof, then it will be deemed to have returned such submission document to the Concessionaire marked "received". In the event the Province determines that a particular issue is sufficiently complex so as to require a longer time period for review, it will so notify the Concessionaire as soon as practicable and in any event within the 15 Working Day period, or other specified period, as applicable.

For greater certainty, the Province's Representative may, in reviewing and dealing with any matter, refer such matter to the Province or any of its employees, agents, advisors, consultants, or contractors or subcontractors of any tier, and any review, consideration, decision, belief, opinion or determination referred to herein in relation to the Province's Representative may be that of the Province's Representative or any such person upon whose review, consideration, decision, belief, opinion or determination the Province's Representative relies. The Province's Representative may also, by written notice to the Concessionaire from time to time, designate an appropriately qualified employee, advisor, consultant, contractor or other person to whom any specific submission or class of submissions is to be delivered by the Concessionaire (including, in the case of a submission in respect of a Proposal under Part 3 of Schedule 5 [Design and Certification Procedure]), a Technical Appraisal Authority and the Concessionaire will comply with any such designation in making submissions under the Review Procedure and, where a submission is delivered in accordance with any such designation, will provide the Province's Representative with a copy of the submission made to the designated person at the same time as the submission is delivered to the designated person.

2. FURTHER INFORMATION

If the Province's Representative so requires in writing, the Concessionaire will promptly submit any further or other information, data and documents (including details of calculations and comments of the Designer and/or Checking Team) which may be reasonably required by the Province's Representative for a full appreciation of a submission under paragraph 1 of this Part 2 and its implications, and will take all such steps as may reasonably be required to satisfy the Province's Representative that the proposed document or proposed course of action complies with this Agreement and is appropriate. If the Province's Representative makes a written request for further or other information, data and/or documents under this paragraph, then the time periods referred to in paragraph 1 of this Part 2 will be suspended until such time as the Concessionaire has submitted such requested information, data and/or documents to the Province's Representative in satisfaction of the request, at which time the time periods referred to in paragraph 1 of this Part 2 will recommence.

3. GROUNDS OF OBJECTION

The Province's Representative may make comments in relation to any submission in accordance with any express provision set out elsewhere in this Agreement or on the ground that the proposed document or course of action would conflict or be inconsistent with the

Province's or any other Governmental Authority's statutory or other duties or functions or with any provisions of this Agreement or in breach of any Laws and Regulations or Legal Requirements, or on the ground that the Concessionaire has not provided all information, data and documents required (including any information, data and documents required by the Province's Representative pursuant to paragraph 2) in respect of such submission. In relation to the submissions set out below, the Province's Representative may make comments as follows:

- 3.1 in relation to a document or proposed course of action submitted to the Review Procedure pursuant to Section 2.3.2, the Province's Representative may make comments only on the grounds that the adoption of such document or proposed course of action would, or might reasonably be expected to:
 - 3.1.1 materially and adversely affect the performance by the Concessionaire of its obligations under this Agreement;
 - 3.1.2 materially and adversely affect any right of the Province or BCTFA under this Agreement;
 - 3.1.3A adversely affect the ability of the Province or BCTFA to enforce any such right or to perform its obligations under this Agreement or the ability of the Province or BCTFA or any other Governmental Authority to carry out any duty or function;
 - 3.1.3 without limiting paragraph 3.1.2 or 3.1.3A, increase any liability of the Province or BCTFA, whether actual or contingent, present or future, known or unknown (including any liability under Section 44 [Compensation on Termination] or Schedule 13 [Changes]); or
 - 3.1.4 adversely affect the financial position, liquidity or solvency of the Concessionaire or any of its Shareholders;
- 3.2 in relation to a submission of a proposed Concessionaire Change, the Province's Representative may make comments only on the grounds that:
 - 3.2.1 the proposed Concessionaire Change is not in accordance with Good Industry Practice or would be prejudicial to the safety of Users;
 - 3.2.2 the proposed Concessionaire Change is likely, in the reasonable opinion of the Province's Representative, to prejudice the Substantial Completion of the Works by the Scheduled Substantial Completion Date or to prejudice the Final Completion of the Works by the Scheduled Final Completion Date;
 - 3.2.3 following the proposed Concessionaire Change the Concessionaire's Design and Construction Requirements would not achieve compliance with the Design and Construction Output Specifications or would reasonably be expected to be less likely to achieve compliance with the Design and Construction Output Specifications than the Concessionaire's Design and Construction Requirements prior to such Concessionaire Change;

- 3.2.4 following the proposed Concessionaire Change the Works would not be of a quality or standard of performance or value (to the Province) equal to or better than that of the Works required under the Design and Construction Output Specifications and the Concessionaire's Design and Construction Requirements prior to such Concessionaire Change; or
 - 3.2.5 the proposed Concessionaire Change would or might reasonably be expected to increase any liability of the Province or BCTFA, whether actual or contingent, present or future, known or unknown (including any liability under Section 44 [Compensation on Termination]);
- 3.3 in relation to a submission of a revised Project Schedule in accordance with Section 12.2 [Variations to Project Schedule] or the initial or a revised Works Schedule in accordance with Section 12.3 [Preparation of Works Schedule], the Province's Representative may make comments only on the grounds that compliance with the revised Project Schedule or Works Schedule (as the case may be):
- 3.3.1 is not practicable;
 - 3.3.2 would breach or be inconsistent with:
 - 3.3.2.1 the Requirements of Interested Parties;
 - 3.3.2.2 the Design and Construction Output Specifications or the Concessionaire's Design and Construction Requirements;
 - 3.3.2.3 Sections 12.2.1.2.1 to 12.2.1.2.3 inclusive or Section 12.4 [Works Schedule]; or
 - 3.3.2.4 any other obligation of the Concessionaire under this Agreement; or
 - 3.3.3 without limiting paragraph 3.3.2 of this Part 2, would adversely affect or might reasonably be expected to adversely affect the performance by the Concessionaire of its obligations under Section 12.5 [Achievement of Completion];
- 3.4 in relation to a submission of a proposed revision to or substitution for the O,M&R Requirements, the Province's Representative may make comments only on the grounds that:
- 3.4.1 the proposed revision or substitution is not in accordance with Good Industry Practice or would be prejudicial to the safety of Users;
 - 3.4.2 the conduct of the Operations in accordance with the proposed revision or substitution would not or would be less likely to achieve compliance with the O,M&R Output Specifications or would be likely to provide for compliance to a lower standard or quality than the conduct of the Operations in accordance with the O,M&R Requirements prior to such proposed revision or substitution;
 - 3.4.3 the proposed revision or substitution would or might reasonably be expected to increase any liability of the Province or BCTFA, whether actual or

contingent, present or future, known or unknown (including any liability under Section 44 [Compensation on Termination]);

- 3.5 in relation to the submission of a Schedule of Lane Closures pursuant to Section 15.2B or a proposed revision of a Schedule of Lane Closures pursuant to Section 15.3.2 or 15.3.3, the Province's Representative may make comments in respect of a period or periods of Lane Closure requested by the Concessionaire only on the grounds that:
- 3.5.1 such Lane Closure is not in accordance with the Traffic Management Output Specifications, the Traffic Management Requirements, or the Requirements of Interested Parties, or any other provisions of this Agreement;
 - 3.5.2 there has been material non-compliance by the Concessionaire with the requirements of this Agreement regarding liaison between the Concessionaire and the Phase 1 Section Contractor and/or any contractor on the Phase 3 Section (if any) and/or any other person, including any Interested Party, with respect to traffic management;
 - 3.5.3 such Lane Closure would be inconsistent with any duty or function of the Province or any other Governmental Authority (including as a highway authority, street authority or traffic authority);
 - 3.5.4 the rescheduling of such Lane Closure would materially ameliorate any adverse effect of such Lane Closure on traffic flow on any Connecting Road(s) (whether or not the Province is the highway authority for the relevant Connecting Road(s)); or
 - 3.5.5 the duration of the requested period of Lane Closure exceeds the period reasonably required for the relevant works to be carried out;
- 3.6 in relation to a submission of a proposal in respect of the layout, location, type, size, colour and content of any traffic signs or other signs in accordance with the provisions of Section 16.2 [New Signs], the Province's Representative may make comments only on the grounds:
- 3.6.1 that the proposals or any of them do not satisfy the requirements of Section 16 [Signage, Traffic Control Devices and Communications];
 - 3.6.2 that the proposals or any of them are not in accordance with Good Industry Practice;
 - 3.6.3 that the proposals or any of them do not comply with the relevant provisions of the Technical Requirements;
 - 3.6.4 of safety, taking into account, *inter alia*, the nature of the Concession Highway and the proposed location of the relevant sign(s);
 - 3.6.5 of the efficiency of strategic routing for the public highway network or any part thereof; or

- 3.6.6 that the signs do not comply with the reasonable requirements of the federal government;
- 3.7 in relation to a submission in respect of insurance in accordance with Section 20.1.2, the Province's Representative may make comments only on the grounds that such insurance would not comply with any provision of Section 20 [Insurance] or Part 1 of Schedule 11 [Insurance Requirements];
- 3.8 in relation to a submission of any Quality Documentation or part of any Quality Documentation or any changes to any Quality Documentation, the Province's Representative may make comments only on the grounds that such Quality Documentation, parts or changes or the Quality Management System which they reflect would not comply with or would be inconsistent with the requirements of Section 23 [Quality Management] or Schedule 6 [Quality Management] or any other provision of this Agreement;
- 3.9 in relation to a submission in respect of the installation or replacement of any component of the Measuring Equipment in accordance with the provisions of Part 8 of Schedule 10 [Monitoring and Measurement], the Province's Representative may make comments only on the grounds that the proposed Measuring Equipment would not meet the specification set out in the Technical Requirements or would not comply with any other requirement of this Agreement;
- 3.10 in relation to the submission of a proposal for any Improvement in accordance with Part 4 of Schedule 14 [Improvements], the Province's Representative may make comments only on the grounds that:
 - 3.10.1 the safety of Users or others would be adversely affected;
 - 3.10.2 the utility of the Concession Highway to any class of Users would be adversely affected; or
 - 3.10.3 the Improvement would fail to meet the then current and relevant standards or requirements of the Province in relation to the design, construction, maintenance, rehabilitation or operation of Comparable Controlled Access Highways;
- 3.11 in relation to any submission of Design Data in accordance with the Design and Certification Procedure, the Province's Representative may make comments only on the grounds that such Design Data:
 - 3.11.1 is not in accordance with the Technical Requirements or (where there are no applicable Technical Requirements) with Good Industry Practice and the then current and relevant standards or requirements of the Province in relation to the design, construction, maintenance, rehabilitation and operation of Comparable Controlled Access Highways;
 - 3.11.2 if implemented would adversely affect the safety of Users or others; or
 - 3.11.3 does not comply with any other provision of this Agreement;

- 3.12 [not used];
- 3.13 in relation to a submission of a proposed revision to the Traffic Management Requirements in accordance with Section 15.1.2 of this Agreement or paragraph 1.3 of this Part 2, the Province's Representative may make comments only on the grounds that:
- 3.13.1 the proposed revision is not in accordance with Good Industry Practice or the Traffic Management Output Specifications or any other provision of this Agreement;
 - 3.13.2 there has been non-compliance in any material respect by the Concessionaire with the requirements of this Agreement regarding liaison between the Concessionaire and the Phase 1 Section Contractor and/or any contractor on the Phase 3 Section (if any) and/or any other person, including any Interested Party, with respect to traffic management; or
 - 3.13.3 the proposed revision would implement any change to the Traffic Management Requirements that is inconsistent with any duty or function of the Province or any other Governmental Authority (including as a highway authority, street authority or traffic authority);
- 3.14 in relation to a submission of the initial Management Plan or any update thereof in accordance with Section 14.10 [Five-Year Management Plan], the Province's Representative may make comments only on the grounds that:
- 3.14.1 the proposed Management Plan or update does not comply with and satisfy the requirements set out in Part 3 of Schedule 15 [Five-Year Management Plan]; or
 - 3.14.2 management of the Operations in accordance with the proposed Management Plan or update would be inconsistent with any of the Concessionaire's obligations under or any other provision of this Agreement or would not be conducive to achieving compliance with the O,M&R Output Specifications, the O,M&R Requirements and the other Technical Requirements or otherwise would not result in the delivery of the Operations in the manner and to the quality and standards contemplated by this Agreement;
- 3.15 in relation to a submission of an updated privacy code in accordance with Section 14.11 [Privacy Code], the Province's Representative may make comments only on the grounds that the updated privacy code does not comply with the requirements of all applicable Privacy Legislation and other Laws and Regulations and Legal Requirements and the provisions of Schedule 21 [Privacy Protection] or is inconsistent with any other provision of this Agreement;
- 3.16 in relation to a submission of the initial Unstable Slope Mitigation Program or any update and extension thereof in accordance with Section 14.7.2, the Province's Representative may make comments only on the grounds set out in Section 14.7.4;

- 3.17 in relation to a submission of a Reinstatement Plan in accordance with Section 20.6A.2, the Province's Representative may make comments only on the grounds that:
- 3.17.1 the Reinstatement Works described in the Reinstatement Plan are not adequate to restore the Project Facilities, the Site and the Adjacent Areas to substantially the same condition they were in prior to the occurrence of the relevant damage or destruction (subject, where applicable, to any Province Change) with a minimum of traffic disruption, delay or inconvenience to Users, or are not in accordance with the Technical Requirements and Good Industry Practice;
 - 3.17.2 the schedule for the execution of the Reinstatement Works set out in the Reinstatement Plan is not consistent with the obligations of the Concessionaire under Section 20.6A [Restoration and Reinstatement] having regard to all relevant circumstances including the Requirements of Interested Parties and the public interest in restoring the Project Facilities to a condition safe for use by the public without traffic restrictions as soon as reasonably possible, or would adversely affect or might reasonably be expected to adversely affect the performance by the Concessionaire of its obligations under Section 12.5 [Achievement of Completion];
 - 3.17.3 implementation of the Reinstatement Plan would adversely affect any right of the Province or BCTFA under this Agreement or the ability of the Province or BCTFA to enforce any such right or to perform their obligations under this Agreement or the ability of the Province or BCTFA or any other Governmental Authority to carry out any duty or function;
 - 3.17.4 without limiting paragraph 3.17.3 of this Part 2, implementation of the Reinstatement Plan would increase any liability of the Province or BCTFA, whether actual or contingent, present or future, known or unknown (including any liability under Section 44 [Compensation on Termination] or Schedule 13 [Changes];
 - 3.17.5 implementation of the Reinstatement Plan would adversely affect the safety of Users or others; or
 - 3.17.6 implementation of the Reinstatement Plan would not be in accordance with the Technical Requirements or would be inconsistent with or result in non-compliance with any other provision of this Agreement;
- 3.18 in relation to a submission of the initial Records Management Protocol or any update thereof in accordance with Section 25.4.1, the Province's Representative may make comments only on the grounds that the initial or updated Records Management Protocol (as the case may be) is materially inconsistent with or will not meet any of the requirements set forth in Section 25 [Records] or any other provisions of this Agreement;
- 3.19 in relation to a submission of an update to the complaints protocol in accordance with Section 30.1.1, the Province's Representative may make comments only on the grounds that the complaints protocol as so updated will not meet the requirements of

the Provincial Ombudsman and Good Industry Practice and the reasonable requirements of the Province;

- 3.20 in relation to a submission of proposed procedures for backing-up and storage in safe custody of data, materials and documents referred to in Section 49.1 [Design and Other Data] or any variation in such procedures pursuant to Section 49.3.2, the Province's Representative may make comments only on the grounds that the proposed procedures, or the procedures after giving effect to the proposed variation, would not be in accordance with Good Industry Practice and the reasonable requirements of the Province or would be inconsistent with any other provision of this Agreement;
- 3.21 in relation to a submission of a proposed Design Management Plan in accordance with Section 11.2.1, the Province's Representative may make comments only on the grounds that the proposed Design Management Plan does not include the components and information (including with respect to submissions of drawings and other Design Data and design reviews, meetings, audits and progress reports) required by, or otherwise does not comply with the requirements for such plan set forth in, the Design and Construction Output Specifications; and
- 3.22 in relation to the submission of the proposed Traffic Management Plan in accordance with Section 15.2A.1 or of a proposed revision to the Traffic Management Plan (including any proposed revision to a sub-plan included in the Traffic Management Plan) in accordance with Section 15.2A.2, the Province's Representative may make comments only on the grounds that:
- 3.22.1 the proposed Traffic Management Plan or revision is inconsistent or does not comply with the requirements set forth in the Traffic Management Output Specifications or with the Traffic Management Requirements, the Traffic Quality Management Plan or any other Technical Requirements or relevant provisions of this Agreement;
- 3.22.2 there has been non-compliance in any material respect by the Concessionaire with the requirements of this Agreement regarding liaison between the Concessionaire and the Phase 1 Section Contractor and/or any contractor on the Phase 3 Section (if any) and any other person, including any Interested Party, with respect to traffic management;
- 3.22.3 the proposed Traffic Management Plan or revision is inconsistent with any duty or function of the Province or any other Governmental Authority (including as a highway authority, street authority or traffic authority); or
- 3.22.4 the proposed Traffic Management Plan or revision is not in accordance with Good Industry Practice or would be prejudicial to the safety of Users.

4. OPTIONAL STANDARDS

In respect of the Ministry's Standards or other standards or specifications which are incorporated into the Technical Requirements and which contain options from which a choice can be made, any choice by the Concessionaire of any one option set out in such standards or specifications will satisfy the Technical Requirements in that regard (unless any such

option is excluded or limited by the terms of the Technical Requirements) and the Province's Representative will not object to such choice (of such option) on that basis. If the Concessionaire has notified such choice to the Province's Representative and subsequently proposes to substitute another such option, it will request a Concessionaire Change. If the Province's Representative requires an option set out in the above standards or specifications to be adopted which the Concessionaire has not chosen, the Province's Representative will request a Province Change.

5. NO OBJECTION

A reference in this Agreement to there being "no objection" under the Review Procedure in relation to a particular matter means that such matter has been submitted in accordance with the provisions of this Part 2 and that:

- 5.1 the matter has been returned (or deemed returned) with an endorsement of "received";
- 5.2 the matter has been returned with an endorsement "received with comments" and the matter having been amended in accordance with such comments; or
- 5.3 the only comments of the Province's Representative outstanding and not satisfied are comments that have been determined pursuant to the Disputes Resolution Procedure to be comments that the Province's Representative is not entitled to make or that the Concessionaire is not required to comply with.

6. ADHERENCE

Documents or courses of action the subject of a submission pursuant to paragraph 1 of this Part 2 and returned (or deemed returned) endorsed:

- 6.1 "received" shall be adhered to; or
- 6.2 "received with comments" shall, once amended in accordance with the comments or as determined pursuant to the Disputes Resolution Procedure, be adhered to,

except to the extent that there has been no objection to any subsequent change or amendment thereto submitted in accordance with the Review Procedure.

7. CONCESSIONAIRE CHANGE CERTIFICATE

The Concessionaire's Representative will issue a Concessionaire Change Certificate in respect of a Concessionaire Change to which there has been no objection in accordance with the Review Procedure, and the Concessionaire will submit a copy of the Concessionaire Change Certificate in duplicate to the Province's Representative who will, as a matter of record only, return to the Concessionaire's Representative a receipted copy thereof.

SCHEDULE 8**REPRESENTATIVES****Part 3****KEY INDIVIDUALS AND SENIOR INDIVIDUALS**

The key individuals are the following:

Position

Concessionaire Operational Director
 Concessionaire Project Director
 Quality Management Representative
 Operations and Maintenance Quality Control Manager
 DBJV Quality Control Manager
 Design Manager
 Finance Manager
 Construction Manager

Name

Mike Kelly, Concessionaire
 Steve Perfect, Concessionaire
 James Turnham, Turnham
 Justin Burgers, H M C
 Paul Goryl, Parsons
 Greg Orsolini, Parsons
 Dennis Rotmann-Ishay, Bilfinger
 Gordon French, Flatiron

The senior individuals are the following:

Position

Design Quality Control Manager
 Construction Quality Control Manager
 Environmental Monitor
 Bridge Design
 Bridge Design Check
 Hydraulics
 Wall Design
 Roadway Design
 Drainage and Utility Design
 Electrical Design
 Traffic Engineering
 Environmental Compliance/Permitting
 Avalanche Mitigation and Design
 Geotechnical Design

Name

Oscar Aguas, Parsons
 Paul Goryl, Parsons
 Conrad Pilon, Golder
 JD Deschamps, Parsons
 Hugh Hawk, Delcan
 Colin Kristiansen, Delcan
 Joost Meyboom, Delcan
 Paul Agate, Stantec
 Richard Rebneris, Stantec
 Soolim Co, Stantec
 Barry Erlandson, Parsons
 Dave Munday, Golder
 Aurthur Mears, Columbia
 Don Lister, Golder

Position

Geotechnical Design
 Pavement Design
 Landscaping Design
 DBJV Project Manager
 Operations and Maintenance Manager
 Operations and Maintenance Supervisor
 Asset Manager
 Avalanche & Weather Program Manager
 Risk Manager
 Safety Manager
 Traffic Manager
 Demolition Superintendent

Name

Duncan Wyllie, W&N
 Hana Prilesky, Golder
 Doug Thomson, Lombard
 Bob Heath, Flatiron
 Joe Wrobel, H M C
 William Houseman, H M C
 William Houseman, H M C
 Phil Hein, Columbia
 Steve Perfect, Concessionaire
 Nick Kakasenko, Flatiron
 Nick Kakasenko, Flatiron
 Gordon French, Flatiron

Legend:

“Bilfinger” – Bilfinger Berger BOT Inc.
 “Columbia” – Columbia Mountain Recreation
 “Delcan” – Delcan Corporation
 “Flatiron” – Flatiron Constructors Canada Ltd.
 “Golder” – Golder Associates Ltd.
 “H M C” – H M C Services Inc.
 “Lombard” – Lombard North Group
 “Parsons” – Parsons Overseas Company of Canada Ltd.
 “Stantec” – Stantec Consulting Ltd.
 “Turnham” – Turnham Consulting Inc.
 “W&N” – Wyllie & Norrish Rock Engineers Ltd.

SCHEDULE 9

[NOT USED]

SCHEDULE 10**PAYMENTS****Part 1****INTERPRETATION****1. REFERENCES**

Unless otherwise indicated, a reference in any Part of this Schedule to a paragraph is a reference to the specified paragraph in the Part of this Schedule in which the reference appears.

2. CONFLICTS

In the case of any conflict, ambiguity or inconsistency between the definitions contained in this Schedule and in Schedule 1 [Definitions and Interpretation] of this Agreement, the definitions in this Schedule will prevail for purposes of this Schedule.

SCHEDULE 10**PAYMENTS****Part 2****OSP PERFORMANCE PAYMENT****1. OSP PERFORMANCE PAYMENT**

1.1 The OSP Performance Payment consists of the Original Service Period Availability & Safety Payment (“OSP Availability & Safety Payment”).

1.2 The OSP Performance Payment will accrue from the first day of the Original Service Period to and including the last day of the Original Service Period.

2. [NOT USED]**3. OSP AVAILABILITY & SAFETY PAYMENT**

3.1 The OSP Availability & Safety Payment in respect of a Contract Year n (“ $OASP$ ”) will be determined in accordance with the following formula:

$$OASP_n = GOASP_n - TD_n - UD_n - PSD_n$$

where:

$OASP_n$ = The OSP Availability & Safety Payment (\$) for the Contract Year n .

$GOASP_n$ = The Gross OSP Availability & Safety Payment for the Contract Year n , being:

$$[\$2,000,000 * d_n / 365.25] * [1 + (IF_{OASP} * PPI_n)]$$

where:

d_n = The number of days in Contract Year n .

IF_{OASP} = The indexation factor for Contract Year n of the Original Service Period determined in accordance with paragraph 3.3 of Part 2 below.

PPI_n = Performance Price Index in Contract Year n determined in accordance with the following:

$$PPI_n = \left[0.55 * \frac{LI_n - LI_{bd}}{LI_{bd}} \right] + \left[0.07 * \frac{FI_n - FI_{bd}}{FI_{bd}} \right] + \left[0.38 * \frac{RI_n - RI_{bd}}{RI_{bd}} \right]$$

Where:

LI_n = the Labour Index for Contract Year n .

LI_{bd} = the Labour Index for the month of the year in which the Financial Base Date occurs.

FI_n = the Fuel Index for Contract Year n .

FI_{bd} = the Fuel Index for the month of the year in which the Financial Base Date occurs.

RI_n = the Residual Index for Contract Year n .

RI_{bd} = the Residual Index for the month of the year in which the Financial Base Date occurs.

Provided always that if either the Labour, Fuel or Residual Index for a Contract Year is published with a different base from that of the same index for the previous Contract Year, the affected index shall be adjusted so that the index for each Contract Year has a common base prior to including the index in the calculation of the PPI.

“Fuel Index” means the annual average of the diesel fuel price index for British Columbia published by Statistics Canada (Statistics Canada Table 329-0047) in respect of a Contract Year or, if not available, of such other similar index agreed between the parties as the most appropriate index for the purposes of this Schedule 10 or, failing agreement within 21 days, as determined pursuant to the Disputes Resolution Procedure.

“Labour Index” means annual average of the Fixed-weighted Indexes of Average Hourly Earnings, for all Employees, for Selected Industries, Canada, Provinces and Territories: British Columbia (Statistics Canada, Catalogue No. 72-002-XPB – Table 3) in respect of a Contract Year or, if not available, such other similar public sector wage index agreed between the parties as the most appropriate index for the purposes of this Schedule 10 or, failing agreement within 21 days, as determined pursuant to the Disputes Resolution Procedure.

“Residual Index” means the annual average of the non-residential building construction price index for Vancouver, British Columbia published by Statistics Canada (Statistics Canada Table 327-0039) in respect of a Contract Year or if not available, of such other similar index agreed between the parties as the most appropriate index for the purposes of this Schedule 10 or, failing agreement within 21 days, as determined pursuant to the Disputes Resolution Procedure.

TD_n = The Traffic Disruption Charge (\$) for the Contract Year n , calculated in accordance with paragraph 2.1 of Part 4 of this Schedule.

UD_n = The Unavailability Deductions (\$) for the Contract Year n , calculated in accordance with paragraph 2.1 of Part 5 of this Schedule, provided that the references to IF_{EASP} in paragraph 2.1 of Part 5 shall be read as references to IF_{OASP} for the purposes of this paragraph 3.1 of Part 2.

PSD_n = The Performance / Safety Deductions (\$) for the Contract Year n , calculated in accordance with paragraph 3.2 of Part 6 of this Schedule, provided that the references to IF_{EASP} in paragraph 3.2 of Part 6 shall be read as references to IF_{OASP} for the purposes of this paragraph 3.1 of Part 2.

3.2 If the OSP Availability & Safety Payment for a Contract Year calculated in accordance with the above formula is a negative amount, it will be deemed to be zero.

3.3 The Province will pay a monthly installment payment of the OSP Availability & Safety Payment (“**Monthly OSP Availability & Safety Payment**”) to the Concessionaire during the Original Service Period in accordance with Section 33.5.1 of this Agreement. The Monthly OSP Availability & Safety Payment for month m in Contract Year n (“ $MOASP_m$ ”) will be determined in accordance with the following formula:

$$MOASP_m = [(\$5479.45 * d_m) - UD_m - PSD_m - TD_m] * [1 + (IF_{OASP} * PPI_{n-1})]$$

where:

d_m = The number of days in month m .

UD_m = The monthly Unavailability Deduction, calculated in accordance with paragraph 2.1 of Part 5 of this Schedule.

PSD_m = The monthly Performance / Safety Deduction, calculated in accordance with paragraph 3.2 of Part 6 of this Schedule.

IF_{OASP} = The indexation factor for Contract Year n of the Original Service Period determined in accordance with Table 1 below.

Table 1 - IF_{OASP}

Contract Year during the Original Service Period (Contract Year n)	Indexation Factor (IF_{OASP})
1 st Contract Year	DELETED
2 nd Contract Year	DELETED
3 rd Contract Year	DELETED
4 th Contract Year and thereafter	DELETED

PPI_{n-1} = Performance Price Index for the Contract Year immediately preceding Contract Year n , determined in the same manner as PPI_n in paragraph 3.1 of Part 2 above except that all references to Contract Year n relating to the determination of PPI_n are replaced with Contract Year $n-1$.

TD_m = The monthly Traffic Disruption Charge, calculated in accordance with paragraph 2.2 of Part 4 of this Schedule.

- 3.4 If the Monthly OSP Availability & Safety Payment for a month calculated in accordance with the above formula is a negative amount, it will be deemed to be zero.
- 3.5 The annual aggregate of all Monthly OSP Availability & Safety Payments, monthly Traffic Disruption Charges, monthly Unavailability Deductions and monthly Performance / Safety Deductions will be taken into account in the Annual Reconciliation Notice of that Contract Year, and adjustments for over-payment or under-payment will be made in accordance with Sections 32 [Calculation of Payments] and 33 [Invoicing and Payment] of this Agreement.

SCHEDULE 10**PAYMENTS****Part 3****ESP PERFORMANCE PAYMENT****1. ESP PERFORMANCE PAYMENT**

1.1 The ESP Performance Payment will accrue from the first day of the Enhanced Service Period until the last day of the Enhanced Service Period.

1.2 The ESP Performance Payment (\$) in respect of a Contract Year n (" EPP_n ") will be calculated in accordance with the following formula:

$$EPP_n = EASP_n + TVP_n - PSD_n$$

where:

$EASP_n$ = The ESP Availability & Safety Payment (\$) for the Contract Year n , calculated in accordance with paragraph 2 of Part 3 of this Schedule.

TVP_n = The Traffic Volume Payment (\$) for the Contract Year n , calculated in accordance with paragraph 3 of Part 3 of this Schedule.

PSD_n = The Performance / Safety Deductions (\$) for the Contract Year n , calculated in accordance with paragraph 3.2 of Part 6 of this Schedule.

1.3 If the ESP Performance Payment for any Contract Year calculated in accordance with the above formula is a negative amount, it will be deemed to be zero.

1.4 The Province will pay a monthly installment payment of the ESP Performance Payment ("**Monthly ESP Performance Payment**") to the Concessionaire during the Enhanced Service Period in accordance with Section 33.5.1 of this Agreement. The Monthly ESP Performance Payment for month m in Contract Year n (" $MEPP_m$ ") will be determined in accordance with the following formula:

$$MEPP_m = \left[\left[GEASP_m - UD_m - PSD_m \right] * \left[1 + \left(IF_{EASP} * PPI_{n-1} \right) \right] \right] + \left[\frac{TVP_{n-1}}{12} \right]$$

where:

$GEASP_m$ = Has the meaning given in paragraph 2.1 of Part 3 of this Schedule.

UD_m = The monthly Unavailability Deduction calculated in accordance with paragraph 2.1 of Part 5 of this Schedule.

PSD_m = The monthly Performance / Safety Deduction calculated in accordance with paragraph 3.2 of Part 6 of this Schedule.

IF_{EASP} = The indexation factor given in paragraph 2.1 of Part 3 of this Schedule.

PPI_{n-1} = Performance Price Index for the Contract Year immediately preceding Contract Year n , determined in the same manner as PPI_n in paragraph 3.1 of Part 2 above except that all references to Contract Year n relating to the determination of PPI_n are replaced with Contract Year $n-1$.

TVP_{n-1} = The Traffic Volume Payment for the Contract Year preceding Contract Year n , except that if Contract Year n is the first Contract Year of the Enhanced Service Period, the traffic revenue forecast for the first Contract Year of the Enhanced Service Period provided by the Concessionaire in its Base Case Financial Model and Financial Model will be used for the calculation.

1.5 If the Monthly ESP Performance Payment for a month calculated in accordance with the formula in paragraph 1.4 above is a negative amount, it will be deemed to be zero.

1.6 All Monthly ESP Performance Payments payable by the Province under this paragraph 1 are subject to withholding by the Province of the Monthly Retention in accordance with paragraph 1.1 of Part 3A of this Schedule.

1.7 The annual aggregate of all Monthly ESP Performance Payments, all monthly Unavailability Deductions and all monthly Performance / Safety Deductions will be taken into account in the Annual Reconciliation Notice of that Contract Year, and adjustments for over-payment or under-payment will be made in accordance with Sections 32 [Calculation of Payments] and 33 [Invoicing and Payment] of this Agreement.

2. ESP AVAILABILITY & SAFETY PAYMENT

2.1 The ESP Availability & Safety Payment for Contract Year n in the Enhanced Service Period (" $EASP_n$ ") is calculated as follows:

$$EASP_n = GEASP_n - UD_n$$

where:

$GEASP_n$ = The gross enhanced service period availability and safety payment (\$) for Contract Year n , determined in accordance with the following formula:

$$GEASP_n = \sum_{m=1}^q GEASP_m * [1 + (IF_{EASP} * PPI_n)]$$

where:

q = The number of months in Contract Year n , rounded to the nearest four decimal places.

$GEASP_m$ = The gross enhanced service period availability and safety payment (\$) for a month in Contract Year n , determined in accordance with Table 2 below.

IF_{EASP} = The indexation factor for Contract Year n determined in accordance with Table 2 below.

Table 2 – $GEASP_m$ and IF_{EASP}

Contract Year during the Enhanced Service Period (Contract Year n)	Gross monthly ESP Availability & Safety Payment ($GEASP_m$) (\$) <small>(If m is less than one month, this amount will be reduced proportionately)</small>	Indexation Factor (IF_{EASP})
1 st Contract Year	DELETED	DELETED
2 nd Contract Year	DELETED	DELETED
3 rd Contract Year	DELETED	DELETED
4 th Contract Year	DELETED	DELETED
5 th Contract Year	DELETED	DELETED
6 th Contract Year	DELETED	DELETED
7 th Contract Year	DELETED	DELETED
8 th Contract Year	DELETED	DELETED
9 th Contract Year	DELETED	DELETED
10 th Contract Year	DELETED	DELETED
11 th Contract Year	DELETED	DELETED
12 th Contract Year	DELETED	DELETED

Contract Year during the Enhanced Service Period (Contract Year n)	Gross monthly ESP Availability & Safety Payment ($GEASP_m$) (\$) (If m is less than one month, this amount will be reduced proportionately)	Indexation Factor (IF_{EASP})
13 th Contract Year	DELETED	DELETED
14 th Contract Year	DELETED	DELETED
15 th Contract Year	DELETED	DELETED
16 th Contract Year	DELETED	DELETED
17 th Contract Year	DELETED	DELETED
18 th Contract Year	DELETED	DELETED
19 th Contract Year	DELETED	DELETED
20 th Contract Year	DELETED	DELETED
21 st Contract Year	DELETED	DELETED
22 nd Contract Year	DELETED	DELETED
23 rd Contract Year	DELETED	DELETED
24 th Contract Year	DELETED	DELETED
25 th Contract Year	DELETED	DELETED
26 th Contract Year	DELETED	DELETED

- PPI_n = Has the meaning given in paragraph 3.1 of Part 2 of this Schedule.
- UD_n = Unavailability Deductions (\$) for the Contract Year n , determined in accordance with paragraph 2.1 of Part 5 of this Schedule.

3. TRAFFIC VOLUME PAYMENT

- 3.1 Traffic Volume Payment for the Contract Year n (“TVP _{n} ”) is determined by the following formula:

$$TVP_n = \left[\sum_{y=1}^5 (B_y * R_y) \right] * [1 + (IF_{TVPn} * PPI_n)]$$

where:

- B_1 = The Passenger Vehicle Equivalent in Contract Year n falling within Band 1, where Band 1 is calculated in accordance with paragraph 3.2 of Part 3 of this Schedule.
- B_2 = The Passenger Vehicle Equivalent in Contract Year n falling within Band 2, where Band 2 is calculated in accordance with paragraph 3.2 of Part 3 of this Schedule.
- B_3 = The Passenger Vehicle Equivalent in Contract Year n falling within Band 3, where Band 3 is calculated in accordance with paragraph 3.2 of Part 3 of this Schedule.
- B_4 = The Passenger Vehicle Equivalent in Contract Year n falling within Band 4, where Band 4 is calculated in accordance with paragraph 3.2 of Part 3 of this Schedule.
- B_5 = The Passenger Vehicle Equivalent in Contract Year n falling within Band 5, where Band 5 is calculated in accordance with paragraph 3.2 of Part 3 of this Schedule.
- R_1 = The per PVE rate (\$) determined in accordance with Table 3 below.
- R_2 = The per PVE rate (\$) determined in accordance with Table 3 below.
- R_3 = The per PVE rate (\$) determined in accordance with Table 3 below.
- R_4 = The per PVE rate (\$) determined in accordance with Table 3 below.
- R_5 = The per PVE rate (\$) determined in accordance with Table 3 below.
- IF_{TVPn} = The indexation factor for Contract Year n , determined in accordance with Table 3 below.

Table 3 – Per PVE Rate

[PVE rates for this table are taken from the Base Case Financial Model]

Contract Year during the Enhanced Service Period (Contract Year <i>n</i>)	Per PVE rate (R ₁) (\$)	Per PVE rate (R ₂) (\$)	Per PVE rate (R ₃) (\$)	Per PVE rate (R ₄) (\$)	Per PVE rate (R ₅) (\$)	Indexation Factor (<i>IF_{TVP}</i>)
1 st Contract Year	DELETED	DELETED	DELETED	DELETED	DELETED	DELETED
2 nd Contract Year	DELETED	DELETED	DELETED	DELETED	DELETED	DELETED
3 rd Contract Year	DELETED	DELETED	DELETED	DELETED	DELETED	DELETED
4 th Contract Year	DELETED	DELETED	DELETED	DELETED	DELETED	DELETED
5 th Contract Year	DELETED	DELETED	DELETED	DELETED	DELETED	DELETED
6 th Contract Year	DELETED	DELETED	DELETED	DELETED	DELETED	DELETED
7 th Contract Year	DELETED	DELETED	DELETED	DELETED	DELETED	DELETED
8 th Contract Year	DELETED	DELETED	DELETED	DELETED	DELETED	DELETED
9 th Contract Year	DELETED	DELETED	DELETED	DELETED	DELETED	DELETED
10 th Contract Year	DELETED	DELETED	DELETED	DELETED	DELETED	DELETED
11 th Contract Year	DELETED	DELETED	DELETED	DELETED	DELETED	DELETED
12 th Contract Year	DELETED	DELETED	DELETED	DELETED	DELETED	DELETED
13 th Contract Year	DELETED	DELETED	DELETED	DELETED	DELETED	DELETED
14 th Contract Year	DELETED	DELETED	DELETED	DELETED	DELETED	DELETED
15 th Contract Year	DELETED	DELETED	DELETED	DELETED	DELETED	DELETED
16 th Contract Year	DELETED	DELETED	DELETED	DELETED	DELETED	DELETED
17 th Contract Year	DELETED	DELETED	DELETED	DELETED	DELETED	DELETED
18 th Contract Year	DELETED	DELETED	DELETED	DELETED	DELETED	DELETED
19 th Contract Year	DELETED	DELETED	DELETED	DELETED	DELETED	DELETED
20 th Contract Year	DELETED	DELETED	DELETED	DELETED	DELETED	DELETED
21 st Contract Year	DELETED	DELETED	DELETED	DELETED	DELETED	DELETED
22 nd Contract Year	DELETED	DELETED	DELETED	DELETED	DELETED	DELETED
23 rd Contract Year	DELETED	DELETED	DELETED	DELETED	DELETED	DELETED
24 th Contract Year	DELETED	DELETED	DELETED	DELETED	DELETED	DELETED
25 th Contract Year	DELETED	DELETED	DELETED	DELETED	DELETED	DELETED
26 th Contract Year	DELETED	DELETED	DELETED	DELETED	DELETED	DELETED

PPI_n = Has the meaning given in paragraph 3.1 of Part 2 of this Schedule.

3.2 The Passenger Vehicle Equivalent in Contract Year n will be divided into 5 traffic bands (“**Traffic Bands**”). The PVE rate (R_1, R_2, R_3, R_4 and R_5) that applies to each Traffic Band during that Contract Year n will be calculated in accordance with Table 4 below.

Table 4 – Traffic Band Rates

Traffic Bands	Traffic Band Description	Rate per PVE (\$) ($R_i$)
Band 1	$0 \leq \text{Band 1} \leq PVE_1 * d_n$	R_1
Band 2	$PVE_1 * d_n < \text{Band 2} \leq PVE_2 * d_n$	R_2
Band 3	$PVE_2 * d_n < \text{Band 3} \leq PVE_3 * d_n$	R_3
Band 4	$PVE_3 * d_n < \text{Band 4} \leq PVE_4 * d_n$	R_4
Band 5	$PVE_4 * d_n < \text{Band 5}$	R_5

Where:

- (a) PVE_1, PVE_2, PVE_3 and PVE_4 have the meanings given in Appendix 2 of this Schedule;
- (b) R_1, R_2, R_3, R_4 and R_5 have the meanings given above; and
- (c) d_n is the number of days in Contract Year n .

SCHEDULE 10**PAYMENTS****Part 3AA****PRE-COMPLETION PERFORMANCE PAYMENT**

1. Subject to the Concessionaire complying with the provisions of Section 33.2 [Semi-Annual Invoices for Pre-Completion Performance Payments], the Province will pay the Concessionaire the Pre-Completion Performance Payment in accordance with the provisions of this Part 3AA.
2. The Pre Completion Performance Payment will consist of semi-annual payments payable in accordance with Section 33.5.1 of this Agreement. Each semi-annual payment will be equal to 50% of the incremental Eligible Costs as defined in Appendix 1 to this Schedule 10 incurred by the Concessionaire at the time of payment.
3. The maximum aggregate Pre-Completion Performance Payment payable under this Agreement is \$62.5 million for Concessionaire Eligible Costs.
4. The Pre-Completion Performance Payment is intended to be a contribution towards Eligible Costs incurred by the Concessionaire in respect of capital works relating to the Works.

SCHEDULE 10

PAYMENTS

Part 3A

PAYMENT RETENTIONS

- 1.1 The Province may withhold the following:
- (a) from any installment payment of ESP Performance Payment due to the Concessionaire in any month after the Scheduled Final Completion Date until the Final Completion Date, an amount, determined in accordance with paragraph 1.2 of this Part 3A, as security for ensuring Final Completion of the Works on or before the Scheduled Final Completion Date (“**Completion Retention**”); and
 - (b) from any installment payment of the ESP Performance Payment due to the Concessionaire in any month after the Substantial Completion Date until the Termination Date, an amount, determined in accordance with paragraph 1.5 of this Part 3A, as security for the performance by the Concessionaire of its obligations to undertake capital rehabilitation work and maintain the Project Facilities in the condition required by the O,M&R Requirements and the O,M&R Output Specification (“**Asset Condition Retention**”),

together, the “**Monthly Retention**”.

- 1.2 The Completion Retention for a month m (“ CR_m ”) will be calculated as follows:

$$CR_m = \text{DELETED} * d$$

Where:

- d = The number of days between:
- (a) the Scheduled Final Completion Date and the first day of month m , whichever is the later; and
 - (b) the last day of the month m or Final Completion, whichever is the earlier.

- 1.3 The Province will return to the Concessionaire the Completion Retention within 30 days of the Final Completion Date.

- 1.4 If:
- (a) the Project Facilities do not comply with the asset condition requirements (the “**Quality Management Plan Requirements**”) set out in the Highway Asset Preservation Performance Measures and Local Area Specifications referred to in

paragraph 1.9 of Part 1 of Schedule 7 [O,M&R Output Specifications], as determined by the Province acting reasonably; or

- (b) the Concessionaire fails to comply with the current Asset Management Plan or Five-Year Management Plan, as determined by the Province acting reasonably; or
- (c) the Concessionaire fails to submit an annual update to the Asset Management Plan as required by paragraph 1.2 of Appendix 1 to Part 1 of Schedule 7 [O,M&R Output Specifications] or Five-Year Management Plan as required by Part 3 of Schedule 15 [Five-Year Management Plan],

the Province shall withhold the Asset Condition Retention from the date of an occurrence of one of the events described in (a) to (c) above until:

- (d) in the case of the event described in (a) above, the Project Facilities are brought to a condition that meets or exceeds the Quality Management Plan Requirements, as determined by the Province acting reasonably; or
- (e) in the case of the event described in (b) above, the compliance by the Concessionaire with the requirements of the current Asset Management Plan or Five-Year Management Plan, as determined by the Province acting reasonably; or
- (f) in the case of the event described in (c) above, the submission of the annual update to the Asset Management Plan in accordance with paragraph 1.2 of Appendix 1 to Part 1 of Schedule 7 [O,M&R Output Specifications] or Five-Year Management Plan in accordance with Part 3 of Schedule 15 [Five-Year Management Plan].

1.5 The Asset Condition Retention for a month m (" ACR_m ") in Contract Year n will be calculated as follows:

$$ACR_m = (ARE_n * 2) - AGAR$$

Where:

ARE_n = In the case of the event described in paragraph 1.4(a) of this Part 3A: the cost of carrying out (or if work is being undertaken, of completing) the Maintenance Works or other works of renewal, reconstruction, repair and reinstatement in order to ensure that the Project Facilities will meet or exceed the Quality Management Plan Requirements;

In the case of the event described in paragraph 1.4(b) of this Part 3A: the cost of carrying out (or if work is being undertaken, of completing) the Maintenance Works or other works required to comply with the applicable Asset Management Plan and Five-Year Management Plan; or

In the case of the event described in paragraph 1.4(c) of this Part 3A: the amount determined by the Province which is required to undertake the

annual update to the Asset Management Plan or the Five-Year Management Plan.

The cost will be determined every Contract Year, within the first 20 Business Days of Contract Year n in accordance with paragraph 1.4 of this Part 3A.

AGAR = The aggregate of all Asset Condition Retentions made in Contract Year n prior to month m .

- 1.6 Unless otherwise agreed between the parties, ARE_n will be determined on the basis of the costs of the relevant Maintenance Works or other works set out in the Concessionaire's Asset Management Plan for Contract Year n . If any such cost is not in the Asset Management Plan or the Five-Year Management Plan is not submitted, it will be the Province's estimate of such cost, acting reasonably.

If the Concessionaire does not agree with the Province's estimate of such cost, the Concessionaire will notify the Province in writing within 20 Working Days of notification by the Province of its estimate, giving details of the grounds of its disagreement and the Concessionaire's estimate of the cost, failing which the Concessionaire will be deemed to have agreed to the Province's estimate.

If no agreement is reached between the Concessionaire and the Province on the amount of such cost within 20 Working Days of the Province's receipt of the Concessionaire's estimate, either the Province or the Concessionaire may refer the matter to the Disputes Resolution Procedure for determination of the cost of the works. Within 20 Working Days of the determination of such amount in accordance with the Dispute Resolution Procedure, the Province and the Concessionaire will take such steps as are necessary to adjust for any over or under retention.

- 1.7 The Province will return to the Concessionaire the Asset Condition Retention within 20 Working Days of receiving an asset condition report referred to in paragraph 3.2 of the Reporting Specifications for Highway Concessions referred to in paragraph 1.10 of Part 1 of Schedule 7 [O,M&R Output Specifications] or other evidence satisfactory to the Province confirming that the Project Facilities meet or exceeds the Quality Management Plan Requirements.
- 1.8 If the Monthly Retention in any month exceeds the monthly installment of the ESP Performance Payment to which the Concessionaire is otherwise entitled for that month, then the Province will be entitled to set-off the shortfall against any subsequent monthly payments of the ESP Performance Payment in addition to the Monthly Retention that is otherwise to be withheld from such subsequent monthly payments of the ESP Performance Payment. For greater certainty, such retentions will not be affected by or subject to any readjustment on account of any subsequent reconciliation of the monthly payments of an ESP Performance Payment pursuant to Section 32 [Calculation of Payments].
- 1.9 The Concessionaire will not be entitled to any interest or compensation on the Monthly Retention.

SCHEDULE 10

PAYMENTS

Part 4

TRAFFIC DISRUPTION CHARGES

1. The Concessionaire is solely responsible for maintaining the flow of traffic on the Concession Highway during the prosecution of the Works. A Traffic Disruption Charge will apply to all Lane Closures within the Phase 2 Section due to the prosecution of the Works which are not Excepted Closures or a Scheduled Stoppage or a Random Minor Interruption which is determined to be non-compliant.
- 2.1 The Traffic Disruption Charge for the Contract Year n , will be calculated in accordance with the following formula:

$$TD_n = \sum_{m=1}^q TD_m$$

q = The number of months in Contract Year n .

TD_m = The Traffic Disruption Charge for a month or part of month in Contract Year n calculated in accordance with paragraph 2.2 below.

- 2.2 The Traffic Disruption Charge for a month or part of month in Contract Year n will be calculated in accordance with the following formula:

$$TD_m = \sum_{i=1}^x (TD_i \times TDD_i)$$

where:

x = The number of occurrences in month m in Contract Year n .

TD_i = Traffic Disruption Rate (\$/min) applicable to an occurrence i , assessed by the Province's Representative in accordance with Table 5 below.

TDD_i = Time Outside Permitted Timeframe or Duration (in minutes).

Table 5 – Traffic Disruption Charge

Type of Stoppage	Time Outside Permitted Timeframe or Duration	Traffic Disruption Rate
Daytime Stoppage	First 5-Minutes	DELETED
	Second 5-Minutes	DELETED

Type of Stoppage	Time Outside Permitted Timeframe or Duration	Traffic Disruption Rate
	Third & Subsequent 5-Minutes	DELETED
Night-time Stoppage	First 5-Minutes	DELETED
	Second 5-Minutes	DELETED
	Third & Subsequent 5-Minutes	DELETED

For the purpose of Traffic Disruption Charge, night-time is defined as 7:00 p.m. to 7:00 a.m. local time regardless of sunrise or sunset times.

3. The Traffic Disruption Charge will not exceed **DELETED** in any 24 hour period.

SCHEDULE 10**PAYMENTS****Part 5****UNAVAILABILITY DEDUCTIONS****1. RELEVANT UNAVAILABILITY EVENTS**

- 1.1 The Concessionaire will implement a system to accurately measure and record all Relevant Unavailability Events on the Concession Highway. The system will be based on Highway Maintenance Specifications for Highway Concessions #3-340 Highway Condition Reporting forming part of the Ministry Standards, whereby the Concessionaire will prepare and deliver daily highway condition reports that include information regarding any lane closures. The Concessionaire will maintain in electronic format a log for recording the start / end times and relevant details for all lane unavailability events, in a form which can be audited by the Province for conformity.
- 1.2 If Relevant Unavailability Events occur, Unavailability Deductions will be made from the Total Performance Payment for that Contract Year in accordance with paragraph 3 of Part 2 and paragraphs 1.5 and 2.1 of Part 3 of this Schedule.
- 1.3 The Concessionaire will not incur an Unavailability Deduction where
- (a) a Lane Closure occurs as a result of an Excepted Closure;
 - (b) any Lane Closure occurs within the first 60 minutes following any Relevant Unavailability Event;
 - (c) a Traffic Disruption Charge has been assessed in accordance with Part 4 of this Schedule.

2. UNAVAILABILITY DEDUCTIONS

- 2.1 Unavailability Deductions (\$) for a Contract Year n (" UD_n ") are calculated as follows:

$$UD_n = \sum_{m=1}^q UD_m * [1 + (IF_{EASP} * PPI_n)]$$

where:

q = The number of months in Contract Year n .

UD_m = The Unavailability Deductions (\$) for a month or part of a month m in Contract Year n , determined in accordance with the following formula:

$$UD_m = \sum_{i=1}^x UD_i$$

where:

x = The number of Relevant Unavailability Events in month m in the Contract Year n .

UD_i = The Unavailability Deduction (\$) for each Relevant Unavailability Event during a month or part of month m in Contract Year n , which will be calculated in accordance with the following formula:

$$UD_i = UDR_i * UDRF_i$$

where:

UDR_i = Unavailability Deduction Rate (\$/hour) applicable to an occurrence i determined in accordance with the following Table 6:

Table 6 – Unavailability Deductions

Lane Closure Description	Summer (June 1 to September 31)		Winter, Spring, Fall (October 1 to May 31)	
	7:00 am to 7:00 pm 7 days per week*	7:00 pm to 7:00 am 7 days per week*	7:00 am to 7:00 pm 7 days per week*	7:00 pm to 7:00 am 7 days per week*
Closure resulting in no lanes in both directions	DELETED per hour	DELETED per hour	DELETED per hour	DELETED per hour
Closure resulting in no lanes for either east bound or west bound traffic	DELETED per hour	DELETED per hour	DELETED per hour	DELETED per hour
Closure resulting in only one lane east-bound and one lane west-bound	DELETED per hour	DELETED per hour	DELETED per hour	DELETED per hour
Closure resulting in only one lane available for either east-bound or west-bound	DELETED per hour	DELETED per hour	DELETED per hour	DELETED per hour

$UDRF_i$ = The duration of the Relevant Unavailability Event of occurrence i , measured in hours or part of hours.

IF_{EASP} = The indexation factor for Contract Year n determined in accordance with paragraph 2 of Part 3 of this Schedule.

PPI_n = Has the meaning given in paragraph 3.1 of Part 2 of this Schedule.

2.2 The Unavailability Deductions for any day d shall not exceed an amount equal to $GEASP_m$ for the month in which day d occurs divided by the number of days in that month.

3. AVAILABILITY REPORT

- 3.1 The report to be delivered pursuant to Section 33.1.2 of the Agreement will, together with the information required by Section 33.1.3 of the Agreement, include details of all Relevant Unavailability Events affecting the Concession Highway (including the time, date, duration and cause, location and length of each Lane Closure and the number of lanes affected thereby) which have occurred in respect of the month for which the report is produced.

SCHEDULE 10

PAYMENTS

Part 6

PERFORMANCE / SAFETY DEDUCTIONS

1. NONCONFORMITY AND REPORTS

- 1.1 “**Nonconformity**” has the meaning set out in Schedule 6 [Quality Management] except that for the purposes of this Schedule the meaning is limited to Nonconformities in respect of operations and maintenance of the Project Facilities.
- 1.2 If the Province’s Representative becomes aware of a Nonconformity it may, without prejudice to any other right or remedy available to the Province under this Agreement issue a report of the Nonconformity Report to the Concessionaire.
- 1.3 The Concessionaire must investigate all matters contained in a Nonconformity Reports and, where necessary, initiate corrective and preventative action.
- 1.4 The Concessionaire may within 2 Working Days of receipt of any Nonconformity Report object to the issue of the Nonconformity Report, failing which it is deemed to have accepted the Nonconformity Report. If such objection has not been resolved by mutual agreement between the Province’s Representative and the Concessionaire within 10 Working Days of the issue of the Nonconformity Report, then either of them may refer the matter to the Disputes Resolution Procedure for determination.
- 1.5 The Concessionaire must return a copy of the Nonconformity Report together with its response thereto to the Province within 2 Working Days of the Concessionaire’s receipt of the Nonconformity Report.

2. NONCONFORMITY TRACKING SYSTEM

- 2.1 The Province will implement a Nonconformity Tracking System to track and record all Nonconformity Reports issued by the Province, including the total number and status of all the Nonconformity Reports. A Nonconformity Report is “outstanding” until the Concessionaire produces satisfactory documentary evidence to the Province showing that the Nonconformity identified in that Nonconformity Report:
 - (a) has been identified in the Concessionaire’s Quality Management System and the Concessionaire has taken, or is in the process of taking, appropriate action to remedy the non-conformance; or
 - (b) it has been remedied.

If a Nonconformity Report is removed from the outstanding list under paragraph (a), the relevant Nonconformity must be remedied within the time required by the

Concessionaire's Quality Management System or the relevant Nonconformity Report will be reinstated as outstanding in the Nonconformity Tracking System.

- 2.2 The Province may issue further Nonconformity Reports if a Nonconformity identified in a Nonconformity Report continues unremedied.
- 2.3 Nonconformity Reports issued relating to the same occurrence in a rolling 12 month period will be deemed to subsist for a minimum period of 7 days, even if the Concessionaire remedies the relevant failure within 7 days of the issuance of that Nonconformity Report.
- 2.4 The Concessionaire will maintain records of:
- (a) all Nonconformities;
 - (b) the reference numbers of all Nonconformity Reports;
 - (c) a description of all Nonconformity Reports;
 - (d) the Nonconformity Report Points determined in accordance paragraph 3 of this Part 6;
 - (e) the proposed actions by the Concessionaire to rectify each Nonconformity;
 - (f) the time at which each Nonconformity was identified; and
 - (g) the time at which a Nonconformity specified in a Nonconformity Report was rectified.

3. PERFORMANCE / SAFETY DEDUCTIONS

- 3.1 Outstanding Nonconformity Reports on the Nonconformity Tracking System will be allocated points in accordance with Table 7 ("**Nonconformity Report Points**").

Table 7 – Nonconformity Report Points

Item	Standard	Nonconformity Report Points ("NCRP")
Repeat Nonconformity Report	4 or more Nonconformity Reports relating to the same occurrence in a rolling 12 month period.	6
Failure to identify and record defects	Inspection regimes are specified in Highway Maintenance Specifications 8-830 to 8-850 including amendments thereto. Compliance with the requirements for Snow Avalanche Program / Weather Monitoring Program and Unstable Slope Mitigation Program.	6

Item	Standard	Nonconformity Report Points ("NCRP")
Operational performance measures within the limits of the travelled lanes and sealed shoulders	As specified in the O,M&R Output Specifications and O,M&R Requirements	3
Records and Reporting	As specified in the Reporting Specifications and Local Area Specifications	2
All other Nonconformities	Any O,M&R Output Specifications and O,M&R Requirements and not covered above, or any other obligations relating to the operation and maintenance of the Project Facilities not covered above.	1

3.2 Performance / Safety Deductions (\$) for the Contract Year n ("PSD _{n} ") is calculated as follows:

$$PSD_n = \sum_{m=1}^q [PSD_m * [1 + (IF_{EASP} * PPI_n)]]$$

where:

q = The number of months in Contract Year n , rounded to the nearest four decimal places.

PSD_m = The Performance / Safety Deductions (\$) for month or part of a month m in Contract Year n , determined in accordance with the following formula:

$$PSD_m = \sum_{d=1}^{d_m} NCRPR_d$$

where:

d_m = The number of days in month or part of a month m in the Contract Year n .

$NCRPR_d$ = Nonconformity Report Points Rate (\$) for day d in month or part of a month m in the Contract Year n determined in accordance with the following:

Aggregate Nonconformity Report Points	0-10	11-15	16-25	26-35	>35
NCRPR _{d} (\$)	DELETED	DELETED	DELETED	DELETED	DELETED

IF_{EASP} = Has the meaning given in paragraph 2.1 of Part 3 of this Schedule.

PPI_n = Has the meaning given in paragraph 3.1 of Part 2 of this Schedule.

- 3.3 The Concessionaire will calculate and report to the Province the Performance / Safety Deductions monthly in arrears, the first calculation to be made within 10 Business Days of the expiry of one month from the Commencement Date. The Concessionaire will report the calculated Performance / Safety Deductions in writing to the Province, setting out the calculations of the Performance / Safety Deductions and the information supporting such calculations in detail, together with applicable supporting documents.

SCHEDULE 10**PAYMENTS****Part 7****END OF TERM PAYMENT**

1. In addition to the Performance Payment, the Province will pay to the Concessionaire the End of Term Payment in accordance with the terms of this Agreement. The End of Term Payment will be determined at the same time as the Remediation Amount under Section 19.6.4 of this Agreement.
2. The End of Term Payment (\$) ("*ETP*") will be calculated as follows:

$$ETP = GETP - Remediation Amount$$

Where:

Remediation Amount has the meaning given to it in Section 19.6.4 of this Agreement:

GETP = The gross end of term payment, being **DELETED**

3. The Province will pay the Concessionaire an amount equal to the End of Term Payment in accordance with Section 19.6 [End of Term Inspection] after the end of the Contract Period upon transfer, assignment or vesting in the Province, free from Encumbrances, of the assets to be transferred or assigned by the Concessionaire in accordance with Section 43.4 [Transfer of Assets, etc.]. The Province and the Concessionaire may negotiate at any time during the Contract Period alternative arrangements to meet this obligation.

SCHEDULE 10**PAYMENTS****Part 8****MONITORING AND MEASUREMENT****1. MEASUREMENT METHOD**

- 1.1 At all times during the Contract Period the traffic using any part of the Concession Highway will be continuously Measured by the Concessionaire at each Measurement Point using the Measuring Equipment.

2. MEASUREMENT POINTS

- 2.1 Each of the following will be a Measurement Point for the purposes of this Agreement:
- 2.1.1 the existing Measurement Point on the Existing Highway;
 - 2.1.2 at the location to be agreed upon between the Province and the Concessionaire having regard for the requirements to Measure traffic in accordance with the provisions of Schedule 5 [Design and Construction Requirements]; and
 - 2.1.3 if, as a result of any Subsequent Scheme or Additional Works, the Measurement Points specified in paragraphs 2.1.1 and 2.1.2 of Part 8 are insufficient or inadequate to Measure the traffic using the Concession Highway to a level of accuracy equivalent to that prior to the Subsequent Scheme or Additional Works, such other point or points as necessary to Measure such traffic to such an equivalent level of accuracy.
- 2.2 If there is any Dispute between the Concessionaire and the Province's Representative as to the need for or location of any Measurement Point referred to in paragraph 2.1 of Part 8, such Dispute will at the request of either of them be submitted to the Disputes Resolution Procedure.
- 2.3 The Province will bear the cost of any additional Measurement Point required pursuant to paragraph 2.1 of Part 8 as a result of any Additional Works. The Concessionaire will bear the cost of any other Measurement Point required pursuant to paragraph 2.1.3 of Part 8 as a result of any Subsequent Scheme.

3. MEASURING EQUIPMENT

- 3.1 The Concessionaire will provide and install the Measuring Equipment at the Measurement Points in accordance with the provisions of Schedule 5 [Design and Construction Requirements].
- 3.2 Prior to the installation or replacement of any component of the Measuring Equipment which may materially affect the accuracy of Measurement of such Measuring Equipment,

the Concessionaire will notify the Province's Representative of the design and type of such equipment and such notice will be dealt with under the Review Procedure.

- 3.3 Without limitation to any other provision of this paragraph 3 of Part 8, the Concessionaire will design, supply, install, test, commission, maintain, repair, replace and operate all Measuring Equipment in accordance with the provisions of Schedule 5 [Design and Construction Requirements], Schedule 6 [Quality Management], Schedule 7 [Operation, Maintenance, Rehabilitation and End of Term Requirements] and with Good Industry Practice.
- 3.4 The Province will be entitled at any time and from time to time to install and operate (at his own expense and risk) at any Measurement Point:
- 3.4.1 check measuring equipment to check the Measurement of the traffic at such Measurement Point; and/or
- 3.4.2 equipment linked directly to the Measuring Equipment,
- to provide at the Province's premises independent confirmation and/or direct readings of the Measurement of the traffic at such Measurement Point.
- 3.5 Any equipment installed by the Province pursuant to paragraph 3.4 of Part 8 will be compatible with and will not interfere with the use or operation of the Measuring Equipment.

4. VERIFICATION

- 4.1 The Concessionaire may at any time submit to the Province's Representative in accordance with the Review Procedure any proposed revision to the Verification methodology referred to in Schedule 6 [Quality Management] (as previously revised in accordance with this paragraph 4.1 of Part 8). The Province's Representative may object to any such proposed revision only on the grounds that the proposed Verification methodology would not meet any of the requirements of Schedule 6 [Quality Management]. From the date on which there has been no objection to any such revised Verification methodology under the Review Procedure, the Concessionaire will comply with such revised Verification methodology.
- 4.2 The Concessionaire will Verify the Measuring Equipment at each Measurement Point at least once in every 90 days or at such other frequency as may be agreed by the Province's Representative. Without limitation to paragraph 7 of this Part 8, the Concessionaire will adjust the Measuring Equipment to read centrally and accurately within the limits of accuracy ("Measurement Limits of Accuracy") set out in paragraph 2.3.11.4 of Part 2 of Schedule 5 [Concessionaire's Design and Construction Requirements].
- 4.3 The Concessionaire will give to the Province's Representative reasonable notice of the date and time of any Verification pursuant to paragraph 4.2 of Part 8 and the Province's Representative will be entitled to attend and witness any such Verification. The Province's Representative may require the Concessionaire to Verify any Measuring Equipment at any other time.

- 4.4 Verifications will be made at the expense of the Concessionaire, except that the Province will bear the costs of the attendance of the Province's Representative at any Verification and the whole expense of any Verification (other than periodic Verification pursuant to paragraph 7 of this Part 8) made at the request of the Province's Representative if the Measuring Equipment is found to be registering within the Measurement Limits of Accuracy.

5. COLLECTION OF DATA

- 5.1 The Concessionaire will ensure that the Traffic Data is collected at such times and in such format as will enable the Concessionaire to prepare the Monthly Report in accordance with Schedule 15 [Records and Reports].
- 5.2 Subject to paragraph 7 of this Part 8, if there is more than one set of vehicle detection equipment measuring the same flow of traffic at a Measurement Point, then the traffic passing the Measurement Point during any period will be deemed to be the average of the figures produced by each of such sets of vehicle detection equipment during such period. Such average will be calculated and provided to the Province in the Monthly Report together with the figures produced for each of such sets of vehicle detection equipment.

6. INSPECTION AND AUDITING

- 6.1 The Province's Representative will be entitled at all reasonable times to inspect:
- 6.1.1 any Measuring Equipment; and
- 6.1.2 any charts or other measurement or test data relating to the Measuring Equipment.

7. CORRECTION OF DEFECTS

- 7.1 If at any time any Measuring Equipment is found to be defective or measuring outside the Measurement Limits of Accuracy (as the case may be), the Concessionaire will as soon as practicable adjust such equipment to read centrally and accurately within such limits or (if that is not possible) will replace it with serviceable equipment.
- 7.2 If the Measuring Equipment referred to in paragraph 7.1 of Part 8 (the "**Defective Equipment**") comprises only one of two or more sets of vehicle detection equipment at a Measurement Point, then the calculation for the relevant Measurement Point pursuant to paragraph 5 of this Part 8 will be retrospectively corrected, excluding from such calculations the data from such defective set of vehicle detection equipment from the time when such set of vehicle detection equipment became defective or (where that time cannot be established) from the time which is the mid-point between the last Verification which indicated that the set of vehicle detection equipment was operating within the Measurement Limits of Accuracy and the next following Verification.
- 7.3 In all other circumstances where there is any Defective Equipment, the Traffic Data from the relevant Measurement Point or (where there are two or more sets of vehicle detection equipment at a Measurement Point) the calculations for the relevant Measurement Point pursuant to paragraph 5 of this Part 8 will be retrospectively

corrected from the time when such equipment became defective (or where two or more sets of vehicle detection equipment are defective, from the time when the last such set of vehicle detection equipment became defective) or (where that time cannot be established) from the time which is the mid-point between the last Verification which indicated that the equipment was operating within the Measurement Limits of Accuracy and the next following Verification.

- 7.4 Calculations will be corrected for purposes of paragraph 7.3 of Part 8 by applying the methods set out below in the order in which they appear:
- 7.4.1 by using the readings recorded by any check measuring equipment, provided that such equipment was at the relevant time operating within the Measurement Limits of Accuracy. If such equipment was at the relevant time not operating accurately or if no such equipment has been installed, then
 - 7.4.2 by correcting the error if the percentage of error is ascertainable to the satisfaction of the Concessionaire and the Province's Representative by calibration, test or mathematical calculation. If the percentage of error is not so ascertainable, then
 - 7.4.3 by using the readings recorded during the comparable period of the immediately preceding month, provided the relevant equipment was operating within the Measurement Limits of Accuracy during such period. If such equipment was not operating accurately or if there are no such readings, then
 - 7.4.4 by estimating the number and classification of vehicles by reference to Measurements made under similar circumstances when the Defective Equipment was registering accurately. If there is any Dispute between the Concessionaire and the Province's Representative in respect of any such estimate, then such Dispute shall at the request of either of them be submitted to the Disputes Resolution Procedure.

Appendix 1 to Schedule 10**ELIGIBLE COSTS**

Eligible Costs means:

- a) capital costs, as defined and determined according to accounting principles generally recognized in Canada, and relating to the acquisition, construction or renovation of a fixed capital asset;
 - b) the costs of environmental planning, surveying, engineering, architectural, supervision, testing and management consulting services, to a maximum of 15% of total Eligible Costs;
 - c) the costs of engineering and environmental reviews, including environmental assessments and follow-up programs as defined in the *Canadian Environmental Assessment Act*;
 - d) the costs of remedial activities mitigation measures and follow-up identified in any environmental assessment;
 - e) the costs of signage, lighting and changes to public utilities;
 - f) the costs of developing and implementing innovative techniques for carrying out the Project as approved in writing in advance by the Province's Representative; and
 - g) the costs of communication and signage recognition,
- in respect of the Works.

For greater certainty, Eligible Costs shall not include the following:

- a) costs incurred prior to or in connection with or pursuant to the RFP process or after the Final Completion Date;
- b) capital costs in respect of any works other than the Works;
- c) land acquisition, real estate fees and related costs, financing charges;
- d) loan interest payments;
- e) any goods and services costs that are paid by donations or in kind;
- f) the Province sales tax and Goods and Services Tax, and any other costs eligible for rebates by the Province;
- g) legal fees; and
- h) the costs of general repairs or maintenance.

Appendix 2 to Schedule 10**TRAFFIC BANDS**

“ PVE_1 ” means **DELETED**

“ PVE_2 ” means:

(a) in respect of the first Contract Year an amount equal to:

(i) **DELETED**; plus

(ii) **DELETED**

where d_n = number of days in the first Contract Year.

(b) in respect of each subsequent Contract Year n , except for the final Contract Year an amount equal to:

(i) PVE_2 for the preceding Contract Year; plus

(ii) **DELETED**

where d_n = the number of days in Contract Year n

“ PVE_3 ” means:

(a) in respect of the first Contract Year an amount equal to:

(i) **DELETED**; plus

(ii) **DELETED**

where d_n = number of days in the first Contract Year.

(b) in respect of each subsequent Contract Year n , except for the final Contract Year an amount equal to:

(i) PVE_3 for the preceding Contract Year; plus

(ii) **DELETED**

where d_n = the number of days in Contract Year n

“ PVE_4 ” means:

(a) in respect of the first Contract Year an amount equal to:

(i) **DELETED**; plus

(ii) **DELETED**

where d_n = number of days in the first Contract Year.

(b) in respect of each subsequent Contract Year n , except for the final Contract Year an amount equal to:

(i) PVE_4 for the preceding Contract Year; plus

(ii) **DELETED**

where d_n = the number of days in Contract Year n

Where the final Contract Year is less than a full calendar year, each of PVE_1 , PVE_2 , PVE_3 and PVE_4 will be adjusted as follows:

(a) the "Reference Period" will be the calendar dates of the final Contract Year (i.e. 30 Sept to 22 April);

(b) the "Seasonal Ratio" is the ratio of:

(i) the AADT for the Reference Period in the penultimate Contract Year, and

(ii) the AADT for the entire penultimate Contract Year

(c) the traffic bands in the final Contract Year will be determined as follows:

$$PVE_1 = \mathbf{DELETED} * \text{Seasonal Ratio}$$

$$PVE_2 = (PVE_2 \text{ of the penultimate Contract Year} * \text{Seasonal Ratio}) + (PVE_2 \text{ of the penultimate Contract Year} * \text{Seasonal Ratio}) * \mathbf{DELETED}$$

$$PVE_3 = (PVE_3 \text{ of the penultimate Contract Year} * \text{Seasonal Ratio}) + (PVE_3 \text{ of the penultimate Contract Year} * \text{Seasonal Ratio}) * \mathbf{DELETED}$$

$$PVE_4 = (PVE_4 \text{ of the penultimate Contract Year} * \text{Seasonal Ratio}) + (PVE_4 \text{ of the penultimate Contract Year} * \text{Seasonal Ratio}) * \mathbf{DELETED}$$

Appendix 3 to Schedule 10

PRE-COMPLETION PERFORMANCE PAYMENT CERTIFICATE

Certificate Ref. No. []

Agreement between Her Majesty the Queen in Right of the Province of British Columbia, BC Transportation Financing Authority and Trans-Park Highway General Partnership dated [] (the "Agreement") relating to the Kicking Horse Canyon Project. Expressions used in the Agreement have the same meanings in the Certificate.

Form of Certificate to be used by the Independent Certifier for certifying the value of the Pre-Completion Performance Payment, the completion of Milestones and/or Partial Milestones.

PROJECT NO. _____

PROJECT DESCRIPTION _____

Reporting Period: From _____, 20__ **To** _____, 20__

MILESTONE (ITEM)	Cost of Complete Milestone (as per CA) in \$'000s	Portion of Total Cost Representing Eligible Costs	ELIGIBLE COSTS: Last Reporting Period	ELIGIBLE COSTS: This Reporting Period	50% of ELIGIBLE COSTS: This Reporting Period	ELIGIBLE COSTS : To Date	50% of ELIGIBLE COSTS: To Date	Percentage of Milestone Complete: This Reporting Period	Last Reporting Period	Total Percentage of Milestone Complete To Date
1. GENERAL Mobilization Demobilization Utility Relocations Traffic Detours and Traffic Control CP Rail Interface Costs Environmental Total	DELETE		_____	_____	_____					
2. DESIGN AND APPROVALS Site Survey Geotechnical Investigations Highway Design Bridge Design Wall Design Tunnel Design All other work Design Approvals Design Folders and Record Drawings Total	DELETE		_____	_____	_____					
3. HIGHWAY CONSTRUCTION Clearing and Grubbing Grading and Drainage Granular Layers New and Rehabilitated Asphalt Pavements Total	DELETE		_____	_____	_____					
4. BRIDGE STRUCTURES: Excavation and Drainage Backfill Foundations Substructures Superstructure Total	DELETE		_____	_____	_____					

MILESTONE (ITEM)	Cost of Complete Milestone (as per CA) in \$'000s	Portion of Total Cost Representing Eligible Costs	ELIGIBLE COSTS: Last Reporting Period	ELIGIBLE COSTS: This Reporting Period	50% of ELIGIBLE COSTS: This Reporting Period	ELIGIBLE COSTS : To Date	50% of ELIGIBLE COSTS: To Date	Percentage of Milestone Complete: This Reporting Period	Last Reporting Period	Total Percentage of Milestone Complete To Date
5. RETAINING WALLS: Excavation and Drainage Backfill Foundations Walls Total	DELETE		_____	_____	_____					
6. CONSTRUCTION ENGINEERING Construction Management Quality Management General Engineering During Construction Total	DELETE		_____	_____	_____					
7. FINISHING WORKS: Barriers and Finishing Work Traffic and Guide Signs Highway Lighting Final Line Painting Landscaping Total	DELETE		_____	_____	_____					
8. DEMOLITIONS AND REMOVALS Removal of Existing Pavement Demolition of Existing Park Bridge All other Removals Total	DELETE		_____	_____	_____					

Total Eligible Cost of Work to Date: _____
 Less: Eligible Cost of Previous Work _____
 Equals: Eligible Cost of Work for this Reporting Period _____

All work has been completed in general accordance with the Agreement, Project Schedule and the design concepts contained in the Concession Agreement.

Certified Correct _____
 Independent Certifier

SCHEDULE 11

INSURANCE

Part 1

INSURANCE REQUIREMENTS

1. EVIDENCE OF COVERAGE

1.1 The following evidence of coverage will be required:

- (a) File originals or signed, certified copies of all policies and renewals of such policies together with any other endorsements necessary to comply with this Part 1 and any other requirements outlined in this Agreement with: The Manager, Insurance and Bonds, Ministry of Transportation, P.O. Box 9850 STN Prov Govt, 4 Floor, 940 Blanshard Street, Victoria, BC V8W 9T5.
- (b) If filed originals or signed, certified copies of such policies and renewals are not available as at the time that delivery by the Concessionaire to the Province is required, the Concessionaire may, as an **INTERIM** measure pending delivery of the originals and signed certified copies and subject to the condition that the Concessionaire complies with subsection 1.1(c) of this Schedule, deliver to the Province a duly completed Certificate of Insurance certifying to the Province that the insurance requirements have been met together with a letter from the insurer providing the Certificate of Insurance in a form acceptable to the Province confirming that the insurance referred to in the Certificate of Insurance complies with the requirements set out in this Agreement and in particular this Part 1.
- (c) If the Concessionaire delivers a Certificate of Insurance, the Concessionaire must by not later one hundred and twenty (120) days after the date of issuance of the Certificate, deliver originals or signed, certified copies of all current policies and necessary endorsements to the Province at the following address: The Manager, Insurance and Bonds, Ministry of Transportation, PO Box 9850, Stn Prov Govt, 940 Blanshard Street, Victoria, BC V8W 9T5.
- (d) Any endorsements issued must be countersigned, and only original or certified copies of endorsements are acceptable.
- (e) For Automobile Liability insurance, a duly executed Insurance Corporation of British Columbia APV 47 form may be used for evidence of coverage or renewal provided that if excess limits are purchased through private insurers, evidence will be provided by way of signed, certified copies of such policies.

2. INSURANCE COVERAGES REQUIRED
(See Section 20.1.1.1 and Section 20.1.1.2 of the Concession Agreement)

2.1 Third Party General Liability Policies

- (a) “Wrap-Up” Commercial General Liability insurance with inclusive limits of not less than **DELETED** for bodily injury, death, and property damage arising from any one accident or occurrence, and in the annual aggregate. The insurance policy will pay on behalf of the named insureds and the additional named insureds under the policy for any sum or sums which the insured may become liable to pay or shall pay for bodily injury, death or property damage or for loss of use thereof, arising out of or resulting from the work or operations of the Concessionaire or contractors or subcontractors of any tier, including all persons, firms, corporations or partnerships who perform any of the Works, in connection with this Agreement, anywhere within Canada. In addition to the above limits, such liability insurance will also pay all costs, charges, and expenses in connection with any claims that may require to be contested by the insureds anywhere within Canada.

For all bodily injury or death and property damage arising from any one accident or occurrence for all vessels that are owned, leased, rented or operated by the Concessionaire or contractors or subcontractors of any tier, including all persons, firms, corporations or partnerships who perform any works in connection with this Agreement, insurance coverage is to be provided through the “Wrap – Up” Comprehensive General Liability Insurance policy, or through a separate Protection and Indemnity insurance policy(ies), and if provided through a separate Protection and Indemnity insurance policy(ies) then with inclusive limits of not less than **DELETED**, submitted to the Province in accordance with and to which there is no objection under the Review Procedure. The Concessionaire will be responsible for ensuring that any changes to the requirements of the Marine Liability Act and/or the regulations of the Marine Liability Act are reflected in the insurance coverage provided.

If aircraft (including helicopters) are used in the performance of this Agreement and are owned, leased, rented, or used by the Concessionaire, or any contractors or subcontractors of any tier then third party liability coverage with inclusive limits of not less than **DELETED** for bodily injury or death and property damage arising from any one accident or occurrence, and in the annual aggregate, must be provided, together with a waiver of subrogation on the hull.

(b) **Extension Of Coverage — (applicable to liability policies described in Section 2.1(a) in this Schedule):**

Such liability insurance will cover liability assumed by the Concessionaire in connection with and applicable to this Agreement and will include the following coverage extensions applicable to the following liability policies:

Coverage Extensions Applicable to the “Wrap-Up” Commercial General Liability Policy

- Canada coverage territory
- Products/Completed Operations
- Occurrence Property Damage
- Broad Form Property Damage
- Broad Form Completed Operations
- Contingent Employers Liability
- Medical Payments
- Incidental Medical Malpractice
- Blanket Written Contractual
- Cross Liability
- Attached Machinery
- Non Owned Automobile
- Legal Liability for damage to hired automobiles
- Hazardous Operations (XCU)
- 24 months Products and Completed Operations (as more fully outlined under Section 2.5 of this Schedule)
- Sudden and Accidental Pollution with coverage of not less than **DELETED** (IBC Form #2313)
- 60 days notice of Cancellation or Limitation of cover (as more fully outlined under Section 2.6 of this Schedule)
- Blanket Additional Insureds

Coverage Extensions Applicable to the Marine and Aviation Policies

- Canada coverage territory
- 60 days notice of Cancellation or Limitation of cover (as more fully outlined under Section 2.6 of this Schedule)

(c) **Inclusions / Exclusions Not Permitted**

Hazardous operations, including excavation pile driving, shoring, blasting, underpinning, or demolition work or any other operation or work to be performed will not be excluded from insurance coverage.

Claims arising out of the legal liability imposed upon the Insured at common law and extended by Statute for bodily injury or death to employees of the Insured will not be excluded. However, exclusions applicable to liability imposed upon or assumed by the Insured under any Workers Compensation Statutes or for assessment by any Workers Compensation Board will be permitted.

Liability assumed by the insureds under contract with railroad companies for the use and operation of railway sidings or crossings will not be excluded.

Liability assumed by the Concessionaire under and applicable to any Gravel Licences will not be excluded.

Liability arising out of all products where the Concessionaire supplies the material will not be excluded.

Tort liability assumed by the Concessionaire under this Agreement will not be excluded.

Exclusions for design/build, design/build/finance, design/build/finance/operate, or joint venture projects will not be permitted.

Other types of services not listed above, to be performed by the Concessionaire under this Agreement will not be excluded.

(d) **Deductible**

A maximum deductible on the primary insurance policy will be allowed for any one accident or per occurrence of up to **DELETED** provided that the Concessionaire can demonstrate to the reasonable satisfaction of the Province that the payment of such deductible is secured in a manner satisfactory to the Province. Payment of any deductible will be the responsibility of the Concessionaire.

(e) **Self-Insured Retention**

A maximum self-insured retention of up to **DELETED** for any one accident or per occurrence will be permitted for the Concessionaire providing umbrella/excess liability insurance subject to having a minimum primary insurance policy of **DELETED** underlying the umbrella/excess.

2.2 Professional Liability Insurance (Errors & Omissions)

- (a) Single Project Specific Professional Liability insurance with minimum limits of **DELETED** per claim, and **DELETED** aggregate insuring against all insured loss or damage including coverage for third party property damage, bodily injury or death, arising out of the professional services rendered by the Concessionaire, the Concessionaire's contractors or sub-contractors of any tier, and/or any engineers/architects/surveyors and any of their servants or employees including personnel on loan to the Concessionaire or the Concessionaire's contractors or sub-contractors of any tier and personnel who perform normal services of the Concessionaire under this Agreement. The named insured shall also include but not be limited to all architectural or engineering firms, including project managers, construction managers, applied science technologists, land surveyors, or quantity surveyors engaged in providing professional services to the Project.

Coverage will be maintained for a period of **DELETED** following the Final Completion Date.

- (b) A maximum deductible of **DELETED** will be allowed provided that the Concessionaire can demonstrate to the reasonable satisfaction of the Province that the payment of the deductible is secured in a manner satisfactory to the Province.

Exclusions for design/build, design/build/finance/, design/build/finance/operate, or joint venture projects will not be permitted.

- (c) The required insurance shall not be cancelled, removed, or endorsed to restrict coverage or limits of liability, without 60 days' notice in writing by registered mail to: The Manager, Insurance and Bonds, Ministry of Transportation, P0 Box 9850, Stn Prov Govt, 940 Blanshard Street, Victoria, BC V8W 9T5.

2.3 Automobile Insurance

Automobile Liability coverage with inclusive limits of not less than **DELETED** providing third party liability and accident benefits insurance coverage must be provided for all vehicles required by law to be licensed that are owned, leased or rented by the Concessionaire or by the Contractor, and that are used in the performance of this Agreement.

2.4 Property Insurance

(a) Builders Risk, Direct Damage, Installation Floater, "All-Risk" Insurance

"All risks" of direct physical loss or damage including but not limited to flood, full resultant loss or damage, structural collapse (for greater certainty, excluding loss or damage resulting from seismic (earthquake events)) and transit risks by any conveyance to and/or from the site, while there, awaiting and/or during erection, installation and testing, occurring anywhere within Canada. The insurance policy shall provide coverage for and limits to the full value of any buildings, structures (including walls and bridges) and improvements and include the value of any material and/or structure and/or property destined for or entering into or forming part of the Works, whether belonging to the Concessionaire or any of its contractors or sub-contractors of any tier and/or the Province and/or the engineers and/or otherwise and including automatically any changes in design or method of construction occurring during the term of the policy.

(b) Deductibles Per Occurrence

- (i) Flood – up to **DELETED** provided that the Concessionaire can demonstrate to the reasonable satisfaction of the Province that the payment of such deductible is secured in a manner satisfactory to the Province
- (ii) All other losses up to **DELETED** provided that the Concessionaire can demonstrate to the reasonable satisfaction of the Province that the payment of such deductible is secured in a manner satisfactory to the Province

The Concessionaire will be solely responsible for the payment of all deductibles, except the deductible applying in the event of damage caused by Landslides (other than Landslides originating on slopes along any portions of the Project Facilities, the Site or the Adjacent Areas which have been Disturbed by the Concessionaire for the purpose of any construction work or other work carried out in performing the

Operations that occur during the period of two years following the completion of the work and for which Disturbance is a reasonable factor in the causation of the Landslide). In the event of damage caused by Landslides (other than Landslides originating on slopes along any portions of the Project Facilities, the Site or the Adjacent Areas which have been Disturbed by the Concessionaire for the purpose of any construction work or other work carried out in performing the Operations that occur during the period of two years following the completion of the work and for which Disturbance is a reasonable factor in the causation of the Landslide) the payment of the deductible will be included in the calculation of Landslide Repair Costs contemplated in Section 14.8 [Landslides] of this Agreement such that any contribution to the Landslide Repair Costs that the Province may make in accordance with the terms of Section 14.8 [Landslides] will, subject to the terms of Section 14.8 [Landslides], take into account the deductible, if any, applicable to the damage caused by the Landslide.

The following Waiver of Subrogation is to be added to Equipment and Property Insurance Policies:

“In the event of any third party loss or damage or any physical loss or damage to the work, or contractor’s equipment, the settlement or payment of the subsequent claim shall be made without the right of subrogation against Her Majesty the Queen or the BC Transportation Financing Authority, or any of their employees, agents and servants, or the architects, engineers, consultants, contractors, or any of their servants, agents, employees, volunteers, directors, parent, subsidiary, affiliated or related firms, engaged in or connected with the design, construction and related operations known as the “Kicking Horse Canyon Project”.”

2.5. Additional Conditions In All Property and Liability Policies (Except Owned Automobile and Professional Liability Insurance) are to be Included by Endorsement as Follows:

Each of the Province and BC Transportation Financing Authority will be named as an additional named insured in all property insurance policies by an endorsement as follows.

“Her Majesty the Queen in Right of the Province of British Columbia and the BC Transportation Financing Authority, are added as Additional Named Insureds.”

Notwithstanding any other terms, conditions, or exclusions elsewhere in the policies or in this Part 1, it is understood and agreed that every liability insurance policy (except owned automobile, professional liability, marine liability and aviation liability insurance) is extended to include insurance coverages and clauses as follows:

“Her Majesty the Queen in Right of the Province of British Columbia and BC Transportation Financing Authority, together with all their employees, agents and servants, and all architects, engineers, consultants, contractors and any of their servants, agents, employees, volunteers, directors, parent, subsidiary, affiliated or related firms, engaged in or connected with the design, construction and related operations known as the “Kicking Horse Canyon Project” hereinafter referred to as Additional Named Insureds, are added as Additional Named Insureds, in respect of liability arising from the work or operations of the Insured and the Additional Named Insureds, in connection with contracts entered into between the Insured and the Additional Named Insureds.

The insurance as is afforded by this policy shall apply in the same manner and to the same extent as though a separate policy had been issued to each Insured. Any breach of a condition of the policy by any Insured shall not affect the protection given by this policy to any other insured. The inclusion herein of more than one Insured shall not operate to increase the limit of liability under this policy.

Products and Completed Operations Hazard coverage shall be provided and such cover shall remain in full force and effect for a period of **DELETED** after the work has been completed, irrespective of the expiry date of the policy.”

2.6 Cancellation / Limitation For All Policies (Except Owned Automobile and Professional Liability):

The required insurance coverages shall not be cancelled, removed, or endorsed to restrict coverage or limits of liability, without 60 days' notice in writing by registered mail to: The Manager, Insurance and Bonds, Ministry of Transportation, P0 Box 9850, Stn Prov Govt, 940 Blanshard Street, Victoria, BC V8W 9T5.

The required insurance coverages shall not be lapsed without at least 30 days' notice in writing by registered mail to: The Manager, Insurance and Bonds, Ministry of Transportation, P0 Box 9850, Stn Prov Govt, 940 Blanshard Street, Victoria, BC V8W 9T5

2.7 Loss Payable

The insurance policies must contain a loss payable clause directing payment in accordance with the provisions of Section 20.7 [Application of Proceeds] of this Agreement.

2.8 Use and Occupancy

Use and occupancy of the work or any part thereof prior to the date of completion shall not be cause for any termination of insurance coverage shown in the applicable sections.

2.9 Primary and Excess Coverage

The Concessionaire may satisfy limit requirements through the use of primary and excess liability insurance programs.

2.10 Construction Works after Construction Insurance End Date

The insurances described in Section 2.1 to and including Section 2.9, subject to any reasonable variations in such insurance requirements made by the Province, including any adjustments in policy limits and additions of coverages will apply, *mutatis mutandis*, in connection with any construction works undertaken after the Construction Insurance End Date. Variations to the insurance requirements contemplated in this Section 2.10 will not impose more stringent requirements than those imposed by the MOT for construction contracts of a similar nature or value to the construction works undertaken after the Construction Insurance End Date and will be based on the Province's reasonable assessment of the risks involved, based on the then current version of the MOT Form INS152 or INS172, as appropriate.

2.11 Railway Insurances

Any insurance coverages and limits as may, from time to time, be required by CP Rail in connection with this Agreement, the CP Rail Agreement, the CP Rail Works and the Operations or any of them, will be at the sole expense of the Concessionaire, save and except if any such insurance coverages and limits:

- (a) are additional to or vary from any insurance coverages or limits disclosed on the Resource Documents DVD; and
- (b) require adjustment to any insurance coverages and limits required under the terms of this Part 1 (except, for greater certainty, under this Section 2.11, Section 3.10 and Section 4.6 of this Part 1),

in which case any such additional or adjusted insurance coverages and limits will be considered a Province Change.

2.12 Earthquake Insurances

In the case of any insurance coverages and limits for earthquake loss or damage required to be obtained by the Concessionaire pursuant to the Senior Funding Agreements, or any of them, or pursuant to other requirements of the Senior Funders, any such insurance coverages and limits for earthquake loss or damage shall be deemed to be insurance coverages and limits required under this Agreement (including for greater certainty, under Section 20.7 [Application of Proceeds] of this Agreement).

3. INSURANCE COVERAGES REQUIRED (Section 20.1.1.3 of the Concession Agreement)

3.1 Third Party General Liability Policies

- (a) Commercial General Liability insurance will be arranged with inclusive limits of not less than **DELETED** for bodily injury, death, and property damage arising from any one accident or occurrence and in the annual aggregate. The insurance policy will pay on behalf of the named insureds and the additional named insureds under the policy for any sum or sums which the insured may become liable to pay or shall pay for bodily injury, death or property damage or for loss of use thereof, arising out of or resulting from the work or operations of the Concessionaire or contractors or subcontractors of any tier, including all persons, firms, corporations or partnerships who perform any works, in connection with this Agreement, anywhere within Canada. In addition to the above limits, such liability insurance will also pay all costs, charges, and expenses in connection with any claims that may require to be contested by the insureds anywhere within Canada.

For all bodily injury or death and property damage arising from any one accident or occurrence and in the annual aggregate for all vessels that are owned, leased, rented or operated by the Concessionaire or contractors or subcontractors of any tier, including all persons, firms, corporations or partnerships who perform any works in connection with this Agreement, insurance coverage is to be provided through the Comprehensive General Liability Insurance policy with inclusive limits of not less than **DELETED**, or through a separate Protection and Indemnity insurance

policy(ies) submitted to the Province in accordance with and to which there is no objection under the Review Procedure. The Concessionaire will be responsible for ensuring that any changes to the requirements of the Marine Liability Act and/or the regulations of the Marine Liability Act are reflected in the insurance coverage provided.

(b) **Extension of Coverage — (applicable to liability policies described above in Section 3.1(a) in this Schedule):**

Such liability insurance will cover liability assumed by the Concessionaire in connection with and applicable to this Agreement and will include the following coverage extensions applicable to the following liability policies:

Coverage Extensions Applicable to the Commercial General Liability Policy

- Canada coverage territory
- Products/Completed Operations
- Occurrence Property Damage
- Broad Form Property Damage
- Broad Form Completed Operations
- Contingent Employers Liability
- Medical Payments
- Incidental Medical Malpractice
- Blanket Written Contractual
- Cross Liability
- Attached Machinery
- Non Owned Automobile
- Legal Liability for damage to hired automobiles
- Hazardous Operations (XCU)
- Sudden and Accidental Pollution with coverage of not less than **DELETED** (IBC Form #2313)
- 60 days notice of Cancellation or Limitation of cover (as more fully outlined under Section 3.7 of this Schedule)
- All Additional Insureds

Coverage Extensions Applicable to the Marine and Aviation Policies

- Canada coverage territory
- 60 days notice of Cancellation or Limitation of cover (as more fully outlined under Section 3.6 of this Schedule)

(c) **Inclusions / Exclusions Not Permitted**

Hazardous operations, including excavation pile driving, shoring, blasting, underpinning, or demolition work or any other operation or work to be performed will not be excluded from insurance coverage.

Claims arising out of the legal liability imposed upon the Insured at common law and extended by Statute for bodily injury or death to employees of the Insured will not be excluded. However, exclusions applicable to liability imposed upon or assumed by

the Insured under any Workers Compensation Statutes or for assessment by any Workers Compensation Board will be permitted.

Liability assumed by the insureds under contract with railroad companies for the use and operation of railway sidings or crossings will not be excluded.

Liability assumed by the Concessionaire under and applicable to any Gravel Licences will not be excluded.

Liability arising out of all products where the Concessionaire supplies the material will not be excluded.

Tort liability assumed by the Concessionaire under this Agreement will not be excluded.

Exclusions for design/build, design/build/finance, design/build/finance/operate, or joint venture projects will not be permitted.

Other types of services not listed above, to be performed by the Concessionaire under this Agreement will not be excluded.

(d) **Deductible**

A maximum deductible on the primary insurance policy will be allowed for any one accident or per occurrence of up to **DELETED** provided that the Concessionaire can demonstrate to the reasonable satisfaction of the Province that the payment of such deductible is secured in a manner satisfactory to the Province. Payment of any deductible will be the responsibility of the Concessionaire.

(e) **Self-Insured Retention**

A maximum self-insured retention of up to **DELETED** for any one accident or per occurrence will be permitted for the Concessionaire providing umbrella/excess liability insurance subject to having a minimum primary insurance policy of **DELETED** underlying the umbrella/excess.

(f) **Amendments to Insurance Coverages**

The Province may from time to time in its reasonable discretion and on written notice to the Concessionaire amend the required insurance coverage described in this Section 3, including by adjusting the policy limits and by changing the scope of coverages to reflect changes in the insurance specifications applicable to the road and bridge maintenance contracts of the Province, or if the road and bridge maintenance contracts are not in effect, such other appropriate insurance specifications as the Province may apply to risks of a similar nature. The cost of any and all such amendments will be benchmarked in accordance with Section 20.13 [Benchmarking of Insurance] of this Agreement.

3.2 Professional Liability Insurance (Errors & Omissions)

- (a) The Concessionaire will obtain and maintain or cause to be obtained and maintained professional liability insurance coverage in connection with the services of “professionals” in the performance of the Operations or any part thereof, including the maintenance, repair, rehabilitation, or construction of any road or bridge or in the conduct of other services involving “professionals”.

Coverage will be maintained for a period of **DELETED** following completion of each item of maintenance, repair, rehabilitation, or construction work of the Project.

- (b) A maximum deductible of **DELETED** will be allowed provided that the Concessionaire can demonstrate to the reasonable satisfaction of the Province that the payment of the deductible is secured in a manner satisfactory to the Province.

Exclusions for design/build, design/build/finance/, design/build/finance/operate, or joint venture projects will not be permitted.

- (c) The required insurance shall not be cancelled, removed, or endorsed to restrict coverage or limits of liability, without 60 days’ notice in writing by registered mail to: The Manager, Insurance and Bonds, Ministry of Transportation, P0 Box 9850, Stn Prov Govt, 940 Blanshard Street, Victoria, BC V8W 9T5.

3.3 Automobile Insurance

Automobile Liability coverage with inclusive limits of not less than **DELETED** providing third party liability and accident benefits insurance coverage must be provided for all vehicles required by law to be licensed that are owned, leased or rented by the Concessionaire or by the Operator, and that are used in the performance of this Agreement.

3.4 Aircraft Insurance

If aircraft (including helicopters) are used in the performance of this Agreement and are owned, leased, rented or used by the Concessionaire or by the Operator, then third party liability coverage with inclusive limits of not less than **DELETED** must be provided, together with a waiver of subrogation on the hull.

3.5 Additional Conditions In All Property and Liability Policies (Except Owned Automobile and Professional Liability Insurance) are to be Included by Endorsement as Follows

Each of the Province and BC Transportation Financing Authority will be named as an additional named insured in all property insurance policies by an endorsement as follows:

“Her Majesty the Queen in Right of the Province of British Columbia and the BC Transportation Financing Authority, are added as Additional Named Insureds.”

Notwithstanding any other terms, conditions, or exclusions elsewhere in the policies or in this Part 1, it is understood and agreed that every liability insurance policy (except owned automobile and professional liability insurance) is extended to include insurance coverages and clauses as follows:

“Her Majesty the Queen in Right of the Province of British Columbia and BC Transportation Financing Authority, together with all their employees, agents and servants, and all architects, engineers, consultants, contractors and any of their servants, agents, employees, volunteers, directors, parent, subsidiary, affiliated or related firms, engaged in or connected with the design, construction and related operations known as the “Kicking Horse Canyon Project” hereinafter referred to as Additional Named Insureds, are added as Additional Named Insureds, in respect of liability arising from the work or operations of the Insured and the Additional Named Insureds, in connection with contracts entered into between the Insured and the Additional Named Insureds.

The insurance as is afforded by this policy shall apply in the same manner and to the same extent as though a separate policy had been issued to each Insured. Any breach of a condition of the policy by any Insured shall not affect the protection given by this policy to any other insured. The inclusion herein of more than one Insured shall not operate to increase the limit of liability under this policy.

Products and Completed Operations Hazard coverage shall be provided and such cover shall remain in full force and effect for a period of **DELETED** after the work has been completed, irrespective of the expiry date of the policy.”

3.6 Cancellation / Limitation For All Policies (Except Owned Automobile and Professional Liability):

The required insurance coverages shall not be cancelled, removed, or endorsed to restrict coverage or limits of liability, without 60 days’ notice in writing by registered mail to: The Manager, Insurance and Bonds, Ministry of Transportation, P0 Box 9850, Stn Prov Govt, 940 Blanshard Street, Victoria, BC V8W 9T5.

The required insurance coverages shall not be lapsed without at least 30 days’ notice in writing by registered mail to: The Manager, Insurance and Bonds, Ministry of Transportation, P0 Box 9850, Stn Prov Govt, 940 Blanshard Street, Victoria, BC V8W 9T5.

3.7 Loss Payable

The insurance policies must contain a loss payable clause directing payment in accordance with the provisions of section 20.7 entitled “Application of Proceeds” of the Agreement.

3.8 Primary and Excess Coverage

The Concessionaire may satisfy limit requirements through the use of primary and excess liability insurance programs.

3.9 Use and Occupancy

Use and occupancy of the work or any part thereof prior to the date of completion shall not be cause for any termination of insurance coverage shown in the applicable sections.

3.10 Railway Insurances

Any insurance coverages and limits as may, from time to time, be required by CP Rail in connection with this Agreement, the CP Rail Agreement, the CP Rail Works and the Operations or any of them, will be the sole expense of the Concessionaire, save and except if any such insurance coverages and limits:

- (a) are additional to or vary from any insurance coverages or limits disclosed on the Resource Documents DVD; and
- (b) require adjustment to any insurance coverages and limits required under the terms of this Part 1 (except for greater certainty under Section 2.11, this Section 3.10 and Section 4.6 of this Part 1),

in which case any such additional or adjusted insurance coverages and limits will be considered a Province Change.

4. INSURANCE COVERAGES REQUIRED (Section 20.1.1.4 of the Concession Agreement)

4.1 Property Insurance

(a) Property and Equipment Insurance

The Concessionaire shall obtain, maintain and provide evidence of “ALL RISKS” insurance coverage (for greater certainty, excluding coverage for loss or damage resulting from seismic (earthquake) events) for buildings, structures, and improvements and equipment insurance, including flood and waterborne coverages, satisfactory to the Province covering all equipment, including equipment owned, rented or leased and used in the performance of this Agreement or for which the Concessionaire may be responsible including the current (as at the time of loss) replacement value of the structures (including walls and bridges).

(b) Deductibles Per Occurrence

- (i) Flood – up to **DELETED** provided that the Concessionaire can demonstrate to the reasonable satisfaction of the Province that the payment of such deductible is secured in a manner satisfactory to the Province
- (ii) All other losses up to **DELETED** provided that the Concessionaire can demonstrate to the reasonable satisfaction of the Province that the payment of such deductible is secured in a manner satisfactory to the Province

The Concessionaire will be solely responsible for the payment of all deductibles, except the deductible applying in the event of damage caused by Landslides (other than Landslides originating on slopes along any portions of the Project Facilities, the Site or the Adjacent

Areas which have been Disturbed by the Concessionaire for the purpose of any construction work or other work carried out in performing the Operations that occur during the period of two years following the completion of the work and for which Disturbance is a reasonable factor in the causation of the Landslide). In the event of damage caused by Landslides (other than Landslides originating on slopes along any portions of the Project Facilities, the Site or the Adjacent Areas which have been Disturbed by the Concessionaire for the purpose of any construction work or other work carried out in performing the Operations that occur during the period of two years following the completion of the work and for which Disturbance is a reasonable factor in the causation of the Landslide), the payment of the deductible will be included in the calculation of the Landslide Repair Costs contemplated in Section 14.8 [Landslides] of this Agreement such that any contribution to the Landslide Repair Costs that the Province may make in accordance with the terms of Section 14.8 [Landslides] will, subject to the terms of Section 14.8 [Landslides], take into account the deductible, if any, applicable to the damage caused by the Landslide.

The following Waiver of Subrogation is to be added to Equipment and Property Insurance Policies:

“In the event of any third party loss or damage or any physical loss or damage to the work, or contractor’s equipment, the settlement or payment of the subsequent claim shall be made without the right of subrogation against Her Majesty the Queen or the BC Transportation Financing Authority, or any of their employees, agents and servants, or the architects, engineers, consultants, contractors, or any of their servants, agents, employees, volunteers, directors, parent, subsidiary, affiliated or related firms, engaged in or connected with the design, construction and related operations known as the “Kicking Horse Canyon Project”.”

Each of the Province and BC Transportation Financing Authority will be named as an additional named insured in all Equipment and Property Insurance Policies by an endorsement as follows:

“Her Majesty the Queen in Right of the Province of British Columbia and the BC Transportation Financing Authority, are added as Additional Named Insureds.”

4.2 Cancellation / Limitation For All Policies (Except Owned Automobile):

The required insurance coverages shall not be cancelled, removed, or endorsed to restrict coverage or limits of liability, without 60 days’ notice in writing by registered mail to: The Manager, Insurance and Bonds, Ministry of Transportation, P0 Box 9850, Stn Prov Govt, 940 Blanshard Street, Victoria, BC V8W 9T5.

The required insurance coverages shall not be lapsed without at least 30 days’ notice in writing by registered mail to: The Manager, Insurance and Bonds, Ministry of Transportation, P0 Box 9850, Stn Prov Govt, 940 Blanshard Street, Victoria, BC V8W 9T5.

4.3 Loss Payable

The insurance policies must contain a loss payable clause directing payment in accordance with the provisions of Section 20.7 [Application of Proceeds] of this Agreement.

4.4 Primary and Excess Coverage

The Concessionaire may satisfy limit requirements through the use of primary and excess liability insurance programs.

4.5 Use and Occupancy

Use and occupancy of the work or any part thereof prior to the date of completion shall not be cause for any termination of insurance coverage shown in the applicable sections.

4.6 Railway Insurances

Any insurance coverages and limits as may, from time to time, be required by CP Rail in connection with this Agreement, the CP Rail Agreement, the CP Rail Works and the Operations or any of them, will be at the sole expense of the Concessionaire, save and except if any such insurance coverages and limits:

- (a) are additional to or vary from any insurance coverages or limits disclosed on the Resource Documents DVD; and
- (b) require adjustment to any insurance coverages and limits required under the terms of this Part 1 (except for greater certainty under Section 2.11, Section 3.10 and this Section 4.6 of this Part 1),

in which case any such additional or adjusted insurance coverages and limits will be considered a Province Change.

4.7 Earthquake Insurances

In the case of any insurance coverages and limits for earthquake loss or damage required to be obtained by the Concessionaire pursuant to the Senior Funding Agreements, or any of them, or pursuant to other requirements of the Senior Funders, any such insurance coverages and limits for earthquake loss or damage shall be deemed to be insurance coverages and limits required under this Agreement (including for greater certainty, under Section 20.7 [Application of Proceeds] of this Agreement).

Appendix 1 to Part 1 of Schedule 11

Insurance Benchmarking

1. *First Benchmarking Period*

Assumptions

Initial cost of insurance at the Commencement Date **DELETED**
 Actual insurance cost incurred for Contract Year 1 **DELETED**
 No premium increase for claim history

Calculation

DELETED Threshold Amount **DELETED**
 Province 'share' of premium increase calculated as:

DELETED **DELETED**

Total Performance Payments increase from 1 April in Contract Year 1 by DELETED

2. *Second Benchmarking Period*

Assumptions

Initial cost of insurance in Contract Year 1 **DELETED**
 Actual insurance cost incurred for Contract Year 2 **DELETED**
 No premium increase for claim history

Calculation

DELETED Threshold Amount **DELETED**
 Province 'share' of premium increase calculated as:

DELETED **DELETED**

Total Performance Payments increase from 1 April in Contract Year 2 by DELETED
DELETED

3. *Third Benchmarking Period*

Assumptions

Initial cost of insurance in Contract Year 2 **DELETED**
 Actual insurance cost incurred for Contract Year 3 **DELETED**
 No premium increase for claim history

Calculation

DELETED Threshold Amount **DELETED**
 Province 'share' of premium *decrease* calculated as:

DELETED **DELETED**

Total Performance Payments increase from 1 April in Contract Year 3 by DELETED
DELETED

4. *Fourth Benchmarking Period*

Assumptions

Initial cost of insurance in Contract Year 3

DELETED

Actual insurance cost incurred for Contract Year 4

DELETED

No premium increase for claim history

Calculation

DELETED Threshold Amount DELETED

Province 'share' of premium increase calculated as:

DELETED

DELETED

Total Performance Payments increase from 1 April in Contract Year 4 by DELETED

DELETED

5. *Fifth Benchmarking Period*

Assumptions

Initial cost of insurance in Contract Year 4

DELETED

Actual insurance cost incurred for Contract Year 5

DELETED

No premium increase for claim history

Calculation

DELETED Threshold Amount

DELETED

Province 'share' of premium *decrease* calculated as:

DELETED

DELETED

Total Performance Payments increase from 1 April in Contract Year 5 by DELETED

DELETED

6. *Sixth Benchmarking Period*

Assumptions

Initial cost of insurance in Contract Year 5

DELETED

Actual insurance cost incurred for Contract Year 6

DELETED

Premium increase for claim history DELETED

Calculation

DELETED Threshold Amount

DELETED

Province 'share' of premium increase calculated as:

DELETED

DELETED

Total Performance Payments increase from 1 April in Contract Year 6 by DELETED

DELETED

All other contract years will follow this example

SCHEDULE 11

INSURANCE

Part 2

INSURANCE TRUST AGREEMENT

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

and

CIT GROUP SECURITIES (CANADA) INC.

and

TRANS-PARK HIGHWAY GENERAL PARTNERSHIP,
a general partnership established under the laws of the Province of British Columbia

and

[INSURANCE TRUSTEE]

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

THIS AGREEMENT dated for reference [_____] is made

AMONG

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

(the "Province")

AND

CIT GROUP SECURITIES (CANADA) INC., a corporation incorporated under the laws of the Province of Ontario, for itself and as agent and trustee for and on behalf of the Senior Funders

(the "Agent")

AND

TRANS-PARK HIGHWAY GENERAL PARTNERSHIP, a general partnership established under the laws of the Province of British Columbia

(the "Concessionaire")

AND

[INSURANCE TRUSTEE], a trust company incorporated under the laws of the Province of [_____], in its capacity as trustee under this Agreement

(the "Insurance Trustee")

RECITALS

A. WHEREAS the Province, B.C. Transportation Financing Authority and the Concessionaire entered into the Concession Agreement pursuant to which the Concessionaire will carry out the Project; and

B. WHEREAS the Concessionaire is obligated by Section 20 of the Concession Agreement to maintain or cause to be maintained certain insurance with respect to the Project Facilities, the Site, the Adjacent Areas and the Operations, certain of the proceeds payable thereunder are payable to the Insurance Trustee.

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

1. DEFINITIONS

In this Agreement unless the context otherwise requires:

- (a) **“Agreement”** means this Agreement;
- (b) **“Approved Bank”** means one of the five largest Schedule I Canadian chartered banks ranked by asset size at the time of investment or deposit hereunder, or any of their successors, provided that such bank’s senior unsecured indebtedness is rated by a Major Bond Rating Agency at least A (high), as that rating is presently determined by Dominion Bond Rating Service Limited;
- (c) **“Concession Agreement”** means the agreement entitled “Kicking Horse Canyon Project Concession Agreement” made among the Province, B.C. Transportation Financing Authority and the Concessionaire and dated as of the 28th day of October, 2005;
- (d) **“Major Bond Rating Agency”** means any one of Dominion Bond Rating Service Limited, Standard & Poors Rating Group, Moody’s Canada Inc. or any of their successors or another independent recognized bond rating agency service acceptable to the Province, the Concessionaire, the Agent and the Insurance Trustee;
- (e) **“Party”** means any of the Province, the Insurance Trustee, the Agent or the Concessionaire, and **“Parties”** means the Province, the Insurance Trustee, the Agent and the Concessionaire;
- (f) **“Permitted Investments”** means any bonds, debentures, notes, bills of exchange, securities or other evidences of indebtedness issued or guaranteed by the Government of Canada or the Province of British Columbia provided that such instruments are rated at least AA (as such designation is presently determined by Dominion Bond Rating Service Limited) by a Major Bond Rating Agency; and
- (g) other words and expressions with initial capital letters used in this Agreement which are defined in the Concession Agreement have the same meanings when used in this Agreement as are given to them in the Concession Agreement.

2. INTERPRETATION

This Agreement will be interpreted according to the following provisions, save to the extent that the context or the express provisions of this Agreement otherwise requires:

- (a) the headings and sub headings and references to them in this Agreement are for convenience of reference only, do not constitute a part of this Agreement, and shall not be taken into consideration in the interpretation or construction of, or affect the meaning of, this Agreement;

- (b) the words “herein”, “hereto” and “hereunder” and other words of like import refer to this Agreement as a whole and not to the particular provision in which such word may be used;
- (c) all references to Sections are references to Sections of this Agreement;
- (d) words importing the singular include the plural and vice versa;
- (e) words importing a particular gender include all genders;
- (f) all references to any agreement, document, standard, principle or other instrument include (subject to all relevant approvals and any other provision of this Agreement or the Concession Agreement concerning such agreement, document, standard, principle or other instrument or amendments thereto) a reference to that agreement, document, standard, principle or other instrument as amended, supplemented, substituted, novated or assigned;
- (g) “person” includes an individual, corporation, partnership, joint venture, association, trust, pension fund, union, government, governmental body, governmental agency, authority, board, tribunal, commission or department and the heirs, beneficiaries, executors, personal or other legal representatives or administrators of an individual, and the receivers and administrators of a corporation;
- (h) whenever the terms “will” or “shall” are used in this Agreement they are to be construed and interpreted as synonymous and are to be read as “shall”;
- (i) the words “includes” or “including” are to be construed as being without limitation;
- (j) general words are not given a restrictive meaning;
 - (i) if they are introduced by the word “other”, by reason of the fact that they are preceded by words indicating a particular class of act, matter or thing; or
 - (ii) by reason of the fact that they are followed by particular examples intended to be embraced by those general words;
- (k) if the time for doing an act falls or expires on a day that is not a Working Day, the time for doing such act will be extended to the next Working Day;
- (l) the words of this Agreement are to be given their natural meaning; and
- (m) the Parties have had the opportunity to take legal advice on this Agreement and no provision is, therefore, to be construed contra proferentem.

3. APPOINTMENT AND DUTIES

- (a) The Province, the Agent and the Concessionaire hereby designate the Insurance Trustee as the Insurance Trustee for the purposes of the Concession Agreement with respect to proceeds of insurance pertaining to the Project.

- (b) The Insurance Trustee accepts its appointment and agrees to perform the duties and services required of it under this Agreement in a competent, honest, diligent and efficient manner.
- (c) The Insurance Trustee, upon receipt of any proceeds of insurance pursuant to Section 20.7 of the Concession Agreement, shall hold such proceeds in trust and, subject to the Insurance Trustee's receipt of directions to pay (including quantum and details of payee) from the Province, the Agent and the Concessionaire prior to payment, shall pay such proceeds together with any interest, distribution or other gain from time to time received by the Insurance Trustee upon or in respect of such proceeds pursuant to Section 4, in accordance with Sections 20.6, 20.6A and 20.7 of the Concession Agreement, which Sections are set forth verbatim in Schedule A hereof, and pending such payment shall invest such insurance proceeds in accordance with Section 4. If the Province, the Agent and/or the Concessionaire do not agree on a payment of proceeds of insurance by the Insurance Trustee, then any of the Province, the Agent or the Concessionaire may refer the dispute to be determined in accordance with Section 52 [Disputes Resolution Procedure] of the Concession Agreement and the Insurance Trustee shall deal with such proceeds in accordance with the determination made under the Disputes Resolution Procedure.
- (d) Each of the parties hereto hereby irrevocably nominates, constitutes and appoints the Insurance Trustee as its attorney to take all requisite steps, including, but without limitation, the filing of proofs of loss, to collect the proceeds of such insurance. The Province, the Agent and the Concessionaire will, on the request of the Insurance Trustee, provide such written directions as the Insurance Trustee may require on such collection of the proceeds of such insurance.
- (e) The Province and the Concessionaire shall provide the Insurance Trustee with a copy of any amendment to Sections 20.6, 20.6A and 20.7 of the Concession Agreement and any such amendment shall be deemed to be incorporated into and amend Schedule A to this Agreement accordingly.

4. INVESTMENT

- (a) Upon receipt of a joint direction from the Province, the Agent and the Concessionaire, the Insurance Trustee shall invest the escrow funds in Permitted Investments in its name in accordance with such direction. Any such direction to the Insurance Trustee shall be in writing and shall be provided to the Insurance Trustee no later than 9:00 a.m. on the day on which the investment is to be made. Any such direction received by the Insurance Trustee after 9:00 a.m. or received on a non-Working Day, shall be deemed to have been given prior to 9:00 a.m. the next Working Day. In the event that the Insurance Trustee does not receive a direction or only a partial direction, the Insurance Trustee may hold cash balances constituting part or all of the escrow fund and shall invest same in its deposit department or the deposit department of one of its Affiliates or any other Canadian chartered bank; but the Insurance Trustee and its Affiliates shall not be liable to account for any profit to any parties to this Agreement or to any other person or entity other than at a rate, if any, established from time to time by the Insurance Trustee or one of its Affiliates or Canadian chartered bank, as applicable. For the purpose of this Section, "Affiliate" means affiliated companies within the meaning of the *Business Corporations Act* (Ontario) ("OBCA").

5. TERM

- (a) This Agreement shall commence on the date hereof and shall terminate on the later of the date of termination of the Concession Agreement and the date the Insurance Trustee has discharged its duties in respect of insurance proceeds paid to it pursuant to the Concession Agreement. The Province and the Concessionaire shall give the Insurance Trustee notice of any termination effected pursuant to this Section 5(a).

6. INSURANCE TRUSTEE'S FEES AND EXPENSES

- (a) Subject to Sections 6(b) and 6(c), the Concessionaire shall pay to the Insurance Trustee an annual fee to be agreed between the Concessionaire and the Insurance Trustee which fee shall be paid by the Concessionaire within 30 days of receipt of an invoice therefor.
- (b) The Province and the Concessionaire shall each pay to the Insurance Trustee one half of a reasonable fee for distribution of proceeds, which will be dependent on time involved and responsibility of the Insurance Trustee.
- (c) The Province and the Concessionaire shall each pay to the Insurance Trustee one half of the additional fees referred to in Section 7(c).
- (d) The obligation of the Province and the Concessionaire to pay its one half of the fees referred to in this Section 6 to the Insurance Trustee is a several obligation and not subject to joint or joint and several liability, and neither the Province nor the Concessionaire shall have any liability whatsoever for the non-payment by the other of any fees or costs payable by such other Party under this Agreement.

7. RIGHTS AND DUTIES OF THE INSURANCE TRUSTEE

- (a) In the exercise of the duties and services required of it under this Agreement, the Insurance Trustee shall exercise that degree of care, diligence and skill that a reasonably prudent trustee would exercise in comparable circumstances.
- (b) No duty with respect to effecting or maintaining insurance or notifying anyone of the failure to insure shall rest upon the Insurance Trustee and the Insurance Trustee shall not be responsible for any loss by reason of want or insufficiency of insurance, or by reason of the failure of any insurer to pay the full amount of any loss against which it may have insured. Notwithstanding any reference herein to any other agreements to which the Insurance Trustee is not a party, the Insurance Trustee will have no duties or responsibilities hereunder except as expressly provided for herein.
- (c) The obligation of the Insurance Trustee to commence or continue any act, action or proceeding for the purpose of enforcing any rights of the Insurance Trustee or the parties under any policies of insurance shall be conditional upon the other Parties thereto furnishing, when required by notice from the Insurance Trustee, sufficient funds to commence or continue such act, action or proceeding. The Province and the Concessionaire shall indemnify the Insurance Trustee and hold the Insurance Trustee harmless against all direct liabilities, costs and expenses (including legal fees on a full indemnity basis) which the Insurance Trustee incurs in connection with commencing or continuing such act, action or proceeding, save and except any

liabilities, costs and expenses arising from or in connection with any breach, negligence or default on the part of Insurance Trustee. This indemnity shall survive the termination or discharge of this Agreement or the resignation of the Insurance Trustee.

- (d) The Insurance Trustee may, upon giving to the other Parties 90 days notice or such shorter notice as such Parties may accept as sufficient, resign this trust and at the end of 90 days or such shorter notice period, be discharged from all further duties and liabilities hereunder provided that it is not at that time holding any insurance proceeds payable under the Concession Agreement. If a material conflict of interest arises in the Insurance Trustee's role as a fiduciary hereunder, the Insurance Trustee will immediately notify the Concessionaire and the Province of the same and within 90 days after ascertaining that it has such material conflict of interest, either eliminate the same or resign its trust hereunder. Upon the resignation of the Insurance Trustee, the Concessionaire may designate a successor Insurance Trustee which designation shall be subject to approval by the Province and the Province shall either approve or disapprove of the successor Insurance Trustee forthwith. Any new Insurance Trustee appointed under this Section shall be a corporation authorized to carry on the business of a trust company in the Province of British Columbia. On any new appointment the new Insurance Trustee shall be vested with the same rights and duties as if it had been originally named as Insurance Trustee, the trust created by this Agreement will continue and there shall be immediately executed all such agreements or other instruments as may, in the opinion of counsel for both the Concessionaire and the Province, be necessary or advisable for the purpose of assuring the same to the new Insurance Trustee.
- (e) Nothing herein shall serve to exonerate the Insurance Trustee from any liability on its part arising by virtue of its failure to act in good faith or arising by its negligence or misconduct in performing its duties as aforesaid. In respect of matters not within its expertise, the Insurance Trustee shall be regarded as having acted in good faith and without negligence or misconduct if it relies on the opinion or advice of persons reasonably believed to be expert in such matters.
- (f) In the exercise of its rights, duties and obligations, the Insurance Trustee may, if it is acting in good faith:
 - (i) rely and act on legal opinions and the opinions of advisers and experts and on the certificates of the Concessionaire in form and substance satisfactory to the Insurance Trustee; and
 - (ii) rely on written directions or certificates signed by an officer, director or other designated signatory of the Concessionaire, the Agent and the Province, as applicable.

8. MISCELLANEOUS

(a) All notices or other communications authorized or required to be given pursuant to this Agreement shall be in writing and either delivered by hand or sent by facsimile as follows:

(i) In the case of the Province:

Ministry of Transportation
5th Floor, 940 Blanshard Street
Victoria, British Columbia V8W 9T5

Attention: Assistant Deputy Minister, Highways Department
Ministry of Transportation
Facsimile: 250-387-6431

(ii) In the case of the Agent:

207 Queen Quay West, Suite 700
Toronto, Ontario M5J 1A7

Attention: Chief Operating Officer
Facsimile: 416-594-3849

(iii) In the case of the Concessionaire:

Trans-Park Highway General Partnership
675 Cochrane Drive, West Tower, Suite 630
Markham, Ontario L3R 0B8

Attention: John McArthur
Facsimile: 905-530-2214

(iv) In the case of the Insurance Trustee:

[_____]
[_____]
[_____]

Attention: Manager, Corporate Trust
Facsimile: [_____]

Any such notice or communication shall be deemed to have been given and received on the first Working Day following the day on which it was delivered or transmitted.

A Party may change its address for receipt of notices hereunder by giving notice thereof to the other Parties.

(b) This Agreement may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all of the Parties will constitute a full, original and binding agreement for all purposes. Counterparts may be executed either in original or faxed form provided that any Party providing its

signature in faxed form will, upon any other Party's request, promptly forward to such Party an original signed copy of this Agreement which was so faxed.

- (c) This Agreement will be governed by and construed in all respects in accordance with the laws of the Province of British Columbia and the laws of Canada applicable therein.
- (d) The Parties agree to submit to the non-exclusive jurisdiction of the Courts of the Province of British Columbia as regards any claim or matter arising in relation to this Agreement.
- (e) Time is of the essence of this Agreement. If any Party expressly or impliedly waives the requirement that time will be of the essence, that Party may reinstate that requirement by delivering notice to the other Party or Parties who is or are affected.
- (f) The headings in this Agreement are for convenience of reference only, do not constitute a part of this Agreement, and shall not be taken into consideration in the interpretation or construction of, or affect the meaning of, this Agreement.
- (g) Notwithstanding any other provision of this Agreement the payment of money by the Province pursuant to this Agreement is subject to:
 - (i) there being sufficient monies available in an appropriation, as defined in the *Financial Administration Act*, R.S.B.C. 1996, c. 138 ("FAA"), to enable the Province, in any fiscal year when any payment of money by the Province falls due pursuant to this Agreement, to make that payment; and
 - (ii) Treasury Board, as defined in the FAA, not having controlled or limited, pursuant to the FAA, expenditure under any appropriation referred to in subparagraph (i) of this paragraph.

IN WITNESS WHEREOF the parties have executed this Agreement

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 in the presence of:)

(Witness)

JOHN DYBLE
Deputy Minister, Ministry of Transportation

CIT GROUP SECURITIES (CANADA) INC.

Per: _____
Name:
Title:

TRANS-PARK HIGHWAY GENERAL PARTNERSHIP

by its partners:

TRANS-PARK HIGHWAY INVESTMENT INC.

Per: _____
JOHN McARTHUR
President

Per: _____
STEVE SKELTON
Vice-President

TRANS-PARK HIGHWAY INC.

Per: _____
JOHN McARTHUR
President

Per: _____
STEVE SKELTON
Vice-President

**EXECUTED AND DELIVERED BY
[INSURANCE TRUSTEE]**

Authorized Signatory

Full Name

Authorized Signatory

Full Name

Schedule A

20.6 Claims

- 20.6.1 The Concessionaire will maintain a written register of all claims or incidents which might result in a claim under any of the insurance policies referred to in this Section 20 [Insurance] and will allow the Province's Representative to inspect such register at any time.
- 20.6.2 Without prejudice to Section 20.6.1, the Concessionaire will notify the Province's Representative within five Working Days of making any claim under any of the insurance policies referred to in this Section 20 [Insurance] where the value of the claim exceeds \$25,000 (index linked) or (regardless of the value of the claim) the claim involves personal injury or death, accompanied by full particulars of the incident giving rise to the claim.

20.6A Restoration and Reinstatement

- 20.6A.1 Subject to Sections 14.8 [Landslides] and 14.8A [Snow Avalanches], Section 20.8 [Uninsurable Risks] and Section 37.4 [Consequences of Eligible Force Majeure], if any part of the Project Facilities (including the Works or any part thereof), the Site or the Adjacent Areas are damaged or destroyed, the Concessionaire will restore, replace and reinstate such damage or destruction ("Reinstatement Works") promptly and in any event as soon as practicable in the circumstances.
- 20.6A.2 If any Reinstatement Works are reasonably estimated to cost more than \$1,000,000 (index linked) or in any other case where the Province, having regard to the nature of the damage or destruction, notifies the Concessionaire that a Reinstatement Plan is required, the Concessionaire will, as soon as practicable and in any event within 20 Working Days after the occurrence of the damage or destruction, submit to the Province's Representative pursuant to the Review Procedure a plan (a "Reinstatement Plan") prepared by the Concessionaire for carrying out the Reinstatement Works setting out, *inter alia*:
- 20.6A.2.1 a description of the Reinstatement Works required to restore, replace and reinstate the damage or destruction (in accordance, where applicable, with any Province Change issued in respect thereof);
- 20.6A.2.2 the Concessionaire's proposed schedule for the execution of the Reinstatement Works;
- 20.6A.2.3 the proposed terms upon which the Reinstatement Works are to be effected and the procurement procedure which the Concessionaire proposes to implement to procure the execution of the Reinstatement Works (which, if required by the Province to comply with applicable public procurement policies and requirements, will be a competitive procedure designated by and conducted under the supervision of the Province);

- 20.6A.2.4 if the damage or destruction occurs prior to the Final 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 Works (which proposal will be dealt with in accordance with the provisions of Section 12.2 [Variations to Project Schedule] and Section 12.3 [Preparation of Works Schedule], as applicable); and
- 20.6A.2.5 the Concessionaire's proposal for any related amendment to the Traffic Management Requirements, the Traffic Management Plan or the Schedule of Lane Closures to accommodate Lane Closures required in connection with the execution of the Reinstatement Works (which proposal will be dealt with in accordance with the provisions of Section 15.1.2 and Section 15.2B [Schedules of Lane Closures], as applicable),

and the Reinstatement Works will not be commenced until there has been no objection to the Reinstatement Plan in accordance with the Review Procedure.

- 20.6A.3 Subject to Section 37.4.4, the Concessionaire will carry out the Reinstatement Works in accordance with the Technical Requirements and all other applicable requirements under this Agreement and, where applicable, in accordance with the Reinstatement Plan to which there has been no objection in accordance with the Review Procedure. All designs, plans and specifications in respect of the Reinstatement Works will be subject to the same checking and review procedures and requirements as are applicable to the Works and other works carried out by the Concessionaire in the course of performing the Operations under this Agreement.
- 20.6A.4 If requested by the Province, the persons retained by the Concessionaire to design and carry out any Reinstatement Works will, as a condition to their retainer and prior to commencing any Reinstatement Works or design work in connection therewith, enter into Collateral Agreements with the Province, BCTFA and the Concessionaire in substantially the same form as the Collateral Agreement entered into by the Contractor.

20.7 Application of Proceeds

- 20.7.1 The Concessionaire will ensure that the insurers under any of the insurance policies that the Concessionaire is required to take out and maintain in force or to cause to be taken out and maintained in force pursuant to Section 20.1.1 pay the proceeds of:
- 20.7.1.1 any insurance policy for third party legal liability, contractor's pollution liability (to the extent payable to a third party) or employer's liability:
- 20.7.1.1.1 directly to the third party or employee concerned or, where any insured party has discharged the relevant liability to the third party or employee concerned prior to the payment of any relevant insurance proceeds, to the insured party who discharged the relevant liability;

- 20.7.1.1.2 to the Province as loss payee (and the Province will pay the same to the relevant third party or employee concerned); or
 - 20.7.1.1.3 to any collateral agent or trustee for the Senior Funders to the extent required by the Senior Funding Agreements;
- 20.7.1.2 any contractor's all risks, all risks property or contractor's pollution liability (to the extent not covered by Section 20.7.1.1 and excluding any business interruption or loss of profits insurance proceeds payable to the Concessionaire under such policy) insurance policy to the Insurance Trustee pursuant to the provisions of Part 2 of Schedule 11 [Insurance Trust Agreement] except where the Concessionaire has already completed the Reinstatement Works in respect of the damage or destruction that gave rise to the proceeds (or, in the case of any pollution liability to a third party, discharged such liability) and except where the insurance proceeds payable in respect of any single claim made under the relevant insurance policy is equal to or less than \$2,500,000 (index linked), in either of which cases the proceeds may be paid directly to the Concessionaire or to any collateral agent or trustee for the Senior Funders to the extent required by the Senior Funding Agreements; provided that where the proceeds of any such insurance policy (other than any 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 \$2,500,000 (index linked), the Concessionaire will ensure that such proceeds are applied to the Reinstatement Works 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 paid in whole or in part to the Insurance Trustee pursuant to this Section 20.7.1.2 (such proceeds received by the Insurance Trustee being referred to as the "Insurance Proceeds"), then either Section 20.7.1.2.1 or 20.7.1.2.2 will apply:
- 20.7.1.2.1 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 Works in respect of the damage or destruction that gave rise to the Insurance Proceeds and, in accordance with such contract, the Concessionaire is required to make a payment to such third party for such purpose, then the Insurance Trustee will, not later than the latest of:
 - 20.7.1.2.1.1 the date that is 15 Working Days after receipt by the Insurance Trustee of a copy of an invoice from such third party to the Concessionaire accompanied by a written confirmation of the Concessionaire addressed to the Insurance Trustee that the

amount of the invoice is payable in accordance with the relevant contract and that the Concessionaire requires such invoice to be discharged out of the Insurance Proceeds;

20.7.1.2.1.2 the date that is seven Working Days prior to the due date for payment of such invoice by the Concessionaire under the terms of the relevant contract; and

20.7.1.2.1.3 the date that is 15 Working Days after receipt of the Insurance Proceeds by the Insurance Trustee in respect of the relevant Reinstatement Works,

pay to the relevant third party an amount equal to the lesser of such Insurance Proceeds and the amount of such invoice, provided that the Insurance Trustee has also received written confirmation from the Province's Representative that it has no objection to the amount of such invoice or the Reinstatement Works in respect of which it is issued. Upon completion of the relevant Reinstatement Works and the issue of a Reinstatement Certificate pursuant to Section 20.7.3, the Insurance Trustee will pay the balance (if any) of any such Insurance Proceeds to the Concessionaire or to any collateral agent or trustee for the Senior Funders to the extent required by the Senior Funding Agreements within 20 Working Days of receipt of request for the same from the Concessionaire or such collateral agent or trustee, and the Concessionaire hereby undertakes that if following such payment to the Concessionaire the Province receives a demand from the relevant insurer for all or any part of such balance, the Concessionaire will pay the amount demanded to the relevant insurer within the time period stated in the demand;

20.7.1.2.2 if the Concessionaire itself, in accordance with the provisions of the relevant Reinstatement Plan, carries out the Rectification Works in respect of which the Insurance Proceeds have been paid to the Insurance Trustee, then the Insurance Trustee will, on the later of the date that is 15 Working Days after:

20.7.1.2.2.1 receipt by the Insurance Trustee of a certificate from the Concessionaire addressed to the Insurance Trustee confirming in writing the amount of the Insurance Proceeds claimed by the Concessionaire from the Insurance Trustee,

based on the cost of the Reinstatement Works carried out by the Concessionaire; and

20.7.1.2.2.2 receipt of the Insurance Proceeds by the Insurance Trustee in respect of the relevant Reinstatement Works,

pay to the Concessionaire an amount equal to the lesser of such Insurance Proceeds and the amount claimed in such certificate, provided that the Insurance Trustee has also received written confirmation from the Province's Representative that it has no objection to the amount of the Insurance Proceeds claimed by the Concessionaire for the Reinstatement Works carried out by the Concessionaire in respect of which the relevant Insurance Proceeds are claimed. Upon completion of the Reinstatement Works and the issue of a Reinstatement Certificate pursuant to Section 20.7.3, the Insurance Trustee will within 20 Working Days of receipt of a request from the Concessionaire for the same pay the balance (if any) of such Insurance Proceeds to the Concessionaire or to any collateral agent or trustee for the Senior Funders to the extent required by the Senior Funding Agreements, and the Concessionaire hereby undertakes that if following such payment to the Concessionaire the Province receives a demand from the relevant insurer for all or any part of such balance, the Concessionaire will pay the amount demanded to the relevant insurer within the time period stated in the demand;

20.7.1.3 any other insurance, so as to ensure the performance by the Concessionaire of its obligations under this Agreement.

20.7.2

20.7.2.1 Where the Province's Representative does not provide the written confirmation required by Section 20.7.1.2.1 or Section 20.7.1.2.2, the Province's Representative will provide its reasons for objecting to the claim to the Concessionaire within the period within which but for the absence of such written confirmation the Province would be required to make payment pursuant to those Sections.

20.7.2.2 The Province's Representative may object to the amount claimed or the Reinstatement Works in respect of which the claim is made if:

20.7.2.2.1 the cost of the said Reinstatement Works completed is less than the amount claimed;

20.7.2.2.2 any of the grounds referred to in Sections 20.7.3.3.1 to 20.7.3.3.3, inclusive, exist with respect to the said Reinstatement Works; or

20.7.2.2.3 the Insurance Proceeds remaining in the hands of the Province following payment of the amount claimed would be insufficient to cover the reasonably estimated remaining cost to complete the Reinstatement Works.

Any dispute under this Section 20.7.2.2 may be referred by either the Province or the Concessionaire to the Disputes Resolution Procedure for determination in accordance with Section 20.7.4.

20.7.3

- 20.7.3.1 In respect of Reinstatement Works for which a Reinstatement Plan is required pursuant to Section 20.6A.2, the Concessionaire will give at least 10 Working Days prior notice to the Province's Representative of the date upon which the whole of the Reinstatement Works will be Finally Completed and ready for inspection by the Province's Representative. Upon the Concessionaire notifying the Province's Representative that Final Completion has occurred and subject to the delivery to the Province's Representative of a Concessionaire's Final Completion Certificate (Reinstatement Works) and all other relevant Certificates and supporting documentation in accordance with Part 3 of Schedule 5 [Design and Certification Procedure] with respect to the Reinstatement Works, the Province's Representative will commence an inspection of such Reinstatement Works within 10 Working Days of receipt of such notice.
- 20.7.3.2 The Province's Representative will within 20 Working Days of the commencement of such inspection either:
- 20.7.3.2.1 issue a Reinstatement Certificate; or
 - 20.7.3.2.2 notify the Concessionaire of its decision not to issue a Reinstatement Certificate and state the reasons for such decision.
- 20.7.3.3 The Province's Representative may refuse to issue a Reinstatement Certificate if:
- 20.7.3.3.1 such Reinstatement Works have not been Finally Completed in accordance with the Design and Construction Output Specifications and the Technical Requirements;
 - 20.7.3.3.2 there has been non-compliance in any material respect with the Design and Certification Procedure or any of the Technical Requirements or non-compliance with any Laws and Regulations or Legal Requirements in connection with the execution of the Reinstatement Works, which in either case has not been rectified; or

- 20.7.3.3.3 there is any other default in the execution of the Reinstatement Works in accordance with the requirements of this Agreement (including the requirements set forth in Section 20.6A [Restoration and Reinstatement] and in the relevant Reinstatement Plan).
- 20.7.3.4 If the Province's Representative gives a notice under Section 20.7.3.2.2, then the Concessionaire will issue to the Province's Representative a notice not less than five Working Days but not more than 10 Working Days prior to the date upon which the Concessionaire expects to complete such further works or other measures necessary or appropriate to remedy or remove the cause of the refusal to issue a Reinstatement Certificate notifying the Province's Representative accordingly. Upon the Concessionaire notifying the Province's Representative that such further works or other measures necessary or appropriate as aforesaid have been completed or taken, the Province's Representative will within 10 Working Days of receipt of such notice commence an inspection of such further works or measures and the provisions of Sections 20.7.3.2 and 20.7.3.3 and this Section 20.7.3.4 will thereafter apply to such notice, *mutatis mutandis*.
- 20.7.3.5 The issue of any Reinstatement Certificate is without prejudice to and does not in any way limit:
- 20.7.3.5.1 the obligation of the Concessionaire to design, construct, operate, maintain and rehabilitate the Project Facilities subject to and in accordance with this Agreement;
- 20.7.3.5.2 any warranties given by the Concessionaire under this Agreement; and
- 20.7.3.5.3 the provisions of Section 13 [Inspection and Completion].
- 20.7.4 Any Dispute as to whether a Reinstatement Certificate or a written confirmation pursuant to this Section 20.7 [Application of Proceeds] is required to be issued in accordance with the terms of this Section 20.7 may be referred by either Party to the Disputes Resolution Procedure and the provisions of Section 13.4 [Disputed Certificate] will apply *mutatis mutandis* as if the said Reinstatement Certificate or written confirmation (as the case may be) were specifically mentioned therein.
- 20.7.5 The Concessionaire will ensure that the terms of all policies of insurance that the Concessionaire is required to take out and maintain in force or cause to be taken out and maintained in force in accordance with this Agreement are (without prejudice to any other requirement of this Agreement) taken out and maintained upon terms which give effect to the provisions of Section 20.7.1.
- 20.7.6 The Province agrees that, subject to compliance by the Concessionaire with its obligations under Section 20.6A [Restoration and Reinstatement] and this Section 20.7 [Application of Proceeds], and provided that the Concessionaire carries out and completes the Reinstatement Works in accordance with the requirements of this Agreement and the Reinstatement Plan, it will not exercise

any right which it might otherwise have to terminate this Agreement by virtue of the event which gave rise to a claim for insurance proceeds in respect of the relevant damage or destruction.

SCHEDULE 12

CONCESSIONAIRE'S ENVIRONMENTAL OBLIGATIONS

1. ENVIRONMENTAL MANAGEMENT

Throughout the Contract Period, the Concessionaire is responsible for managing environmental issues associated with the Project and must comply with, observe, satisfy and perform all of the Concessionaire's Environmental Obligations (which include the requirements set forth in Section 8.13 [Concessionaire's Environmental Obligations] of this Agreement). The Concessionaire must also comply with, fulfill and satisfy all Environmental Laws and all provincial and federal guidelines and policies that may apply during the Contract Period in respect of the Operations except to the extent that the Concession Agreement provides for the Province to comply with the same.

1.1 Canadian Environmental Assessment Act Screening Review

Except as provided to the contrary in the Agreement, the Concessionaire must observe, comply with and carry out the environmental mitigation measures described in the CEAA Screening Report, the CEAA Approval, and any amendments thereto as set forth in Section 8.13 [Concessionaire's Environmental Obligations].

Except as provided to the contrary in the Agreement, any further environmental assessment studies required under the CEAA Screening Report, the CEAA Approval, and as may be required by relevant environmental agencies, are the responsibility of the Concessionaire and must be carried out by the Concessionaire at its own cost.

1.2 Environmental Management Responsibilities

The Concessionaire must have available at all times during the Contract Period qualified environmental specialists responsible for managing and monitoring all environmental issues associated with the Works and Operations.

The Concessionaire is required to:

- comply with the requirements of the CEAA Screening Report and the CEAA Approval in accordance with Paragraph 1.1 of this Schedule 12;
- prior to commencing construction, identify and obtain at its own cost all necessary Permits, Licenses, and Approvals including notification and approvals under the British Columbia *Water Act*, R.S.B.C. 1996, c. 483, and authorization pursuant to section 35(2) of the *Fisheries Act*, R.S.C. 1985, c. F-14, if required;
- develop, implement, maintain and update an Environmental Management Plan in accordance with Paragraph 1.5 of this Schedule 12, and to comply with the reporting requirements set forth in Part 2 of Schedule 15 [Reports];
- use reasonable efforts to establish and maintain working relationships with regulatory agencies and Interested Parties;

- address all environmental issues associated with the Works and the Operations to the satisfaction of the regulatory agencies;
- develop and implement an Environmental Quality Management Plan in accordance with Paragraph 1.3 of this Schedule 12;
- conduct environmental monitoring of the Works during construction and after construction is completed; and
- provide at such time during the Contract Period and in such form as may be reasonably required by the Province, such reports and certificates prepared by the appropriate qualified environmental specialists evidencing the Concessionaire's compliance with the CEAA Screening Report, the CEAA Approval, and all Permits, Licences and Approvals pertaining to the Concessionaire's Environmental obligations.

1.3 Environmental Quality Management Plan

The Concessionaire is required to develop, implement, maintain and update a comprehensive Environmental Quality Management Plan in accordance with the requirements set forth in Section 23.1.3.6 of this Agreement and Schedule 6 [Quality Management].

1.4 Environmental Design

The Concessionaire's environmental design requirements will be in accordance with Part 1 of Schedule 5 [Design and Construction Output Specifications].

The Concessionaire is required to design and build the Project in compliance with:

- Environmental Laws;
- Permits, Licences and Approvals;
- the CEAA Screening Report and CEAA Approval;
- provincial and federal guidelines and policies applicable during the Contract Period, including:
 - SS 165 *Protection of the Environment* of the Ministry's Standard Specifications. The Highway is classified as a "designated environmentally sensitive area" in accordance with SS 165.01.04 and is subject to all the restrictions set out in SS 165;
 - Habitat Conservation and Protection Guidelines, Fisheries and Oceans Canada, 1998;
 - *Standards and Best Practices for Instream Works*, Ministry of Water, Land and Air Protection, March 2004;

- *Land Development Guidelines for the Protection of Aquatic Habitat*, Department of Fisheries and Oceans Canada and Ministry of Environment, Lands and Parks, 1992;
- *Manual of Control of Erosion and Shallow Slope Movement*, Ministry of Transportation (and Highways), August 22, 1997;
- Best Management Practices Guide – Ministry of Water, Land and Air Protection;
- Practitioners Guide to Habitat Compensation for DFO Habitat Management Staff, Fisheries and Oceans Canada, 2002;
- *Best Management Practices For Highway Maintenance Activities*, Ministry of Transportation document, July 2004.

The Concessionaire is required to avoid or, where avoidance is not possible, minimize to the fullest extent any adverse environmental impacts associated with the Project to the satisfaction of environmental agencies.

The Concessionaire is required to:

- Incorporate wildlife passage mitigation into the design to the satisfaction of the Province and the Ministry of Water, Land and Air Protection;
- Incorporate wildlife collision mitigation into the design at specific locations of the Project as identified in the CEAA Screening Report and CEAA Approval, which may include but are not limited to:
 - wildlife fencing;
 - avoidance reflector systems; and
 - incorporation of wildlife passage into culvert design.

1.5 Operation, Maintenance and Rehabilitation

The Concessionaire will develop, maintain, and implement an Environmental Management Plan which clearly outlines the responsibilities of the Concessionaire throughout the operation, maintenance and rehabilitation phases of the Project.

The Environmental Management Plan will comply with all of the Concessionaire's Environmental Obligations including those set forth in Part 1 of Schedule 5 [Design and Construction Output Specifications].

The Concessionaire will expand and update the Environmental Management Plan throughout the life of Contract Period to reflect the work scheduling and site conditions that are current at the time.

Without limiting the foregoing, the Environmental Management Plan will include, but will not be limited to, the following:

- Post-construction monitoring and maintenance of fish and wildlife habitat compensation and enhancement sites;
- Water quality monitoring and mitigation;
- Spill contingency planning and response;
- Potential acid generating and metal leaching materials and acid rock drainage monitoring and mitigation; and
- Other environmental issues that may arise as a result of routine operation, maintenance and rehabilitation activities, in respect of the Concession Highway.

The Concessionaire will submit the Environmental Management Plan and any subsequent updates to the Province and to any appropriate environmental agency for acceptance. The Concessionaire is fully responsible for developing an Environmental Management Plan that is acceptable to all environmental agencies.

The Concessionaire is fully responsible for any referrals to relevant environmental agencies which may be necessary or desirable at any time and from time to time during the Contract Period and for satisfying any requirements imposed by any such agency.

SCHEDULE 13

CHANGES

Part 1

DEFINITIONS

In this Schedule 13, unless the context otherwise requires, the following expressions have the following meanings:

“Amended Change Appraisal” has the meaning given in paragraph 4.1.4 of Part 2 of this Schedule 13 [Province Changes].

“Amended Change Notice” has the meaning given in paragraph 4.1.1 of Part 2 of this Schedule 13 [Province Changes].

“Amended Compensation Notice” has the meaning given in paragraph 1.1 of Part 5 of this Schedule 13 [Compensation Events].

“Bid Price” means, in respect of a Province Change or a Compensation Event (as the case may be), the price set out in the report on Valid Responses referred to in paragraph 4.1.4 of Part 2 of this Schedule 13 [Province Changes].

“Cancellation Notice” has the meaning given in paragraph 6.1.1.3 of Part 2 of this Schedule 13 [Province Changes].

“Capital Cost Increase” means, in relation to a Province Change or Compensation Event, the amount of the Fixed Price or Bid Price therefor (if any) accepted by the Province in accordance with this Schedule 13 and (except insofar as covered by such Fixed Price or Bid Price) the amount, if any, by which:

- (a) Capital Expenditure (in addition to such Fixed Price or Bid Price) that is incurred by the Concessionaire in carrying out the Operations as a direct consequence of the Province Change or Compensation Event under consideration, the Concessionaire having taken all reasonable steps to minimize such Capital Expenditure,
exceeds:
- (b) Capital Expenditure which would have been incurred by the Concessionaire in carrying out the Operations without the Province Change or Compensation Event under consideration,

provided, however, that, for greater certainty, if a Bid Price is accepted by the Province, any reasonable additional Capital Expenditure properly and demonstrably incurred and arising under the terms of the Bid Price will be added subsequently and recovered as a Capital Cost Increase insofar as such costs have been included in the report on Valid Responses contained in the Change Appraisal or Amended Change Appraisal (as applicable) delivered to the Province pursuant to either paragraph 3.1 or paragraph 4.1 of Part 2 of this Schedule 13 [Province Changes].

“Capital Cost Saving” means, in relation to a Province Change, Concessionaire Change or Compensation Event, the amount, if any, by which:

- (a) Capital Expenditure that is incurred by the Concessionaire in carrying out the Operations as a direct consequence of the Province Change, Concessionaire Change or Compensation Event under consideration, the Concessionaire having taken all reasonable steps to minimize such Capital Expenditure,

is less than:
- (b) Capital Expenditure which would have been incurred by the Concessionaire in carrying out the Operations without the Province Change, Concessionaire Change or Compensation Event under consideration

provided, however, that, for greater certainty, if a Bid Price is accepted by the Province in accordance with this Schedule 13, any reasonable additional reduction in Capital Expenditure arising under the terms of the Bid Price will be added to and recovered subsequently as a Capital Cost Saving insofar as such costs have been included in the report on Valid Responses contained in the Change Appraisal or Amended Change Appraisal (as applicable) delivered to the Province pursuant to either paragraph 3.1 or paragraph 4.1 of Part 2 of this Schedule 13 [Province Changes].

“Change Adjustment” means an adjustment to the Total Performance Payment calculated in accordance with Appendix A to this Schedule 13.

“Change Appraisal” has the meaning given in paragraph 3.1 of Part 2 of this Schedule 13 [Province Changes].

“Change Completion Date” has the meaning given in paragraph 2.1.1.2 of Part 2 of this Schedule 13 [Province Changes].

“Change Directive” means a written instruction which is issued on a form designated as a “Change Directive Form” and signed by the Province’s Representative directing the Concessionaire to proceed with a Province Change pending the finalization and issuance of a Province Change Confirmation for that Province Change.

“Change in Capital Costs” means a Capital Cost Increase or a Capital Cost Saving.

“Change in Recurrent Costs” means a Recurrent Cost Increase or a Recurrent Cost Saving.

“Change in Revenues” means a Revenue Gain or a Revenue Loss.

“Compensable Loss” in respect of a Compensation Event means:

- (a) a Capital Cost Increase; and/or
- (b) a Recurrent Cost Increase; and/or
- (c) a Revenue Loss,

incurred by the Concessionaire as a direct consequence of the Compensation Event (the Concessionaire having taken all reasonable steps to mitigate such Compensable Loss) to the

extent the aggregate amounts referred to in paragraphs (a), (b) and (c) above exceed the aggregate of any Capital Cost Saving, Recurrent Cost Saving, Revenue Gain and any other saving incurred as a direct consequence of such Compensation Event (the Concessionaire having taken all reasonable steps to maximize the same).

“Compensation Notice” has the meaning given in paragraph 1.1 of Part 5 of this Schedule 13 [Compensation Events].

“Disputed Matter” has the meaning given in paragraph 6.1.1.1 of Part 2 of this Schedule 13 [Province Changes].

“Fixed Price” means a fixed price quotation (excluding financing costs) for the implementation of a Province Change or Compensation Event (as the case may be) incorporating all such information, including quantities, as is required pursuant to paragraph 3.1.1 of Part 2 of this Schedule 13 [Province Changes] or as the Province may reasonably require to enable it to properly evaluate such quotation excluding, for greater certainty, a Bid Price.

“Payment Amount” has the meaning given in paragraph 1.1.1 of Part 5 of this Schedule 13 [Compensation Events].

“Province Change Notice” has the meaning given in paragraph 2.1.1 of Part 2 of this Schedule 13 [Province Changes].

“Recurrent Cost” means any expenditure (whether recurrent or not) which is not a Capital Expenditure.

“Recurrent Cost Increase” means, in relation to a Province Change or a Compensation Event, the amount (if any) by which:

- (a) the Recurrent Costs incurred and/or to be incurred by the Concessionaire in performing the Operations as a direct consequence of the Province Change or the Compensation Event, subject to the Concessionaire taking all reasonable steps (having regard to its continuing obligations under the Agreement) to minimize such Recurrent Costs insofar as they are attributable to such Province Change or Compensation Event,

exceeds:

- (b) the Recurrent Costs which would have been incurred by the Concessionaire in performing the Operations without the Province Change or Compensation Event.

“Recurrent Cost Saving” means, in relation to a Province Change, Concessionaire Change or Compensation Event, the amount (if any) by which:

- (a) the Recurrent Costs incurred and/or to be incurred by the Concessionaire in performing the Operations as a direct consequence of the Province Change, Concessionaire Change or Compensation Event, subject to the Concessionaire taking reasonable steps (having regard to its continuing obligations under the Agreement) to minimize such Recurrent Costs insofar as the Recurrent Costs are attributable to such Province Change, Concessionaire Change or Compensation Event,

is less than:

- (b) the Recurrent Costs which would have been incurred by the Concessionaire in performing the Operations without the Province Change, Concessionaire Change or Compensation Event.

“Refusal Notice” has the meaning given in paragraph 5.1.1 of Part 2 of this Schedule 13 [Province Changes].

“Relevant Consents” has the meaning given in paragraph 3.1.4 of Part 2 of this Schedule 13 [Province Changes].

“Revenue Gain” means a net increase in the Total Performance Payment receivable by the Concessionaire in accordance with Section 32.1 [Total Performance Payment] of the Agreement as a direct consequence of a Province Change, Concessionaire Change or Compensation Event which would not have been payable by the Province but for the Province Change, Concessionaire Change or Compensation Event.

“Revenue Loss” means the absence of, delay in, or a net decrease in the Total Performance Payment receivable by the Concessionaire in accordance with Section 32.1 [Total Performance Payment] of the Agreement as a direct consequence of a Province Change or Compensation Event which would have been payable by the Province but for the Province Change or Compensation Event; provided however that to the extent a Revenue Loss results from a delay in completion of the Works resulting from a Province Change or a Compensation Event, the Revenue Loss will be determined on the basis of the Delay Period determined in accordance with Section 12.6.7 of the Agreement.

“Valid Response” means a tender, bid or proposal received by the Concessionaire which complies with the competitive tender, bid or proposal requirements established in accordance with the provisions of paragraph 4.1.2 of Part 2 of this Schedule 13 [Province Changes] and notified to tenderers, bidders or proponents by the Concessionaire.

SCHEDULE 13

CHANGES

Part 2

PROVINCE CHANGES

1.1 General

- 1.1.1 Subject to the terms and conditions of this Schedule 13, the Province will be entitled to propose and require the Concessionaire to carry out and implement a Province Change.
- 1.1.2 The Concessionaire will not be entitled to any payment, compensation or extension of time for a Province Change except to the extent provided in a Province Change Confirmation or a Change Directive in accordance with this Schedule.

2.1 Procedure for requesting a Province Change

- 2.1.1 If the Province wishes to make a Province Change, the Province will issue a Notice (a "Province Change Notice") to the Concessionaire and the Agent specifying:
- 2.1.1.1 the nature, extent and full details of the Province Change in sufficient detail to reasonably allow the Concessionaire to calculate and provide the Change Appraisal in accordance with paragraph 3.1 of this Part 2;
 - 2.1.1.2 the date as of which the Province wishes the Province Change to be completed (which will be a reasonable date having regard to the nature of the Province Change) (the "Change Completion Date");
 - 2.1.1.3 whether or not the Province wishes any Capital Cost Increase consequent on a Province Change to be paid for by way of a lump sum payment or payments, or by way of a Change Adjustment (and, if desired by the Province in the case of a Change Adjustment, with a request for the Concessionaire to use all commercially reasonable efforts to obtain financing for all or part of the Province Change, provided, however, that no such request may be made by the Province unless the Province believes that the Capital Cost Increase consequent on the Province Change is reasonably likely to exceed **DELETED** (index linked)), or a combination thereof;
 - 2.1.1.4 where, in the opinion of the Province, it is or would be likely to be required by applicable Laws and Regulations to competitively tender or seek competitive bids or proposals in respect of any contract in connection with or relating to the Province Change, that the Concessionaire is required to seek and evaluate competitive tenders, bids or proposals (as applicable)

or other competitive price quotations for the Province Change and submit a Bid Price in accordance with the provisions set out in paragraph 4.1 (provided, however, that references in paragraph 4.1 to “Amended Change Notice” and “Amended Change Appraisal” will be construed for purposes of this paragraph 2.1.1.4 as if they were references to “Province Change Notice” and “Change Appraisal” respectively).

3.1 Change Appraisals

Subject to paragraphs 4.1.6 and 5.1 of this Part 2, within 10 Working Days (or such later date as the Province may specify acting reasonably in the circumstances) of the issuance of a Province Change Notice, the Concessionaire will deliver to the Province a written preliminary estimate which will set out the Concessionaire’s estimate of the impacts of the Province Change Notice on the Project. Within 10 Working Days of the delivery by the Concessionaire of its preliminary estimate, the Province shall notify the Concessionaire in writing that the Province either (i) rescinds the Province Change Notice, or (ii) would like to proceed, in which case within 20 Working Days of such notice to proceed the Concessionaire will deliver to the Province a written report (a “Change Appraisal”), which will set out:

- 3.1.1 the amount of the Fixed Price, together with a detailed summary of the prices, costs, charges, overhead amounts, profit and other margins, used to calculate the Fixed Price and a statement of the Concessionaire confirming the matters set out in paragraphs 3.1.1.1 to 3.1.1.6 (inclusive), which statement must be accompanied by sufficient additional information to demonstrate to the Province’s satisfaction that:
 - 3.1.1.1 the Concessionaire has used all reasonable efforts, including the use of competitive quotations or tenders, to oblige its subcontractors to minimize any increase in costs and to maximize any reduction in costs;
 - 3.1.1.2 all costs of the Concessionaire and its contractors and subcontractors of any tier are limited to actual amounts, to the extent such amounts relate specifically to the Province Change and would not otherwise have been incurred and are: (i) paid or to be paid or invoiced to the Concessionaire, its contractors or subcontractors of any tier (as applicable); or (ii) paid by the Concessionaire, its contractors or subcontractors of any tier (as applicable) and any additional mark-ups, overhead charges, or other increases above the actual amounts referred to above, whether for salary or wages, machinery, equipment, tools, or any other input are set out and identified;
 - 3.1.1.3 the margins for profit and overhead included in the calculation of the Fixed Price for the Concessionaire do not exceed **DELETED** and no other margins or mark-ups (except for any margin or premium referred to in paragraph 3.1.1.3A below) for the Concessionaire are included;
 - 3.1.1.3A to the extent the Province Change would directly result in a material adverse change to the Concessionaire in the overall risk allocation under the Concession Agreement as at the date of the Province Change Notice, taking into account any other factors mitigating the effect of the Province

Change on the overall risk allocation, the amount of any margin or premium included in the calculation of the Fixed Price (in excess of the margins for profit and overhead referred to in paragraph 3.1.1.3 above) fairly and appropriately reflects such change in overall risk allocation (provided, however, that no risk premium may be included in the Fixed Price to take account of any amendments by the Province to relieve the Concessionaire of the obligation to maintain any insurances identified in Section 2, 3 or 4 of Part 1 of Schedule 11 [Insurance Requirements] or to reduce the scope of coverage or the policy limits of any insurance coverage required to be maintained by the Concessionaire pursuant to Part 1 of Schedule 11 [Insurance Requirements]);

- 3.1.1.4 all costs included in the Fixed Price reflect: (i) labour rates applying in the open market to providers of services similar to those required in connection with the implementation of the Province Change; (ii) any and all changes in the Technical Requirements arising out of the proposed Province Change; and (iii) any and all changes in risk allocation (including any margin or premium referred to in paragraph 3.1.1.3A above);
 - 3.1.1.5 the Fixed Price will provide good overall value to the Province and takes into account all reasonably foreseeable Changes in Law;
 - 3.1.1.6 the Concessionaire will make best efforts to obtain competitive pricing when procuring any work, services, supplies, materials or equipment required in connection with the implementation of the proposed Province Change and has complied or will comply with all Good Industry Practice and the procurement guidelines of the Province then in effect in relation to any such procurement, to a standard no less than the Concessionaire would apply if all costs incurred were to its own account without recourse to the Province;
- 3.1.2 where relevant, an estimate of the likely:
- (a) Capital Cost Increases or Capital Cost Savings; and/or
 - (b) Recurrent Cost Increases or Recurrent Cost Savings; and/or
 - (c) Revenue Loss or Revenue Gain,

resulting from the implementation of the Province Change insofar as not covered by the Fixed Price or, where a Bid Price is required pursuant to paragraph 4.1 of this Part 2, by the Bid Price (which estimate, for greater certainty, will not be binding on either Party unless expressly agreed to by both Parties);

- 3.1.3 where the Province Change Notice has specified that the Province wishes the Province Change to be paid for by a Change Adjustment, an estimate of such adjustment calculated in accordance with Appendix A to this Schedule 13 (which estimate, for greater certainty, will not be binding on either Party unless expressly agreed to by both Parties) and, where there is a Capital Cost Increase, a report on whether funding for the Capital Cost Increase to which the Change Adjustment relates is available under the Funding Agreements and, if not,

whether the Concessionaire has been able to obtain or is likely to obtain funding for such Capital Cost Increase within the time period specified in paragraph 9.1 of this Part 2, including details of steps taken or to be taken to obtain such funding;

- 3.1.3A where the Concessionaire has included a margin or premium in respect of a material adverse change in overall risk allocation as contemplated under paragraph 3.1.1.3A above, a detailed description of the nature and extent of such material adverse change which, in its reasonable assessment, would result from the implementation of the Province Change;
- 3.1.4 a list of any Permits, Licences and Approvals or amendments or revisions to existing Permits, Licences and Approvals which must be obtained (including any Permits, Licences and Approvals which can only be obtained by the Province) before the Province Change can be effected or implemented to give effect to the Province Change (the "Relevant Consents") and the costs of and anticipated timetable for obtaining the same together with any consequential impact upon the date specified by the Province in paragraph 2.1.1.2 of this Part 2;
- 3.1.5 a detailed description of any anticipated adverse (or beneficial) effect on the Concessionaire's ability to comply with the provisions of the Agreement or perform any of the Operations and proposals for mitigating (or enhancing) such effect;
- 3.1.6 the Concessionaire's reasonable assessment of whether the implementation of such a Province Change would require or result in changes, alterations or amendments to any of the Technical Requirements;
- 3.1.7 without prejudice to any of the Concessionaire's obligations pursuant to Section 12.6 [Delay] of the Agreement or Part 6 of this Schedule 13 [Relief] and:
 - 3.1.7.1 subject to the determination by the Province's Representative pursuant to Section 12.6.7 of the Agreement regarding the Delay Period (if any) which has arisen or will arise as a consequence of the Province Change, a detailed description of any anticipated delay or impediment to completion of the Works;
 - 3.1.7.2 subject to the determination by the Province's Representative pursuant to paragraph 1.1.3 of Part 6 of this Schedule 13 [Relief] regarding the period of any delay or impediment in performance of the Operations which has arisen or will arise as a consequence of the Province Change, a detailed description of any such anticipated delay or impediment;
- 3.1.8 where the Concessionaire is of the opinion (reasonably held) that implementation of the Province Change may result in the Concessionaire being unable to or being prevented from meeting any of the Technical Requirements and/or any other provisions of the Agreement, details of how such an effect can be mitigated (if at all) and the estimated cost (if any) of doing so;

- 3.1.9 a detailed description of any changes to the Concessionaire's Design and Construction Requirements, the O,M&R Requirements and any other parts of the Agreement which, the Concessionaire considers (acting reasonably) would reasonably be required in order to implement the Province Change;
- 3.1.9A except with respect to material adverse changes in risk allocation taken into account in the margin or premium referred to in paragraph 3.1.1.3A included in the calculation of the Fixed Price pursuant to paragraph 3.1.1 of this Part 2, a detailed description of such amendments to the provisions of Part IV [Payments] of the Agreement, Schedule 10 [Payments] and other provisions of the Agreement associated with the aforesaid provisions of Part IV and Schedule 10 which the Concessionaire considers (acting reasonably) are necessary as a consequence of the Province Change, the objective being to ensure that (save for the obligation of the Province to make payments or altered payments in respect of the Province Change or any other adverse consequences for the Province arising from the Province Change itself) the parties are in no better and no worse position in relation to the Project than they would have been in if such Province Change had not been implemented;
- 3.1.10 if implementing the Province Change will, in the Concessionaire's opinion, result in the Substantial Completion Date not occurring on or before the Final Completion Date, a statement by the Concessionaire as to whether it would be practicable for the Contractor to accelerate construction so as to eliminate or mitigate the delay and (if it is so practicable) the Concessionaire's estimate of the costs of such acceleration;
- 3.1.11 If implementing the Province Change will, in the Concessionaire's opinion, result in the Substantial Completion Date not occurring on or before the Scheduled Substantial Completion Date, a statement by the Concessionaire as to whether it would be practicable for the Contractor to accelerate construction so as to eliminate or mitigate the delay and (if it is so practicable) the Concessionaire's estimate of the costs of such acceleration;
- 3.1.12 details as to any land or Rights in respect of land to which the Concessionaire would require access in order to implement the Province Change in respect of which it does not currently have access pursuant to the licence granted to the Concessionaire and those authorized by it under Section 8 of the Agreement; and
- 3.1.13 the Concessionaire's proposed schedule for the implementation of the Province Change (which will, *inter alia*, provide for completion of the relevant Province Change by not later than the Change Completion Date in respect of that Province Change).

4.1 Bid Price

- 4.1.1 As soon as practicable following the delivery of the Change Appraisal to the Province in accordance with paragraph 3.1 of this Part 2, the Province's Representative will meet with the Concessionaire's Representative to discuss the matters set out in the Change Appraisal. If, following any such discussions, the Province (acting reasonably) is not satisfied that the criteria set out in

paragraph 3.1.1 have been met or is otherwise not satisfied that the Fixed Price represents the best value for money obtainable in connection with the implementation of the proposed Province Change, it may, if the Fixed Price set out pursuant to paragraph 3.1.1 of this Part 2 is likely to exceed \$50,000 (index linked), provide an amended Province Change Notice (the "Amended Change Notice") to the Concessionaire requiring it to seek and evaluate competitive tenders, or competitive bids or proposals for implementation of the proposed Province Change from appropriately qualified and experienced third parties (each of which must be, as at the date of submission by the Concessionaire of the Amended Change Appraisal referred to in paragraph 4.1.4 below, dealing at "arm's length" with the Concessionaire and with one another, as the term "arm's length" is used in the Income Tax Act (Canada) in effect as of the date of this Agreement) and to submit a Bid Price;

- 4.1.2 as soon as possible, but in any event no later than 5 Working Days after receipt of the Amended Change Notice, the Province's Representative and the Concessionaire's Representative will meet to discuss and develop the appropriate manner of identifying prospective tenderers, bidders or proponents and the terms of the tender requirements, which terms must include (without limitation):
 - 4.1.2.1 a statement of the tender, bid or proposal period;
 - 4.1.2.2 details of the tender, bid or proposal evaluation criteria;
 - 4.1.2.3 the terms and conditions under which the relevant services will be contracted by the Concessionaire;
 - 4.1.2.4 the information that tenderers, bidders or proponents are required to provide; and
 - 4.1.2.5 the minimum number of tenders, bids or proposals that are required to be obtained for the tender, bid or proposal process to be valid;
- 4.1.3 any Dispute with respect to the matters referred to in paragraph 4.1.2 above will be determined in accordance with the Disputes Resolution Procedure;
- 4.1.4 within 30 Working Days of agreement or determination of the matters referred to in paragraph 4.1.2 above, the Concessionaire will obtain Valid Responses and submit an amended Change Appraisal (the "Amended Change Appraisal") containing a report on Valid Responses;
- 4.1.5 if the Concessionaire demonstrates to the Province's satisfaction (acting reasonably) that it is impracticable to obtain Valid Responses in accordance with this paragraph 4.1 and complete the Amended Change Appraisal within 30 Working Days of receiving the Amended Change Notice or such longer period as the Province acting reasonably in the circumstances may allow, the Concessionaire will deliver the Amended Change Appraisal to the Province as soon as reasonably practicable; and

- 4.1.6 if the Concessionaire demonstrates to the Province's satisfaction (acting reasonably) that it is impracticable given the nature of the Province Change to obtain a Bid Price (including the Concessionaire being unable, despite taking all reasonable steps to comply, to meet the time requirements set out in paragraph 4.1.5 of this Part 2), the Concessionaire will be entitled (subject to notifying the Province in writing of its reasons therefor) to decline to submit a Bid Price in which event the Province may in its absolute and unfettered discretion, withdraw the Amended Change Notice and cancel the proposed Province Change or accept the Fixed Price provided by the Concessionaire in response to the original Province Change Notice relating to the proposed Province Change.

5.1 Circumstances in which the Concessionaire may refuse to deliver a Change Appraisal

- 5.1.1 Subject to providing the Province with written notification (a "Refusal Notice") not later than 20 Working Days after receipt by the Concessionaire of a Province Change Notice or an Amended Change Notice (whichever is later) (which Refusal Notice must contain an explanation of the Concessionaire's reasons therefor in sufficient detail to permit a considered review thereof by the Province), the Concessionaire may decline to provide a Change Appraisal or implement a Province Change on the basis that:
- 5.1.1.1 to implement the Province Change would be technically unfeasible or the Province Change would, if implemented, materially and adversely affect the Concessionaire's ability to perform its obligations under the Agreement or the Funding Agreements; or
 - 5.1.1.2 to implement the Province Change would be contrary to Good Industry Practice; or
 - 5.1.1.3 to implement the Province Change would be contrary to Laws and Regulations; or
 - 5.1.1.4 to implement the Province Change would be illegal or affect the health and/or safety of any person; or
 - 5.1.1.5 the Concessionaire would be unable (using all reasonable efforts in respect thereof) to obtain any Relevant Consents (other than Relevant Consents that would be the responsibility of the Province) necessary to implement the Province Change or otherwise to allow compliance with the provisions of the Agreement as a consequence of implementation of such a Province Change having regard to the provisions of the Agreement (as amended, where appropriate, to take account of or make provision for the Province Change); or
 - 5.1.1.6 the Province Change would cause any existing Permit, Licence or Approval to be revoked or cancelled or would cause any additional conditions to be imposed in relation to any such Permit, Licence or Approval with which the Concessionaire would be unable to comply; or

- 5.1.1.7 the Concessionaire would be unable (using all reasonable efforts in respect thereof) to obtain any land or Rights in respect of land necessary for the purpose of implementing the Province Change except where the Province obtains such land.

5.2 Province Response to Refusal Notice

- 5.2.1 Within 10 Working Days of receiving a Refusal Notice, the Province will deliver a Notice to the Concessionaire that it: (i) is cancelling the proposed Province Change; (ii) does not agree that the proposed Province Change properly falls within any of the grounds set out in paragraph 5.1.1 of this Part 2 and is referring the matter for resolution pursuant to the Disputes Resolution Procedure; or (iii) is amending the Province Change Notice.
- 5.2.2 If the Province fails to deliver to the Concessionaire the Notice referred to in paragraph 5.2.1 of this Part 2 within the time stipulated thereunder, the Concessionaire will deliver a notice to the Province requiring the Province to deliver the Notice referred to in paragraph 5.2.1 of this Part 2 within 5 Working Days failing which the Province Change Notice will be deemed to have been cancelled.
- 5.2.3 In any circumstances where the Province cancels or is deemed to have cancelled a Province Change pursuant to paragraphs 5.2.1 or 5.2.2 of this Part 2, the Province will pay within 20 Working Days of demand a sum equal to the costs, fees and expenses reasonably incurred by the Concessionaire (from the date of receipt by the Concessionaire of the Province Change Notice) in considering the Province Change and (if applicable) preparing a Change Appraisal or Amended Change Appraisal.
- 5.2.4 If the Province makes a reference to the Disputes Resolution Procedure as contemplated in paragraph 5.2.1(ii) of this Part 2 and it is determined under the Disputes Resolution Procedure that the Concessionaire was not entitled to refuse to implement the Province Change, the Concessionaire will deliver a Change Appraisal in accordance with paragraph 3.1 of this Part 2 within 20 Working Days of such determination or such longer period as the Province (acting reasonably, given the nature and extent of the Province Change) may agree with the Concessionaire.
- 5.2.5 If the Province amends the Province Change Notice, it may issue the amended notice as a Province Change Notice under paragraph 2.1.1 of this Part 2 and all the provisions dealing with Province Change Notice in this Agreement will apply to such amended notice as if it is a Province Change Notice, except that the time period for delivery of the Change Appraisal by the Concessionaire in paragraph 3.1 of this Part 2 will be reduced from 20 Working Days to 10 Working Days and the time for issue of a Refusal Notice by the Concessionaire in paragraph 5.1 of this Part 2 will be reduced from 10 Working Days to 5 Working Days. The Province may amend a Province Change Notice pursuant to this paragraph 5.2.5 of this Part 2 more than once.

6.1 Procedure following submission of a Change Appraisal

- 6.1.1 The Province will, within 15 Working Days of receiving a Change Appraisal or Amended Change Appraisal, as the case may be (or such longer period as the Parties may agree), notify the Concessionaire whether it:
- 6.1.1.1 disputes any matter or matters whatsoever (a “Disputed Matter”) in the Change Appraisal or the Amended Change Appraisal, as the case may be; or
 - 6.1.1.2 wishes to proceed with the Province Change on the basis set out in the Change Appraisal or Amended Change Appraisal, as the case may be (a “Province Change Confirmation”); or
 - 6.1.1.3 wishes to cancel the Province Change (a “Cancellation Notice”); or
 - 6.1.1.4 requires any further clarification or information before making a decision in respect of any of the information set out in the Change Appraisal or the Amended Change Appraisal, as the case may be (including, for greater certainty, confirmation whether funding will be available within the time period specified in paragraph 9.1 of this Part 2 for the Capital Cost Increases which the Province wishes to pay for (whether in whole or in part) by way of a Change Adjustment) in which case the Concessionaire will supply such information or clarification within 10 Working Days of such notification or such longer period as the Parties may agree and this paragraph 6.1.1 will apply *mutatis mutandis* as if receipt of such information or clarification were receipt of a Change Appraisal or Amended Change Appraisal (as the case may be) and the full provision of all requested further clarifications or information will be treated as receipt of the Change Appraisal or the Amended Change Appraisal (as the case may be) for the purposes of this paragraph 6.1.1;
 - 6.1.1.5 wishes the Province Change Notice or the Amended Change Notice (as the case may be) to be amended, in which event the Concessionaire will submit a revised Change Appraisal or Amended Change Appraisal (as the case may be) within 10 Working Days of such notification; or
 - 6.1.1.6 wishes to implement the Province Change itself or through third parties in the circumstances and in the manner set forth in paragraph 6.1.4 below,

failing which the Province will be deemed to have issued a Cancellation Notice.
- 6.1.2 Within 10 Working Days of notification by the Province as to a Disputed Matter, either Party may refer the Disputed Matter for determination or resolution pursuant to the Disputes Resolution Procedure.
- 6.1.3 Within 10 Working Days of the final agreement or determination of all Disputed Matters referred to in paragraph 6.1.2 of this Part 2, the Province will serve either a Province Change Confirmation or a Cancellation Notice in respect of the Province Change.

- 6.1.4 Notwithstanding any other provision contained in this Part 2, where a Province Change involves Capital Expenditure and where the Concessionaire has included a margin or premium as contemplated in paragraph 3.1.1.3A of this Part 2 in the calculation of the Fixed Price in respect of such Province Change, the Province may (if the aforesaid margin or premium is not acceptable to the Province in its opinion, reasonably held, and without being required to treat such matter as a Disputed Matter) in its discretion determine to have any works included in such Province Change carried out by its own labour forces (including day labour retained by the Province) or by a third party contractor, in which event the Province will take measures to have the work carried out in a reasonable fashion, and will have no payment or other obligations to the Concessionaire and the Concessionaire will have no entitlement to any compensation or other relief in respect of or arising out of such Province Change and, without limiting the generality of the foregoing, the provisions of paragraphs 7.1 and 11.1 of this Part 2 will not apply.

7.1 Province Change Confirmation

- 7.1.1 A Province Change Confirmation must, *inter alia*, specify whether or not (if the same has formed part of the Change Appraisal or Amended Change Appraisal, as the case may be):
- 7.1.1.1 the Province accepts any Fixed Price or Bid Price submitted by the Concessionaire in respect of a Province Change or any part of a Province Change in which event such Fixed Price or Bid Price will be binding on the Parties; and
 - 7.1.1.2 subject to paragraph 9.1 of this Part 2, the Province requires (in the event that the Concessionaire has been able to obtain an acceptable offer of finance to fund all or part of a Capital Cost Increase) the Concessionaire to accept such offer of finance and proceed on the basis of a Change Adjustment in respect of such Capital Cost Increase (or part thereof).
- 7.1.2 If the Province fails to issue a Province Change Confirmation within 10 Working Days of agreement or determination of all Disputed Matters, it will be deemed to have served a Cancellation Notice.
- 7.1.3 Where Relevant Consents are required to implement a Province Change, the Concessionaire will not take steps to implement the Province Change until the Relevant Consents have been obtained, except insofar as it is necessary to take any such steps in order to obtain the Relevant Consents. If the Concessionaire (or the Province in the case of Relevant Consents which can only be obtained by it), having used all reasonable efforts, fails within 3 months of the issuance of a Province Change Confirmation or such longer period as the Province may from time to time reasonably specify (having regard to the nature of the Relevant Consents) to obtain such Relevant Consents, the Province will be deemed to have served a Cancellation Notice in respect of that Province Change.

8.1 Effect of a Province Change

Subject to paragraph 9.1 of this Part 2, a Province Change Confirmation will have the effect of varying the Technical Requirements to the extent provided in the Change Appraisal or the Amended Change Appraisal (as the case may be) as read with the relevant Province Change Notice or Amended Change Notice (as the case may be) with effect from the date of issuance of the Province Change Confirmation. As soon as practicable thereafter the Concessionaire will implement such Province Change and will be bound by the Agreement in so doing as if the Province Change formed part of the Technical Requirements.

9.1 Procurement of an Offer of Finance

If a Province Change Notice or Amended Change Notice (as the case may be) has been issued by the Province in respect of which the Province has stated in such Notice that it wishes any Capital Cost Increase (or any part thereof) to be paid for by way of a Change Adjustment, the Concessionaire will use all commercially reasonable efforts to obtain a commercially acceptable offer of finance to fund the Capital Cost Increase to be incurred in implementing the Province Change on terms reasonably satisfactory to the Concessionaire and the Senior Funders prior to the Substantial Completion Date or the Funders thereafter. If the Concessionaire, having used all commercially reasonable efforts, cannot obtain a commercially acceptable offer of finance to fund the Capital Cost Increase on terms reasonably satisfactory to the Concessionaire and the Senior Funders within 30 Working Days of a Province Change Confirmation, or if, having obtained a commercially acceptable offer of finance, the conditions precedent to such offer of finance are not satisfied or such offer is subsequently withdrawn (in either case other than at the request of, or as a consequence of wilful inaction or default by, the Concessionaire), the Concessionaire will notify the Province and the Province will either compensate the Concessionaire for the Capital Cost Increase resulting from the Province Change in accordance with paragraph 10.1 of this Part 2 or, if it is unwilling to compensate the Concessionaire for such Capital Cost Increase and it is not obligated under the terms of the Concession Agreement to proceed with such Province Change will serve a Cancellation Notice in respect of the Province Change.

10.1 Payment of Capital Cost Increase by Province

If the Province is obliged or agrees to finance a Capital Cost Increase itself (whether in whole or in part), such financing will be by way of lump sum compensation paid to the Concessionaire as and when the costs forming part of such Capital Cost Increase become properly due and payable by the Concessionaire. For greater certainty, when the Province compensates the Concessionaire for a Capital Cost Increase pursuant hereto, no Change Adjustment will be made in respect of that Capital Cost Increase except to the extent that the Province Change Notice or Amended Change Notice has stated that the Province intends to pay for the Province Change referred to therein by way of a combination of lump sum payment and Change Adjustment.

11.1 Change Adjustments

Subject to the provisions of Section 12.6.7 of the Agreement, and to paragraph 10.1 of this Part 2, following commencement of implementation of each Province Change there will be a Change Adjustment in respect of:

11.1.1 any Capital Cost Increase (except to the extent such Capital Cost Increase is being paid for other than by way of an adjustment to the Total Performance Payment) or Capital Cost Saving; and/or

11.1.2 any Recurrent Cost Increase or Recurrent Cost Saving; and/or

11.1.3 any Revenue Loss or Revenue Gain; and/or

11.1.4 any other loss, expense and/or saving such that the Concessionaire will be left in a position which is no better or worse position than it would have been in had the relevant Province Change not occurred (the Concessionaire having used all reasonable efforts and taken all reasonable steps to mitigate the adverse effects of such Province Change and to minimize any such loss or expense and to take advantage of any positive or beneficial effects of such Province Change and to maximize any such saving),

resulting from the implementation of a Province Change provided that a Change Adjustment in respect of a change to the Design and Construction Output Specifications will not take effect until the date of issuance of the Substantial Completion Certificate.

12.1 Consequential Amendments

The Concessionaire and the Province's Representative will use their reasonable efforts to reach agreement as to any amendments to the terms of the Agreement (including without limitation the End of Term Requirements) necessary as a consequence of any Province Change. If they are unable to reach agreement within 30 Working Days of issuance of a Province Change Confirmation, then either Party may refer the matter for resolution under the Disputes Resolution Procedure (provided, however, that in no circumstances will the Contract Period be extended or the Termination Date changed pursuant to the Disputes Resolution Procedure without the mutual written consent of the Province and the Concessionaire).

13.1 Reimbursement of Change Appraisal Costs

13.1.1 Without prejudice to the Concessionaire's obligations to pay the Province pursuant to paragraph 13.1.3, in any circumstances where the Province cancels or is deemed to have cancelled a Province Change pursuant to paragraph 5.2.1 or 5.2.2 of this Part 2 or where the Province serves or is deemed to have served a Cancellation Notice, the effect of such cancellation or deemed cancellation will be to render the Province liable to pay to the Concessionaire within 20 Working Days of demand a sum equal to the costs, fees and expenses, reasonably and properly incurred, by the Concessionaire (from the date of receipt by the Concessionaire of the Province Change Notice) in considering the Province Change and (if applicable) preparing a Change Appraisal or Amended Change

Appraisal and complying, where applicable, with the Concessionaire's obligations under paragraph 7.1.3 of this Part 2.

- 13.1.2 If the Province makes a reference to the Disputes Resolution Procedure as contemplated in paragraph 5.2.1 of this Part 2 and it is determined under the Disputes Resolution Procedure that the Concessionaire was entitled to refuse to implement the Province Change, the Province will pay within 20 Working Days of demand a sum equal to the costs, fees and expenses reasonably incurred by the Concessionaire (from the date of receipt by the Concessionaire of the Province Change Notice) in considering the Province Change and in connection with the reference to the Disputes Resolution Procedure.
- 13.1.3 If the circumstances described in paragraph 5.2.4 of this Part 2 occur, the Concessionaire will pay within 20 Working Days of demand the costs, fees and expenses reasonably and properly incurred by the Province in connection with its consideration of the Refusal Notice and in connection with the reference to the Disputes Resolution Procedure.

SCHEDULE 13

CHANGES

Part 3

CONCESSIONAIRE CHANGES

1.1 Financial Consequences

- 1.1.1 In the case of any Concessionaire Change which the Province has consented to pursuant to Section 11.4.3 of the Agreement or to which there has been no objection by the Province's Representative in accordance with the Review Procedure and which, if implemented, would result in Capital Cost Savings, Recurrent Cost Savings or Revenue Gain, there will be a Change Adjustment whereby all Capital Cost Savings and/or all Recurrent Cost Savings and/or any Revenue Gain resulting from implementation of such Concessionaire Change will be shared equally between the Province and the Concessionaire after deducting the costs actually paid (or to be paid) by the Concessionaire to the Province pursuant to paragraph 1.1.2 of this Part 3.
- 1.1.2 If the Concessionaire submits a proposal for a Concessionaire Change pursuant to Section 11.4 [Concessionaire Changes] of the Agreement, the Concessionaire will reimburse the Province, within 20 Working Days of demand, for all costs, fees and expenses reasonably incurred by the Province in connection with its consideration and review of such proposal and (where applicable) in documenting any Concessionaire Change whether or not the proposed Concessionaire Change is implemented in accordance with the provisions of Section 11.4 [Concessionaire Changes] of the Agreement.

1.2 Consequential Amendments

The Concessionaire and the Province's Representative will use their reasonable efforts to reach agreement as to any amendments to the terms of the Agreement necessary as a consequence of any Concessionaire Change. If they are unable to reach agreement within 30 Working Days of issuance of a Concessionaire Change Certificate by the Concessionaire's Representative duly countersigned by the Province's Representative in accordance with the provisions of Section 11.4.1 of the Agreement, then either Party may refer the matter for resolution under the Disputes Resolution Procedure (provided, however, that in no circumstances will the Contract Period be extended or the Termination Date changed or any additional payment or adjustment to the Total Performance Payment be made pursuant to the Disputes Resolution Procedure without the mutual written consent of the Province and the Concessionaire).

SCHEDULE 13

CHANGES

Part 4

ADDITIONAL WORKS

1.1 Notification

1.1.1 If either the Concessionaire or the Province believes that an Eligible Change has occurred or will occur as a consequence of any Additional Works required by the Province to be carried out in accordance with Part 1 of Schedule 14 [Procedure for Additional Works], then the Concessionaire or the Province (as the case may be) will give a Notice to that effect to the other by the time specified in paragraph 1.1.2 of this Part 4.

1.1.2 A Notice pursuant to paragraph 1.1.1 of this Part 4 will be given:

1.1.2.1 if by the Province, at the time it gives the notice in accordance with paragraph 1 of Part 1 of Schedule 14 [Procedure for Additional Works] in respect of such Additional Works; and

1.1.2.2 if by the Concessionaire, within 30 days of receipt of the notice from the Province in accordance with paragraph 1 of Part 1 of Schedule 14 [Procedure for Additional Works] in respect of such Additional Works.

2.1 Change Procedure

If a Notice is given in accordance with paragraph 1.1.1 of this Part 4, then the procedure set out in Part 2 of this Schedule 13 [Province Changes] will apply, *mutatis mutandis*, subject to the provisions of this Part 4.

3.1 Change Figure

No amendments to the Agreement agreed or determined in accordance with paragraph 6.1 of this Part 4 will come into effect and no payment will be made pursuant to Part 2 of this Schedule 13 [Province Changes] unless the construction of the Additional Works has been commenced.

4.1 No Liability

Except as otherwise expressly agreed the Province will bear no risk or liability whatsoever arising from any Additional Works and, accordingly, except as aforesaid, the Province will have no liability to make any payment in connection with or arising from Additional Works other than as provided in Schedule 14 [Additional Works, Subsequent Schemes and Improvements] or as agreed or determined pursuant to Part 2 of this Schedule 13 [Province Changes] in accordance with paragraph 5.1 of this Part 4.

5.1 Withdrawal of Request

The Province may withdraw the request for any Additional Works at any time prior to the commencement of construction of such Additional Works. In the case of such a withdrawal, the Province will be required to pay to the Concessionaire within 20 Working Days of demand a sum equal to the costs, fees and expenses reasonably and properly incurred by the Concessionaire in the preparation of any Change Appraisal referred to in Part 2 of this Schedule 13 [Province Changes] and any related reference to the Disputes Resolution Procedure pursuant to the procedures set out in Part 2 of this Schedule 13 [Province Changes].

6.1 Consequential Amendments

The Concessionaire and the Province's Representative will use their reasonable efforts to agree on any amendments to the terms of the Agreement (including the End of Term Requirements) necessary as a consequence of any Additional Works. If they are unable to reach agreement within 30 days of commencement of construction of such Additional Works, then either Party may refer the matter for resolution under the Disputes Resolution Procedure.

SCHEDULE 13**CHANGES****Part 5****COMPENSATION EVENTS****1.1 Concessionaire Notification**

Without prejudice to Section 12.6.1 of the Agreement, within 7 days of the Concessionaire becoming aware of the occurrence of a Compensation Event it will give Notice of such occurrence (or likely occurrence) to the Province's Representative (unless such notice was already included in a Notice given by the Concessionaire pursuant to Section 12.6 [Delay] of the Agreement). The provisions of Sections 12.6.2 and 12.6.3 of the Agreement will apply, *mutatis mutandis*, in respect of the contents of any Notice given pursuant to this paragraph 1.1 and the consequences of a failure by the Concessionaire to comply with the requirement to give Notice pursuant to this paragraph 1.1. If the Concessionaire suffers a Compensable Loss as a result of a Compensation Event notified under this paragraph 1.1 or under Section 12.6 [Delay] of the Agreement, the Concessionaire will, within 30 Working Days following the giving of the Notice referred to above in this paragraph 1.1, give a further Notice to the Province (a "Compensation Notice") setting out:

- 1.1.1 a detailed calculation of the Compensable Loss (the "Payment Amount") including an explanation as to why the Compensable Loss has occurred and the steps taken or to be taken to mitigate such Compensable Loss; and
- 1.1.2 the extent and terms and conditions of any offer of additional financing which the Concessionaire (having used all reasonable efforts) has been able to procure to fund any Capital Cost Increase or Revenue Loss included in such Compensable Loss and an assessment, with reasons, of whether or not such terms and conditions are acceptable to the Concessionaire, acting reasonably.

In connection with the calculation of any Capital Cost Increase included in the calculation of Compensable Loss under paragraph 1.1.1 above, the provisions of paragraphs 2.1.1.4, 3.1.1 and 4.1 of Part 2 of this Schedule 13 [Province Changes] will apply, *mutatis mutandis*, provided that any references in any such paragraphs to "Province Change", "Change Appraisal", "Amended Change Notice" and "Amended Change Appraisal" will be construed for purposes of this paragraph 1.1 as if they were references to "Compensation Event", "Compensation Notice", the notification contemplated under paragraph 1.3 of this Part 5, and an amended Compensation Notice (an "Amended Compensation Notice") (which will be submitted by the Concessionaire within 30 Working Days of agreement or determination of the matters referred to in paragraph 4.1.2 of Part 2 of this Schedule 13 [Province Changes]), respectively.

1.2 **Additional Information**

The Province may, within 20 Working Days following receipt of a Compensation Notice or an Amended Compensation Notice, request from the Concessionaire such additional information and/or particulars as it may reasonably require to substantiate the Payment Amount or any other matter referred to in the Compensation Notice.

1.3 **Province Notification**

The Province will, within 20 Working Days following receipt of a Compensation Notice or an Amended Compensation Notice (as applicable) or, if later, within 20 Working Days following receipt of the last of any additional information requested in accordance with paragraph 1.2 of this Part 5:

1.3.1 notify the Concessionaire whether or not it agrees to the Payment Amount (having regard, *inter alia*, to the determination by the Province's Representative, pursuant to Section 12.6.7 of the Agreement or paragraph 1.4.2 of this Part 5 (as applicable), as to any Delay Period or other period of delay or impediment in performance of the Operations which has arisen or will arise as a consequence of the Compensation Event), failing which the Province will be deemed not to have agreed to the Payment Amount; and

1.3.2 to the extent that the Concessionaire has notified the Province in accordance with paragraph 1.1.2 of this Part 5 that it has been able to procure a commercially acceptable offer of finance to fund a Capital Cost Increase or Revenue Loss included in such Compensable Loss, confirm to the Concessionaire whether or not it wishes the Concessionaire to accept such offer of finance. If the Province does not give any confirmation in accordance with this paragraph 1.3.2, the Province will be deemed to have confirmed that it does not wish the Concessionaire to accept the offer of finance and to have elected to compensate the Concessionaire by making a lump sum payment. In the event that the conditions precedent to any offer of finance to which this paragraph 1.3.2 applies have not been satisfied or the offer of finance is subsequently withdrawn (in either case other than at the request of, or as a consequence of wilful inaction or default by, the Concessionaire) prior to acceptance by the Concessionaire then the Province will be deemed to have elected to compensate the Concessionaire by making a lump sum payment.

1.4 **Payment**

1.4.1 Subject to paragraph 1.5 of this Part 5, the Province will pay the Payment Amount:

1.4.1.1 save where paragraph 1.4.1.2 or paragraph 1.4.2 of this Part 5 applies, in the case of any Compensable Loss suffered or incurred by the Concessionaire (including, for greater certainty, all costs incurred in mitigating the effect of the Compensation Event), within 20 Working Days of receipt by the Province of an invoice from the Concessionaire in respect of the same; and

1.4.1.2 in the case of any Recurrent Cost Increase and/or to the extent that the Concessionaire has secured an offer of finance to fund a Capital Cost Increase and/or Revenue Loss included in such Compensable Loss on terms and conditions acceptable to the Province (acting reasonably), by a Change Adjustment.

1.4.2 If the Province does not agree with the Payment Amount claimed in the Compensation Notice then, unless otherwise agreed by the Parties, the Province will pay to the Concessionaire the undisputed part (if any) of the Payment Amount in accordance with paragraph 1.4.1 of this Part 5 and either Party will be entitled to refer the determination of the disputed part of the Payment Amount to the Disputes Resolution Procedure.

1.5 Continuing Compensation Event

For greater certainty, where the Compensation Event or the impact of the Compensation Event is continuing, the Concessionaire may serve Compensation Notices at such frequency (not less than monthly intervals) as it may, acting reasonably, determine.

1.6 Mitigation

Relief under this Part 5 will not be available or will cease to be available to the Concessionaire to the extent it fails to take all necessary steps in accordance with the terms of the Agreement to mitigate the effects of the Compensation Event or to remedy the failure to perform or mitigate the delay or impediment in performance as aforesaid.

1.7 No Liability

The Province will not be liable for any indirect or consequential losses suffered by the Concessionaire in respect of any Compensation Event (other than, for greater certainty, Revenue Loss).

1.8 Consequential Amendments

The Concessionaire and the Province's Representative will use their reasonable efforts to reach agreement as to any amendments to the terms of the Agreement necessary as a consequence of any Compensation Event. If they are unable to reach agreement within 30 Working Days of issuance of a Notice by the Province pursuant to paragraph 1.3.1 of this Part 5, then either Party may refer the matter for resolution under the Disputes Resolution Procedure (provided, however, that in no circumstances will the Contract Period be extended or the Termination Date changed pursuant to the Disputes Resolution Procedure without the mutual written consent of the Province and the Concessionaire).

SCHEDULE 13**CHANGES****Part 6****RELIEF****1.1 Relief**

1.1.1 Subject to the provisions of Section 1.9 [General Duty to Mitigate] of the Agreement and of Sections 12.6.7, 12.6.8 and 12.6.9 of the Agreement and of this paragraph 1.1, but notwithstanding any other provisions of the Agreement or this Schedule 13, the Concessionaire will be relieved from liability under the Agreement and the Province will not be entitled to levy Availability/Performance Deductions to the extent that, by reason of a Province Change or Compensation Event, the Concessionaire is not able to perform its obligations under the Agreement during the Delay Period or during any other period of material delay or impediment in performance of the Operations in accordance with the requirements of the Agreement, and such relief will be taken into account in relation to any Change Adjustment, lump sum payment or Payment Amount (as applicable) in respect of such Province Change or Compensation Event.

1.1.2 Without limiting the Concessionaire's obligations under paragraph 1.1.1 of this Part 6 or under Sections 12.6.6 or 12.6.2.3 of the Agreement, in the case of any material delay or impediment in performance of the Operations in accordance with the requirements of the Agreement caused by a Province Change or Compensation Event, the Concessionaire, to the extent it is possible to do so, will take all reasonable steps to avoid the delay or impediment or to reduce the period of the delay or mitigate the effect of the impediment.

1.1.3 Without prejudice to the provisions of Section 12.6.7 of the Agreement, where the Concessionaire may be entitled to any Change Adjustment, lump sum payment or Payment Amount or to any other relief pursuant to Part 2 [Province Changes] or Part 5 [Compensation Events] of this Schedule 13, then subject to the Concessionaire:

1.1.3.1 complying with the requirements of Part 2 [Province Changes] or Part 5 [Compensation Events] of this Schedule 13, as applicable; and

1.1.3.2 putting forward proposals as to the measures it intends to adopt in order to mitigate the consequences of any delay or impediment,

the Province's Representative will, as soon as reasonably practicable, notify the Concessionaire (either prospectively or retrospectively) of its determination in accordance with this paragraph 1.1.3 of the period of the material delay or impediment (if any) in performance of the Operations (other than construction of the Works) which has arisen or will arise as a consequence of the Province Change or Compensation Event. If the Province's Representative determines

that no such material delay or impediment has arisen or will arise or the Concessionaire considers the period of material delay or impediment so determined to be insufficient, then the Concessionaire may refer the matter to the Disputes Resolution Procedure for determination.

The provision of Sections 12.6.8 and 12.6.9 of the Agreement will apply, *mutatis mutandis*, to the determination by the Province's Representative of the period of any material delay or impediment in performance of the Operations for the purposes of this Part 6.

SCHEDULE 13

CHANGES

Part 7

CONCESSIONAIRE ALTERNATE PROPOSAL

1.1 Alternate Pricing

- 1.1.1 The proposal submitted by the Concessionaire on July 14, 2005 in response to the RFP includes details regarding the completion and opening of additional traffic lanes that are not included as part of the requirements for the Works set out in the Design and Construction Output Specifications. The additional work (the "CAP Work") relates to the construction of eastbound lanes at the east end of the Works, from Station 153+35 to 176+40, comprising approximately 2.19 km of work for two additional eastbound roadway lanes. A general description of the CAP Work is as follows:
- 1.1.1.1 upgrade the drainage for both eastbound and westbound lanes in this area to the Design and Construction Output Specifications applicable to the balance of the Works to be constructed; and
 - 1.1.1.2 the additional lanes will be constructed to the same cross section and specifications established by the Design and Construction Output Specifications with the roadway base and asphalt to be consistent with the Design and Construction Output Specifications for the balance of the Works.
- 1.1.2 Notwithstanding any provision of the Agreement or this Schedule 13 with respect to pricing and financial impact, providing the Province requests that the Concessionaire undertake the CAP Work on or before October 30, 2005 or such later date to be mutual agreed, the Concessionaire commits to using the 'package 5 financial model' submitted by the Concessionaire as part of its response to the RFP for the pricing and financial impact of the CAP Work reconciled with the clarification requests during the RFP selection process and any adjustments to be agreed upon between the Province and the Concessionaire to reflect appropriate rate of return calculations.
- 1.1.3 Nothing in this Part 7 obligates the Province in any way to elect to have the Concessionaire perform the CAP Work or, subject to the terms of the Agreement, prohibits or restricts the Province from procuring the CAP Work or any part thereof by other means.

Appendix A to Schedule 13**CHANGE ADJUSTMENT**

1. Where pursuant to this Schedule 13 a Change Adjustment is to be made, the Total Performance Payment will be adjusted with effect from the commencement of the next succeeding month following the month in the Contract Year in which the adjustment is calculated such that following the Change Adjustment:
 - (a) the Equity IRR (as calculated in accordance with the Financial Model) remains unchanged before and after modelling the financial consequences of the Province Change for which the Change Adjustment is to be made; and
 - (b) the loan life cover ratios and the annual debt service cover ratios provided for in the Senior Funding Agreements (for each calculation period, as calculated in accordance with the Financial Model) are not less than they were immediately prior to the date upon which the Change Adjustment is to take effect.
2. In adjusting the Total Performance Payment:
 - (a) adjustments shall be restricted to the Maximum Total Performance Payment;
 - (b) regard shall be had to the timing of the financial consequences and to the date from which the Change Adjustment will take effect.
3. Where the Change Adjustment arises as a consequence of a Province Change in respect of which:
 - (a) the aggregate Capital Cost Increase is less than \$1,000,000 (index linked); or
 - (b) the aggregate Recurrent Cost Increase is less than \$100,000 (index linked) per annum; or
 - (c) a combination of (a) and (b) would equate to a net present value (calculated as of the date upon which the Change Adjustment is to take effect using a discount rate equal to the Threshold Equity IRR) over a period of ten years or until the Expiry Date (if earlier) of less than \$1,000,000 (index linked),

the Parties will, acting in good faith, seek to agree the Change Adjustment (either permanently or provisionally, as appropriate having regard to the circumstances) without recourse to running the Financial Model.

SCHEDULE 14**ADDITIONAL WORKS, SUBSEQUENT SCHEMES AND IMPROVEMENTS****Part 1****PROCEDURE FOR ADDITIONAL WORKS****1. ADDITIONAL WORKS NOTICE**

- 1.1 Where the Province proposes that Additional Works be carried out it will notify the Concessionaire of such intention by means of a notice (the "Additional Works Notice").
- 1.2 The Additional Works Notice will:
 - 1.2.1 include a description and/or specification of the Additional Works (which description and/or specification will be sufficient to enable the Concessionaire to assess the nature and extent thereof and the likely effect of the Additional Works on the Operations);
 - 1.2.2 specify the time by which the Additional Works are proposed to be completed (which time limit must be reasonable, having regard to the nature of the Additional Works);
 - 1.2.3 specify the Additional Works Services (if any) which the Province requires the Concessionaire to perform in respect of the Additional Works;
 - 1.2.4 specify the time by which any comments the Concessionaire has on the contents of the Additional Works Notice must be received (which time limit must be reasonable but in any event shall not be less than 30 days); and
 - 1.2.5 identify the procurement procedure to be implemented to procure the Additional Works.

2. CONCESSIONAIRE COMMENTS

Any comments made by the Concessionaire in accordance with paragraph 1.2.4 of this Part 1 will be given due consideration by the Province in deciding whether to proceed with the Additional Works.

3. ADDITIONAL WORKS SERVICES

- 3.1 The Concessionaire will, within any time limit specified in the Additional Works Notice, perform such of the functions specified below in relation to the Additional Works as are described in the Additional Works Notice (the "Additional Works Services"):

- 3.1.1 the preparation of all designs, documents and materials as may be necessary or required by the Province for the purposes of the Province inviting and obtaining competitive bids for the carrying out of the Additional Works (or any part thereof) in accordance with its procurement procedures and obtaining the Province's approval to all such designs, documentation and materials;
- 3.1.2 the solicitation on behalf of the Province of bids for the carrying out of the Additional Works (or any part thereof);
- 3.1.3 the provision of aid and advice to the Province in the consideration of any bids obtained and in the selection of a bid or bids for acceptance;
- 3.1.4 the negotiation on behalf of the Province of the terms of a contract or contracts for the carrying out of the Additional Works (or any part thereof) (an "Additional Works Contract") with each bidder or other contractor selected by the Province (an "Additional Works Contractor"), the terms of any such contract to be subject to the approval of the Province;
- 3.1.5 the provision to any Additional Works Contractor of the documentation which it requires to enable it to proceed with the Additional Works (or any part thereof) in accordance with the terms of the Additional Works Contract;
- 3.1.6 the provision to the Province of such copies as it may require of all documents relating to any Additional Works Contract;
- 3.1.7 the provision of the services referred to in paragraphs 4 and 5 of this Part 1; and
- 3.1.8 upon completion of any Additional Works (or any part thereof), the preparation and delivery to the Province of:
 - 3.1.8.1 "as built" drawings in a form acceptable to the Province; and
 - 3.1.8.2 any other information which the Province may require in connection with the Additional Works (or any part thereof).
- 3.2 All contracts in respect of the Additional Works (or any part thereof) will be between the Province and the Additional Works Contractor.
- 3.3 For greater certainty, the Concessionaire and its Affiliates will not be disqualified from consideration in respect of any bid or contract referred to in paragraph 3.1 of this Part 1 merely by virtue of the existence of the contractual relationship reflected in this Agreement, subject to compliance with all applicable Laws and Regulations and subject to the existence of such arrangements as the Province reasonably determines to be necessary to avoid any conflict of interest by the Concessionaire or any such Affiliate.

- 3.4 During the progress of the Additional Works, the Concessionaire will in the performance of the Additional Works Services:
- 3.4.1 consult the Province at all appropriate times and keep the Province informed of all matters connected with the Additional Works (or any part thereof) at such times and in such manner as the Province may direct;
 - 3.4.2 provide the Province with all information or reports in connection with the Additional Works (or any part thereof) as it may from time to time require;
 - 3.4.3 consult all relevant authorities having statutory powers including without limitation the police, the Ministry, highway authorities for adjoining highways, agents of the Province and any other person or authority having rights which are connected with or affected by the Additional Works (or any part thereof) and such other Interested Parties as the Province may direct;
 - 3.4.4 throughout the duration of the Additional Works, keep the Province advised as to the requirements of the Interested Parties;
 - 3.4.5 promptly seek the written consent of the Province where the Concessionaire has agreed with the approval of the Province to meet any requirements of the Interested Parties and comply with such requirements;
 - 3.4.6 ensure that all matters are dealt with in accordance with Good Industry Practice to achieve the successful, timely, efficient and economic completion of the Additional Works; and
 - 3.4.7 comply with the terms of this Schedule and all subsequent reasonable instructions of the Province issued in connection with the Additional Works (which instructions will be in writing or, if oral, will be confirmed in writing within 5 Working Days).

4. STATUTORY PROCEDURES

The Concessionaire will, to the extent so specified in the Additional Works Notice, provide the Province with such advice and assistance and undertake such activities as may be necessary or as may be reasonably required by the Province (including the attendance at any meeting, consultation, inquiry or tribunal, and the preparation of any documentation) to enable the Province to gain any authority (including any Permits, Licences and Approvals) required for the provision of the Additional Works (or any part thereof) and for the acquisition of land or Rights in respect of land and other rights required for the execution of the Additional Works (or any part thereof).

5. MANAGEMENT

The Concessionaire will, to the extent specified in the Additional Works Notice, manage any Additional Works Contract, and in so doing it will be subject to such procedures of supervision and review as the Province may reasonably require.

6. CONCESSION HIGHWAY

Upon completion, the Additional Works will become part of the Concession Highway for all purposes of this Agreement and the affected definitions will be deemed to be amended, in accordance with Section 36.1.2 of the Concession Agreement.

SCHEDULE 14

ADDITIONAL WORKS, SUBSEQUENT SCHEMES AND IMPROVEMENTS

Part 2

PAYMENT FOR ADDITIONAL WORKS SERVICES

1. The remuneration of the Concessionaire for carrying out the Additional Works Services as referred to in Part 1 of this Schedule 14 will be on a time basis in respect of each employee of the Concessionaire engaged in the Additional Works Services, as follows:

1.1 Hours Rate calculated as:

$$\text{Basic Annual Salary (Note A)/2080} \quad \times \quad \text{Actual Hours Worked (Note B)} \quad \times \quad \text{The On-Cost Multiplier (Note C)}$$

Notes:

Note (A) "Basic Annual Salary" is the annual salary excluding overtime and bonuses during the period covered by the account. Where the annual salary is changed during the period covered by the account, the total worked should be apportioned and applied to the relevant salary level.

Note (B) "Actual Hours Worked" will include overtime hours.

Note (C) "The On-Cost Multiplier" is the factor required to recover the appropriate part of the annual salary and on-costs and which factor includes an allowance for the annual amount of all contributions and payments made by the Concessionaire on behalf of or in respect of a person employed by the Concessionaire for pension and other benefits, and any tax, charge, levy, impost or payment of any kind whatsoever which the Concessionaire is obliged by law to make on behalf of or in respect of such person ("Other Payroll Costs"). The multiplier to be used for this Agreement is **DELETED**.

Note (D) No other amounts in respect of any person performing any of the Additional Works Services including any Other Payroll Costs other than as set out in this paragraph 1 will be chargeable.

Note (E) The Concessionaire will submit its accounts for payment in a form and manner acceptable to the Province, acting reasonably.

Note (F) Time spent in travelling for the purposes of the Additional Works Services to be performed under this Schedule 14 will be chargeable, excluding travel between home and normal work place.

Note (G) Time spent by staff engaged in general accounting, secretarial or administration duties (unless otherwise agreed) will not be chargeable except to the extent such administrative duties are conducted exclusively in connection with the Additional Works Services.

2. In addition to the fee described in paragraph 1 of this Part 2, the Concessionaire will be reimbursed by the Province all approved costs and expenses properly incurred by it in connection with the Additional Works Services to be performed under this Schedule and certified by the Concessionaire in respect of:
 - 2.1 travel and subsistence expenses based on actual costs reasonably and properly incurred;
 - 2.2 the cost of printing and reproduction of all documents, drawings, maps and records and the like authorised by the Province;
 - 2.3 the cost of providing, where required by the Province, auditors' certificates of costs; and
 - 2.4 the cost of any other expenses authorised by the Province, excluding normal office overheads such as rent, rates, heating, lighting and telephone and postal charges except to the extent specific telephone and postal charges are incurred that relate directly to the Additional Works.
3. For the purposes of this Schedule, "approved" means approved in writing by the Province before the cost, remuneration or expenditure in question is incurred or committed.

SCHEDULE 14**ADDITIONAL WORKS, SUBSEQUENT SCHEMES AND IMPROVEMENTS****Part 3****SUBSEQUENT SCHEMES****1. SUBSEQUENT SCHEME NOTICE**

- 1.1 Where the Concessionaire desires a Subsequent Scheme to be carried out it will give notice to that effect to the Province (the "Subsequent Scheme Notice").
- 1.2 The Subsequent Scheme Notice will:
- 1.2.1 include a description of the proposed Subsequent Scheme which will be in sufficient detail to enable the Province to assess the nature and extent thereof and the likely effect of the Subsequent Scheme on the Project Facilities and on the Operations under this Agreement;
 - 1.2.2 without limitation to paragraph 1.2.1 of this Part 3, give details of:
 - 1.2.2.1 the size and scope of the proposed works (including outline plans);
 - 1.2.2.2 estimated costings; and
 - 1.2.2.3 a proposed schedule for the works; and
 - 1.2.3 contain the Concessionaire's suggestions as to the contractual arrangements in respect of the construction of the Subsequent Scheme, including any statutory authority to be relied on, the party who will promote the Subsequent Scheme through any statutory approvals process, the party who will enter into the contracts in respect of the Subsequent Scheme, and the party who will serve as contractor.
- 1.3 The Province may at any time require the Concessionaire to provide such additional information with respect to the Subsequent Scheme as the Province may reasonably require, and if the Concessionaire fails to provide such information the Province will have no obligation to give any further consideration to the proposed Subsequent Scheme.

2. CONSIDERATION BY THE PROVINCE

- 2.1 Within 7 days after receipt of the Subsequent Scheme Notice, the Province will acknowledge receipt of such Notice and will thereafter proceed with reasonable dispatch to consider the request contained in the Subsequent Scheme Notice.

- 2.2 The Province will, as soon as reasonably practicable in the circumstances, taking into consideration, *inter alia*, the complexity of the proposed Subsequent Scheme, but in any event not later than 30 Working Days after delivery of the acknowledgment delivered pursuant to Section 2.1, give a notice to the Concessionaire indicating whether or not the Province considers that it is worthwhile giving further consideration to the proposed Subsequent Scheme.
- 2.3 The Province will consider the proposal contained in the Subsequent Scheme Notice on its merits, in accordance with and in view of any relevant statutory duties. Without in any way limiting the discretion of the Province in responding to any such request, the Province will, in reaching a decision on whether it is worthwhile to proceed to further discussions with the Concessionaire in regard to such Subsequent Scheme, give consideration, *inter alia*, to whether the Subsequent Scheme would be of benefit to the public.
- 2.4 If the Province gives notice to the Concessionaire that it is willing to consider further the proposed Subsequent Scheme, then, subject to the Concessionaire confirming to the Province that the Concessionaire will bear any abortive costs of the Province in considering the proposed Subsequent Scheme, as set out in paragraph 2.7 of this Part 3, the Province and the Concessionaire will enter into negotiations with a view to reaching agreement on the terms and conditions on which the Subsequent Scheme may be taken forward.
- 2.5 The terms and conditions referred to in paragraph 2.4 of this Part 3 to be agreed between the Parties will include, *inter alia*, the following:
- 2.5.1 the statutory authority under which the Subsequent Scheme will be promoted and any procedural or structural arrangements to satisfy the requirements of such statutory authority;
 - 2.5.2 the responsibilities of each of the Parties in respect of the statutory approvals process in respect of the Subsequent Scheme;
 - 2.5.3 the standards and specifications to apply to the construction of the Subsequent Scheme and to its subsequent operation, maintenance and rehabilitation;
 - 2.5.4 the procedure for the design and certification of the Subsequent Scheme;
 - 2.5.5 the schedule for the works in connection with the Subsequent Scheme;
 - 2.5.6 any amendments required to this Agreement as a consequence of the Subsequent Scheme, including any amendment referred to in paragraph 7 of this Part 3 and any adjustments to the Total Performance Payments to reflect:
 - 2.5.6.1 any changes in traffic as a consequence of the Subsequent Scheme; and
 - 2.5.6.2 any changes in the Concessionaire's costs in respect of the Project Facilities; and

- 2.5.7 the manner in which any land or Rights in respect of land required in connection with the Subsequent Scheme will be acquired, provided that any land or Rights in respect of land acquired by the Concessionaire will, upon request by the Province, be dedicated as a highway or conveyed to the Province or BCTFA free of charge and without any Encumbrances.
- 2.6 For greater certainty:
- 2.6.1 the Province, in its absolute and unfettered discretion, will be entitled to require changes in the proposed Subsequent Scheme as a condition to its agreement;
- 2.6.2 either the Concessionaire or the Province may in its absolute and unfettered discretion by notice to the other terminate the discussions in respect of the Subsequent Scheme and, subject to paragraphs 2.7 and 4 of this Part 3, in such event neither the Concessionaire nor the Province will have any liability to the other in respect of such Subsequent Scheme; and
- 2.6.3 any agreement reached in accordance with paragraph 2.4 of this Part 3 will be conditional upon the making by any relevant Statutory Decision Maker, in accordance with its statutory duties, of any statutory order required to give effect to the agreement in respect of the Subsequent Scheme.
- 2.7 If either the Concessionaire or the Province at any time gives notice terminating the negotiations in respect of the Subsequent Scheme, the Concessionaire will reimburse the Province for all costs, fees and expenses incurred by the Province in connection with the Subsequent Scheme (including an appropriate sum in respect of general staff costs and overheads).

3. STATUTORY PROCEDURES

- 3.1 If the Parties reach agreement in respect of a Subsequent Scheme in accordance with paragraph 2.4 of this Part 3, then they will cooperate in any statutory procedures necessary in respect of the Subsequent Scheme. Subject to the terms of any agreement reached pursuant to paragraph 2.5.2 of this Part 3, the Concessionaire will provide the Province with such advice and assistance and will undertake such duties as may be necessary and as may be required by the Province (including the attendance at any meeting, consultation, inquiry or tribunal, the provision of any witnesses required for any public hearing or inquiry, and the preparation of any documentation) in respect of any such statutory procedures.
- 3.2 For greater certainty, no action taken in connection with any such statutory procedures will fetter in any way the discretion of any relevant Statutory Decision Maker to decide any issue in accordance with any relevant statutory duties. If a Statutory Decision Maker fails or refuses to make any order or take any other action required in connection with the Subsequent Scheme, such decision will not be subject to review under the Disputes Resolution Procedure and the Concessionaire will not be entitled to any compensation in respect thereof.

4. COSTS

Subject to express agreement to the contrary in accordance with paragraph 2.4 of this Part 3, the Concessionaire will bear and will indemnify and hold the Province harmless against:

- 4.1 the Concessionaire's costs in respect of the Subsequent Scheme, including any costs of design or the provision of any information and any costs incurred by the Concessionaire in connection with any negotiations between the Concessionaire and the Province or any statutory procedures in respect of the Subsequent Scheme;
- 4.2 the costs of any statutory procedures in respect of the Subsequent Scheme, including any costs of objectors who participate in such procedures to the extent such costs are required to be borne by the Province;
- 4.3 any costs incurred by the Province in connection with the Subsequent Scheme, including those costs, fees and expenses set out in paragraph 2.7 of this Part 3 in connection with any negotiations or any costs, fees and expenses incurred in connection with the statutory procedures referred to in paragraph 3 of this Part 3; and
- 4.4 any Loss or Claim of any person (including the Province) arising from or in connection with the Subsequent Scheme.

5. OTHER CONSENTS

For greater certainty, nothing in this Part 3 will affect the requirement for the Concessionaire to obtain at its own cost all necessary consents and approvals in respect of the Subsequent Scheme, including any New Order and any Permits, Licences and Approvals.

6. PROCUREMENT

Where in the opinion of the Province it is or would be likely to be required by applicable laws, regulations, policies or guidelines to competitively tender or seek competitive bids or proposals in respect of any works necessary in connection with or relating to the Subsequent Scheme, the Concessionaire will be required to seek and evaluate competitive tenders, bids or proposals, as applicable, for such works in accordance with the provisions of Part 2 of Schedule 13 [Province Changes] as if the Subsequent Scheme were a Province Change, provided, however, that subject to any express agreement to the contrary in accordance with paragraph 2.4 of this Part 3, the Concessionaire will not be entitled to any payment, compensation or extension of time in respect of the Subsequent Scheme and the Concessionaire will bear and will indemnify and hold the Province harmless against any cost or expense in connection therewith.

7. CONCESSION HIGHWAY

Upon completion, any Subsequent Scheme will become part of the Concession Highway for all purposes of this Agreement, and the definitions of "Existing Highway", "Highway Improvement", "Concession Highway" and "Project Facilities" in Section 1 of Schedule 1 [Definitions and Interpretation] will be deemed to be amended as appropriate to include references to such Subsequent Scheme.

SCHEDULE 14**ADDITIONAL WORKS, SUBSEQUENT SCHEMES AND IMPROVEMENTS****Part 4****IMPROVEMENTS**

1. Any proposal by the Concessionaire for an Improvement will be submitted to the Province's Representative in accordance with the Review Procedure. The Concessionaire will not commence the Improvement unless there has been no objection to such Improvement in accordance with the Review Procedure, subject to the provisions of paragraph 2 of this Part 4.
2. The Province will be entitled to object to any proposed Improvement on the grounds set out in paragraph 3.10 of Part 2 of Schedule 8 [Review Procedure].
3. Any Improvement will be deemed to be part of the Concession Highway for all purposes of this Agreement (including for purposes of determining the standards and specifications to apply to such Improvement) and the definitions of "Existing Highway", "Highway Improvement", "Concession Highway" and "Project Facilities" in Section 1 of Schedule 1 [Definitions and Interpretation] will be deemed to be amended as appropriate to include references to such Improvement.
4. For greater certainty, no review of or failure to make comments on or to object to a proposed Improvement by the Province will absolve the Concessionaire from any obligation to obtain any required consent or approval (including any Permit, Licence or Approval) or to take any other action required by applicable Laws and Regulations in respect of such Improvement (including where applicable the preparation of any environmental audit or statement).

SCHEDULE 15

RECORDS AND REPORTS

Part 1

RECORDS

1. GENERAL

Unless otherwise expressly set out, any reference to "records" in this Schedule 15 [Records and Reports] includes the records referred to in Section 2 of this Part 1 and all other records required by the Agreement or Good Industry Practice to be produced, maintained and updated by the Concessionaire pursuant to the Technical Requirements or otherwise in connection with the Project, Project Facilities, Site, Adjacent Areas, the Works, and the Operations.

The Concessionaire will produce, maintain and update all records in accordance with all applicable requirements of the Agreement, including Section 25 [Records], and the Records Management Protocol. Without limiting the generality of the foregoing, the Concessionaire will establish and maintain records in accordance with the requirements of the ISO 9001:2000 Standard that provide objective evidence of conformity to the Agreement as stated in Schedule 6 [Quality Management]. All records produced and maintained by the Concessionaire must be:

- accurate;
- complete;
- legible;
- readily identifiable; and
- retrievable.

All records will be made available for audit or inspection by or on behalf of the Province, BCTFA, the Province's Representative or any of their respective authorized representatives at all reasonable times and such parties will be entitled to take copies of any records at the Concessionaire's cost, in accordance with the provisions of Section 25 [Records] of the Agreement.

All records will be maintained, retained and disposed of by the Concessionaire only in accordance with and subject to the provisions of Sections 25.4.3, 25.4.4, 25.4.5 and 25.4.6 and Section 25.5 [Computer Records] of the Agreement and in accordance with the Records Management Protocol as submitted and updated from time to time without objection in accordance with the Review Procedure.

The requirements set out in this Part 1 and the Records Management Protocol include the minimum requirements to be complied with, and the Province expects the

Concessionaire to exceed these requirements. The requirements set out in this Part 1 and the Records Management Protocol are without prejudice to any Laws and Regulations or Legal Requirements which require the keeping of specified records for a longer period or the production and maintenance of additional records.

Subject to and without limiting any other requirements or obligations of the Concessionaire in respect thereof:

- all records of operational aspects of the Concessionaire's record keeping system will be retained indefinitely and will be systematically and periodically updated and filed so as to be readily retrievable;
- records which have been superseded but are still of historical, contractual or legal importance will be retained and filed on microfilm or in other machine readable form for at least 10 years after being superseded;
- records which are obsolete and are of no historical, contractual or legal significance will be retained and filed on microfilm or in other machine readable form and can be disposed of 5 years after becoming obsolete;
- superseded and obsolete plans and drawings will be retained either on microfiche or digitally on disc or tape or in other machine readable form, using software agreed with the Province's Representative; and
- text of all documents will be prepared and recorded using software systems agreed with the Province's Representative.

2. REQUIRED RECORDS

The required records include all those described in the Agreement, including those described in:

- Part 1 of Schedule 5 [Design and Construction Output Specifications];
- Schedule 6 [Quality Management];
- Part 1 of Schedule 7 [O,M&R Output Specifications];
- Section 9 [Health and Safety] of the Agreement; and
- any other Technical Requirements.

3. REQUIREMENTS FOR RECORDS MANAGEMENT PROTOCOL

The Records Management Protocol referred to in Section 25.4 [Management and Retention of Records] of the Agreement must comply with, and must provide for implementation and maintenance of systems and processes to ensure compliance with, the following requirements:

- 3.1 The Records Management Protocol must be consistent with and comply with the Concessionaire's Quality Management System and Quality Documentation and

Schedule 6 [Quality Management], and with the requirements set out in Section 25.4.1 of the Agreement and all other provisions of the Agreement.

- 3.2 The Records Management Protocol will set forth minimum retention periods satisfactory to the Province's Representative for each class of records produced and maintained by the Concessionaire.
- 3.3 The Concessionaire will maintain, including classify, all records according to the records management practices of the MOT, the Administrative Records Classification System (ARCS) and the Operational Records Classification System (ORCS) as may be amended by the Province from time to time on written notice to the Concessionaire, or any other standards that would be applied by the MOT if the records were created and maintained by the MOT.
- 3.4 Records will be retained primarily in the format of hard copy, but may be created or maintained in computer or other electronic format subject to compliance with those requirements that would apply if the records were created and maintained by the MOT.
- 3.5 The Concessionaire will keep all records in safekeeping, in such a manner as to ensure the integrity of the records and at a location within British Columbia that is satisfactory to and approved by the Province's Representative, acting reasonably.
- 3.6 Any warehouse or other facility used to store records must meet the storage and security standards established by the Corporate Records Management Branch, the particulars of which standards (and any changes thereto) the Province will provide to the Concessionaire on a timely basis.
- 3.7 Records referred in Section 25.1.2 of the Agreement will be kept separate from other records, will be clearly identified as records of the Province subject to the *Document Disposal Act*, and will not be marked, altered, destroyed, or disposed of without prior written authorization from the Province's Representative.
- 3.8 Notwithstanding any other terms of the Agreement, no records that are required under the Agreement to be retained by the Concessionaire will be destroyed or otherwise disposed of during the period in which such records are required to be retained without the express written consent of the Province's Representative or as authorized under a records retention schedule approved by the Legislative Assembly of the Province of British Columbia.
- 3.9 Any records authorized for disposition pursuant to the effluxion of time or otherwise will be disposed of only after reasonable notice in writing to the Province's Representative and only in accordance with disposition standards established by the MOT or by the Corporate Records Management Branch, the particulars of which standards the Province will provide to the Concessionaire.
- 3.10 The Concessionaire will ensure that there is a designated and appropriately qualified person at all appropriate times responsible for the management of the records and for liaison with the Province's Representative in connection with all matters relating thereto.

- 3.11 The Concessionaire will not sell, transfer or relocate any records to the custody, physical or otherwise, of another jurisdiction or person.
- 3.12 The Concessionaire will not disclose any of the records or contents thereof except subject to and in accordance with the provisions of the Agreement, including Section 50 [Confidentiality] thereof.

SCHEDULE 15

RECORDS AND REPORTS

Part 2

REPORTS

1. REPORT REQUIREMENTS AND CATEGORIES

The reporting requirements are provided for in the Agreement, the Technical Requirements and this Part 2 and include the following seven primary categories of reports:

- Quality Management Reports
- Design and Construction Reports
- Operations, Maintenance and Rehabilitation Reports
- Environmental Management Plan Reports
- Monthly Reports
- Annual Reports
- Accident Reports
- Financial Reports

All reports will be submitted in such number and at such times as required by the Agreement or applicable Technical Requirements or, where no such number or time is so specified, in such number and at such time as may be reasonably required in writing by the Province's Representative. Unless otherwise specified in the Agreement or applicable Technical Requirements, such reports will be in such form as reasonably required in writing by the Province's Representative or, where a report is required to be submitted periodically, in the same form as such report was previously submitted until otherwise required in writing by the Province's Representative.

1.1 Quality Management Reports

The Concessionaire will provide documentation and reports in accordance with, and will comply with and satisfy, all Quality Management System reporting requirements set forth in paragraph 8 of Schedule 6 [Quality Management] and in the Quality Management Plans described in Schedule 6 [Quality Management], including the following:

- Quality Manual;
- Quality Systems Procedures and Process Flow Charts;
- Work Method Statements;

- Quality Audit Plans;
- Quality Records;
- Design Quality Management Plan;
- Construction Quality Management Plan;
- Operations, Maintenance and Rehabilitation Quality Management Plan;
- Traffic Quality Management Plan; and
- Environmental Quality Management Plan.

1.2 Design and Construction Reports

The Concessionaire will provide documentation and reports in accordance with, and will comply with and satisfy, all reporting requirements set forth in Part 1 of Schedule 5 [Design and Construction Output Specifications] and Part 2 of Schedule 5 [Concessionaire's Design and Construction Requirements].

From the date of this Agreement until the issue of the Concessionaire's Final Completion Certificate, the Concessionaire will submit to the Province's Representative within 5 Working Days after the end of each month which falls within such period 5 copies of:

- 1.2.1 a formal monthly progress report covering all relevant aspects of the Works, including:
- 1.2.1.1 all actual or potential departures from the Design and Construction Output Specifications, the Concessionaire's Design and Construction Requirements, the Project Schedule or the Works Schedule;
 - 1.2.1.2 all grounds for a substantial Dispute which have occurred or which may reasonably be foreseen as likely to occur in respect of the design or construction of the Works;
 - 1.2.1.3 all breaches of any provisions of this Agreement relating to the design or construction of the Works;
 - 1.2.1.4 particulars of any substantial disagreements among the Concessionaire, the Contractor, the Designer and the Checker material to the design or construction of the Works;
 - 1.2.1.5 the proposed measures to be taken by the Concessionaire to overcome such departure, breach or occurrence or to resolve such grounds for a Dispute; and
 - 1.2.1.6 the date on which the Concessionaire expects the Works and each relevant component thereof will achieve (a) Substantial Completion and (b) Final Completion; and

1.2.2 such other reports as may be reasonably required to be produced by the Concessionaire so as to comply with the Requirements of Interested Parties.

1.3 Operations, Maintenance and Rehabilitation Reports

The Concessionaire will provide documentation and reports in accordance with, and will comply with and satisfy, all reporting requirements set forth in Part 1 of Schedule 7 [O,M&R Output Specifications] and Part 2 of Schedule 7 [O,M&R Requirements], including all reporting requirements set forth in the following:

- Operations and Maintenance Plan (as required in Part 1 of Schedule 7 [O,M&R Output Specifications]);
- Asset Management Plan (as required in Part 1 of Schedule 7 [O,M&R Output Specifications]);
- Salt Management Plan (as required in Section 3.1 of the Highway Corridor Management Specifications for Highway Concessions);
- Communications and Customer Care Plan (as required in Section 3.2 of the Highway Corridor Management Specifications for Highway Concessions);
- Emergency Response Plan (as required in Section 3.3 of the Highway Corridor Management Specifications for Highway Concessions);
- Safety Management and Intervention Plan (as required in Section 3.4 of the Highway Corridor Management Specifications for Highway Concessions);
- Annual Asset Management Plan (as required in Section 2.3 of the Reporting Specifications for Highway Concessions);
- Five-Year Management Plan (as required in Section 14.10 [Five-Year Management Plan] of the Agreement and Part 3 of this Schedule 15 and Section 2.2 of the Reporting Specifications for Highway Concessions); and
- Unstable Slope Mitigation Program (as required in Section 14.7 [Unstable Slope Mitigation Program] of the Agreement).

The Concessionaire shall update the foregoing plans annually except where any of such plans become redundant after construction of the Works has been completed.

1.4 Environmental Management Plan Reports

The Concessionaire will provide documentation and reports in accordance with, and comply with and satisfy, all reporting requirements set forth in Schedule 12 [Concessionaire's Environmental Obligations] including the preparation, updating and maintenance of a comprehensive Environmental Management Plan prepared and approved in accordance with Schedule 12 [Concessionaire's Environmental Obligations], Schedule 6 [Quality Management] and the following:

- Weekly monitoring reports documenting construction progress and related environmental issues;

- Environmental incident reports documenting any events resulting in adverse effects or potential for adverse effects on environmental values or resources resulting from the Works and Operations; and
- Environmental reports documenting environmental mitigation or enhancement works undertaken during the Works and Operations.

1.5 Monthly Report

Capitalized and other terms used in this paragraph 1.5 that are defined or used in Schedule 10 [Payments] have the meanings herein that are ascribed to them in Schedule 10 [Payments].

Within 10 Working Days after the end of each month which falls within the Contract Period the Concessionaire will provide to the Province's Representative 5 copies (save as expressly provided below) of a report (the "Monthly Report") containing the following information:

- 1.5.1 details of the calculation of the Monthly OSP Availability & Safety Payment or Monthly ESP Performance Payment (as the case may be) payable by the Province for the month in accordance with Schedule 10 [Payments] including:
 - 1.5.1.1 the date of issue of the Concessionaire's Substantial Completion Certificate in respect of the Works;
 - 1.5.1.2 details of Eligible Costs incurred for that month in sufficient detail to permit the Province's Representative to verify such Eligible Costs for the purposes of calculating the Pre-Completion Performance Payments payable by the Province; and
 - 1.5.1.3 details including date, time and duration of all Lane Closures in that month to permit verification by the Province's Representative of the calculation of any Traffic Disruption Charges in accordance with Part 4 of Schedule 10 [Traffic Disruption Charges];
- 1.5.2 details of all Unavailability Deductions incurred during the month in accordance with Part 5 of Schedule 10 [Unavailability Deductions] including a detailed report on the occurrence of Relevant Unavailability Events including but not limited to details of each Relevant Unavailability Event that occurred during the month, including but not limited to the time, date, duration, cause, location and number of lanes affected;
- 1.5.3 a detailed report on the traffic volumes for each Measurement Point including but not limited to:
 - 1.5.3.1 vehicle count for all Heavy Vehicles and Other Vehicles (collectively, "Vehicles") passing the Measurement Point on a daily and monthly basis, in both graph (or chart) and tabular format;

- 1.5.3.2 classification of all Vehicles passing the Measurement Point for the purposes of determining Passenger Vehicle Equivalents including classification as either Heavy Vehicles or Other Vehicles on a daily and monthly basis, in both graph (or chart) and tabular format;
 - 1.5.3.3 time of each Vehicle passing the Measurement Point;
 - 1.5.3.4 where there is more than one set of Measuring Equipment at the Measurement Point, the information in paragraphs 1.5.3.1 to 1.5.3.3 (inclusive) of this Part 2 for each set of Measuring Equipment together with a calculation of the average of the figures produced by all the sets of Measuring Equipment;
 - 1.5.3.5 details of any Measuring Equipment that was replaced in accordance with paragraph 3.3 of Part 8 of Schedule 10 [Monitoring and Measurement], including but not limited to identification of the Measuring Equipment replaced, time, date and reason for replacement;
 - 1.5.3.6 details of the installation of any additional Measurement Points as contemplated in paragraph 2.1.2 of Part 8 of Schedule 10 [Monitoring and Measurement], including but not limited to the date and time of the installation, date and time that the additional Measurement Point was brought into use and whether the additional Measurement Point was installed as a result of a Subsequent Scheme or Additional Works;
 - 1.5.3.7 details of construction or maintenance activities at or affecting the Measurement Point, including but not limited to the time and date of the activities and a description of the work carried out;
 - 1.5.3.8 details of any Defective Equipment identified, including but not limited to identification of the Measurement Point affected, the date and time that the Defective Equipment was identified and the date and time that the Defective Equipment was taken out of use;
 - 1.5.3.9 details of any adjustment or replacement of any Defective Equipment, including but not limited to identification of the Measurement Point affected, the date and time of the adjustment or replacement and the date and time that the adjusted or replacement Measuring Equipment was brought into use; and
 - 1.5.3.10 details of any retrospective correction and calculations of that correction in accordance with paragraph 7.2 of Part 8 of Schedule 10 [Monitoring and Measurement], including but not limited to identification of the Measurement Point affected, date, time and details of the required correction;
- 1.5.4 a detailed calculation of the Traffic Volume Payment payable in the month calculated based on the traffic volume of the previous Contract Year in accordance with paragraph 3 of Part 3 of Schedule 10 [ESP Performance Payment];

- 1.5.5 a calculation showing details of any and all Performance / Safety Deductions made in the month in accordance with Part 6 of Schedule 10 [Performance / Safety Deductions] including sufficient information to enable the Province's Representative to verify the calculation including but not limited to:
 - 1.5.5.1 all actual or potential departures from the O,M&R Output Specifications and/or the O,M&R Requirements or from the Traffic Management Output Specifications (Original Service Period), the Traffic Management Requirements (Original Service Period), the Traffic Management Output Specifications (Enhanced Service Period), the Traffic Management Requirements (Enhanced Service Period) and/or the Traffic Management Plan;
 - 1.5.5.2 all breaches of this Agreement, including the occurrence of any Nonconformities for purposes of Part 6 of Schedule 10 [Performance / Safety Deductions];
 - 1.5.5.3 every Nonconformity (as defined in paragraph 1 of Schedule 6 [Quality Management]) in respect of Quality Management System requirements which occurred during the month for purposes of Schedule 6 [Quality Management];
 - 1.5.5.4 all grounds for a substantial Dispute which have occurred or may reasonably be foreseen as likely to occur; and
 - 1.5.5.5 the proposed measures to be taken by the Concessionaire to overcome such departure, breach, Nonconformity (as defined in paragraph 1 of Schedule 6 [Quality Management]) or occurrence or to resolve such grounds for a Dispute;
- 1.5.6 a detailed report of any and all Completion Retentions and Asset Condition Retentions made in the month in accordance with paragraph 1.1 of Part 3A of Schedule 10 [Payment Retentions];
- 1.5.7 a summary report on all accidents on the Concession Highway during such month (including all accidents on which a report has previously been made pursuant to paragraph 1.7 of this Part 2 below), including:
 - 1.5.7.1 a categorization of all accidents on the Concession Highway involving a personal injury or property damage:
 - 1.5.7.1.1 by section of the Concession Highway. Such sections shall encompass the whole of the Concession Highway and shall include:
 - (a) discrete lengths of the Concession Highway of not more than one kilometer and not containing any major junction; and

- (b) each major junction (including the first 20 metres of each intersecting road, to the extent forming part of the Concession Highway),

such sections to be agreed by the Province's Representative and the Concessionaire and, in the absence of agreement, to be determined by the Province's Representative;

- 1.5.7.1.2 by accident severity, divided into Fatal, Injury, and Property Damage only;

- 1.5.7.1.3 by type of User/vehicle, as follows:

- pedestrians
- pedal cyclists
- powered two wheel vehicles
- car/taxi
- light goods vehicles (<3.5 tonnes)
- heavy goods vehicles (>3.5 tonnes)
- public service vehicles
- other vehicles; and

- 1.5.7.1.4 by road condition (including lighting), weather conditions and time of day; and

- 1.5.7.2 the total number of accidents for each section of the Concession Highway referred to in paragraph 1.5.7.1.1 of this Part 2 above and for the Concession Highway as a whole;

- 1.5.8 a comprehensive monthly Quality Management System report for each month or part thereof in accordance with paragraph 8 of Schedule 6 [Quality Management];

- 1.5.9 a summary report of all occurrences on the Concession Highway (referred to in this Part 2 as "Incidents") during such month necessitating traffic control measures either by the Concessionaire or the Police or affecting or potentially affecting safety, the environment or the structural integrity of the Concession Highway or any part thereof (other than accidents referred to in paragraph 1.5.7 above), including:

- 1.5.9.1 a categorization of all such Incidents:

- 1.5.9.1.1 by section of the Concession Highway (using the sections referred to in paragraph 1.5.7.1.1 of this Part 2 above); and

- 1.5.9.1.2 by type of occurrence (e.g. chemical spillage, structural failure, etc.); and

- 1.5.9.2 the total number of such Incidents for each section of the Concession Highway referred to in paragraph 1.5.7.1.1 of this Part 2 above and for the Concession Highway as a whole;
- 1.5.10 the results of all Verifications conducted during such month and (to the extent not already provided in the report referred to in paragraph 1.5.3 of this Part 2) a report of all actions taken pursuant to paragraph 4.1 of Part 8 of Schedule 10 [Monitoring and Measurement] as a consequence of such Verifications;
- 1.5.11 details of any defects identified on the Concession Highway; and
- 1.5.12 an account of the number and type of complaints received from Users and others in respect of the Concession Highway and the conduct of the Operations and the actions taken or proposed to be taken by the Concessionaire to deal with or address such complaints.

The Concessionaire is required to provide only one hard copy of the information referred to in this paragraph 1.5, together with four copies of a diskette containing the same information, using software agreed with the Province's Representative.

1.6 Annual Report

Capitalized and other terms used in this paragraph 1.6 that are defined or used in Schedule 10 [Payments] have the meanings herein that are ascribed to them in Schedule 10 [Payments].

As soon as reasonably practicable and in any event not later than 30 days following the end of each Contract Year, the Concessionaire will provide to the Province's Representative 5 copies of a report (the "Annual Report") in respect of such Contract Year containing the following information:

- 1.6.1 a statement showing any adjustments to the Monthly Reports in accordance with Section 24.5 [Revisions to Reports] of the Agreement;
- 1.6.2 a summary for each month of such Contract Year of the information required under paragraph 1.5 of this Part 2 with appropriate totals for the Contract Year;
- 1.6.3 details of actual Lane Closures during the Contract Year;
- 1.6.4 [not used];
- 1.6.5 detailed calculation of the Annual Reconciliation in accordance with Section 32.2 [Annual Reconciliation] of the Agreement.

The Province may incorporate all or any part of the Annual Report, Monthly Report or any other report prepared by the Concessionaire in any annual, monthly or other report published by the Province.

1.7 Accident Reports

- 1.7.1 As soon as practicable and in any event no later than 24 hours following the occurrence of any Major Road Accident (as defined in paragraph 1.7.3 of this Part 2 below) on the Concession Highway, the Concessionaire will submit to the Province's Representative a report setting out details of such Major Road Accident and, to the extent they are known, the causes of such Major Road Accident, and the Concessionaire will thereafter promptly report to the Province's Representative any additional details of such Major Road Accident or its causes which become known to it.
- 1.7.2 On request by the Province's Representative, the Concessionaire will investigate the circumstances of any accident or Incident on the Concession Highway (whether or not falling within the scope of the paragraph 1.7.1 of this Part 2) and shall as soon as practicable and in any event no later than 7 days following such request submit to the Province's Representative a report setting out details of such accident or Incident and, to the extent they are known, the causes of such accident or Incident, and the Concessionaire will thereafter promptly report to the Province's Representative any additional details of such accident or Incident or its causes which become known to it.
- 1.7.3 For purposes of this paragraph 1.7, "Major Road Accident" means any accident or Incident on the Concession Highway included in the following:
- 1.7.3.1 any vehicle accident or Incident resulting in a fatality;
 - 1.7.3.2 any vehicle accident or Incident resulting in serious structural damage; and
 - 1.7.3.3 any vehicle accident or Incident which provokes considerable media attention.

1.8 Financial Reports

The Concessionaire will provide to the Province's Representative:

- 1.8.1 as soon as possible and in any event within 60 days after the end of the first 6 months of each of its financial years, certified true copies of the unaudited financial statements of the Concessionaire and, if appropriate, consolidated financial statements of the Concessionaire and its subsidiaries as at the end of and for that 6 month period; and
- 1.8.2 as soon as they shall have been finalized but no later than 180 days after the end of each of its financial years, a copy of the audited financial statements of the Concessionaire and, if appropriate, consolidated financial statements of the Concessionaire and its subsidiaries in respect of that period (prepared in accordance with Canadian generally accepted accounting principles), together with copies of all related directors' and auditors' reports.

If at any time after the provision to the Province of the documents referred to in paragraphs 1.8.1 and 1.8.2 of this Part 2 above the Province's Representative notifies

the Concessionaire of any matter which gives him concern and which arises in connection with anything in such documents, the Concessionaire will instruct its auditors to prepare as soon as is reasonably practicable a report on that matter, giving such further information, amplification or explanation as is reasonable having regard to the contents of the Province's Representative's notification; and the Concessionaire will provide the Province's Representative with a copy of that report within 7 days of the Concessionaire's receipt of it from its auditors.

SCHEDULE 15**RECORDS AND REPORTS****Part 3****FIVE-YEAR MANAGEMENT PLAN****1. GENERAL**

The Concessionaire will prepare and submit its initial proposed Five-Year Management Plan to the Province's Representative in accordance with the Review Procedure within 6 months following the Commencement Date. Thereafter, not less than 60 days prior to the commencement of the second and each subsequent Contract Year the Concessionaire will submit to the Province's Representative, in accordance with the Review Procedure, an update and extension of the Five-Year Management Plan proposed for the five-year period from the commencement of that Contract Year.

2. PLAN REQUIREMENTS

The Five-Year Management Plan is a rolling, forward works program that describes the rehabilitation in respect of the Project Facilities, the Site and the Adjacent Areas in accordance with the Concessionaire's rehabilitation obligations under this Agreement including but not limited to the O,M&R Output Specifications and the O,M&R Requirements, excluding Routine Maintenance, that the Concessionaire is planning to undertake over the next five-year period (the "Rehabilitation Works").

For greater certainty, a reference in this Agreement including any of the Technical Requirements to the "Annual Management Plan" for a given year is a reference to the first year of the corresponding Five-Year Management Plan.

The Five-Year Management Plan will provide specific details including:

- Location and extent of the proposed Rehabilitation Works;
- Description of the sites of the proposed Rehabilitation Works; and
- Scheduling of the proposed Rehabilitation Works.

The annual update and extension of the Five-Year Management Plan will, without limitation, incorporate any changes in asset inventory within the plan in accordance with the Performance Measure requirements defined in Part 1 of Schedule 7 [O,M&R Output Specifications] and as Rehabilitation Works are completed.

The Five-Year Management Plan must at all times be compliant with the Concessionaire's Quality Management System and the Quality Documentation.

SCHEDULE 16

DISPUTES RESOLUTION PROCEDURE

Except as expressly provided in any other provision of the Agreement, all Disputes will be resolved in accordance with the provisions set out in this Schedule 16. In this Schedule 16 the term “Parties” means the Concessionaire and the Province, and the term “Party” means either the Concessionaire or the Province.

1. GENERAL

- 1.1 Each of the Parties agrees that at all times, both during and after the Contract Period, it will make *bona fide* efforts to:
 - 1.1.1 resolve by amicable negotiations any and all Disputes arising between the Parties; and
 - 1.1.2 have all Disputes resolved at the lowest level of management before engaging the dispute resolution processes described in paragraphs 1.3, 3, 4 and 5 of this Schedule 16.
- 1.2 If the Parties are unable to resolve a Dispute at the lowest level of management pursuant to paragraph 1.1.2 of this Schedule 16, either Party may deliver to the Province’s Representative or the Concessionaire’s Representative, as applicable, a written notice of dispute (the “Notice of Dispute”), which Notice of Dispute will initiate either the dispute resolution process described in paragraphs 1.3, 3, 4 and 5 of this Schedule 16, or the dispute resolution process described in paragraphs 4 and 5 of this Schedule 16 where the Dispute is a Dispute in relation to a decision of the Independent Certifier. To be effective, the Notice of Dispute must expressly state that it is a notice of dispute, set out the particulars of the matter in dispute, describe the remedy or resolution sought by the Party issuing the Notice of Dispute and be signed by the Province’s Representative, if given by the Province, or by the Concessionaire’s Representative, if given by the Concessionaire.
- 1.3 In the case of a Dispute that is not in relation to a decision of the Independent Certifier, if, within 5 Working Days (or such other period as the Parties to the Dispute may agree) after the Notice of Dispute referred to in paragraph 1.2 of this Schedule 16 has been given, the Dispute is not resolved to the mutual satisfaction of the Parties, any Party to the Dispute may refer the Dispute to the President of Bilfinger Berger BOT Inc. and the official of the Province nominated or appointed by the Province for that purpose (as notified to the Concessionaire) (collectively, the “Senior Executives”). The Senior Executives will (unless they agree otherwise) meet within 5 Working Days of the giving of such notice and will attempt in good faith to resolve the Dispute. If the Dispute is resolved by the Senior Executives, the resolution will forthwith be recorded by the Parties in writing and signed by a duly authorized representative of each of the Parties, and such resolution will be final and binding on the Parties. If the Senior Executives are unable to resolve the Dispute within 5 Working Days of their meeting (or, in the event that they agree not to hold

any such meeting), a Party may by written notice to the other Party refer the Dispute in accordance with paragraph 3 of this Schedule 16.

- 1.4 No Party will designate, nominate or appoint, and no Party will cause, authorize or permit any other person to designate, nominate or appoint any person to act as an Expert or Arbitrator (each as defined in this Schedule 16) who could reasonably be considered to have a conflict of interest (actual or apparent). Each Party shall, promptly upon request, provide or cause to be provided to each requesting Party reasonable particulars (including current and past professional experience) regarding any person that it seeks to designate, nominate or appoint to act as an Expert or Arbitrator, such particulars to be requested and provided for the purposes of determining whether such person could reasonably be considered to have a conflict of interest. In particular and without restricting the generality of the foregoing, no person will be nominated or appointed to act as a member of any of the Panels under paragraph 3 or to act as an arbitrator under paragraph 5 who is or at any time has been interested in the conduct of the Operations or in the business affairs of the Concessionaire or any consultant, subconsultant or subcontractor of any tier of the Concessionaire.
- 1.5 Notwithstanding anything contained in the Agreement including this Schedule 16, except in the case of manifest arithmetical error, neither party shall be entitled to dispute the contents of any Pre-Completion Performance Payment Certificate certified by the Independent Certifier and the findings of the Independent Certifier as set out in such Pre-Completion Performance Payment Certificate including but not limited to the percentage completion of the components of the Works and the amount of Eligible Costs contained within the Works at the time of issuance of the Pre-Completion Performance Payment Certificate shall be final and binding on the Parties.

2. INDEPENDENT CERTIFIER

- 2.1 Without limiting any obligations of the Parties under the Independent Certifier Contract, the Parties will cooperate with the Independent Certifier and provide such information, records and documents as may be required by the Independent Certifier to make any determination or decision required to be made by the Independent Certifier pursuant to and in accordance with the provisions of the Agreement.
- 2.2 Subject to Section 13.4.2 of the Concession Agreement, unless and until revised, cancelled, varied or overturned by an Arbitrator or court of competent jurisdiction in accordance with the provisions of paragraph 5 of this Schedule 16, any decision of the Independent Certifier to issue or not to issue any Substantial Completion Certificate or Final Completion Certificate will be final and binding on the Parties and not subject to appeal, arbitration, litigation or any other dispute resolution process, and each of the Parties expressly waives all rights of appeal and review in connection with such decisions of the Independent Certifier, subject always to the Concessionaire's right to subsequently seek such Substantial Completion Certificate and/or Final Completion Certificate, as the case may be in accordance with this Agreement if the decision of the Independent Certifier is a decision not to issue such Substantial Completion Certificate or Final Completion Certificate. For greater certainty, paragraph 3 of this Schedule 16 will not apply in respect of the resolution of any Dispute regarding a decision of the Independent Certifier unless otherwise agreed by the Parties on terms acceptable to the Parties.

3. REFERRAL TO EXPERT

- 3.1 If the Parties are unable to resolve the Dispute in the manner contemplated in paragraphs 1.1 and 1.3 of this Schedule 16, then either Party may, at any time, by written notice to the other Party (the "Expert Dispute Notice") require the Dispute to be resolved on an expedited basis by a qualified and experienced expert (the "Expert") in accordance with this paragraph 3.
- 3.2 The Expert will be appointed as follows:
- 3.2.1 there will be three panels of experts (each, a "Panel", collectively, the "Panels"), one which will resolve Disputes relating to construction matters (the "Construction Panel"), one of which will resolve Disputes relating to operation, rehabilitation and maintenance matters (the "O & M Panel") and one of which will resolve all Disputes relating to financial and other matters arising under the Agreement (the "General Panel");
- 3.2.2 each of the Construction Panel and the O & M Panel will consist of 3 experts who will be jointly appointed by the Province and the Concessionaire within 30 days of Financial Close;
- 3.2.3 the General Panel will consist of 3 experts (at least one of whom will be a barrister and solicitor duly licensed to practice law in the Province of British Columbia and one of whom will be a member in good standing of the Institute of Chartered Accountants of British Columbia) who will be jointly appointed by the Province and the Concessionaire within 30 days of Financial Close;
- 3.2.4 if any member of a Panel resigns, dies or otherwise withdraws from the Panel at any time during the Contract Period, a replacement expert will be appointed to the relevant Panel jointly by the Province and the Concessionaire as soon as practicable thereafter;
- 3.2.5 if the Parties fail to agree on the identity of any expert to be appointed to any of the Panels within the aforesaid 30-day period following Financial Close, or pursuant to paragraph 3.2.4 herein, either Party may apply to the British Columbia International Commercial Arbitration Centre ("BCICAC") or to a judge of the Supreme Court of the Province of British Columbia for appointment of such expert, in which case the BCICAC or court will appoint the expert at the earliest opportunity from the list of potential experts submitted by the Parties or, if either Party fails to submit its list of potential experts within 7 Working Days, the BCICAC or court may appoint such person as expert who meets the requirements set out in this Schedule 16 for qualifications and experience of the relevant expert.
- 3.3 **[Not Used]**
- 3.4 The Expert will be selected from the Panels established pursuant to paragraph 3.2 as follows:
- 3.4.1 the Party that issues the Expert Dispute Notice will designate in such notice the relevant Panel from which the Expert is to be selected;

- 3.4.2 where the Construction Panel or the O&M Panel is designated as the relevant Panel by the Party that issues the Expert Dispute Notice, the Expert will be selected on a strictly rotational basis from such Panel no later than 5 Working Days following delivery of the Expert Dispute Notice;
 - 3.4.3 where the General Panel is designated as the relevant Panel by the Party that issues the Expert Dispute Notice, such Party will designate in the Expert Dispute Notice a member of the General Panel (having qualifications and experience relevant to the issues in the particular Dispute for which the Expert is appointed) to serve as Expert; and
 - 3.4.4 if the Party that did not issue the aforesaid Expert Dispute Notice does not agree with the choice of Panel, or with the choice of member of the General Panel, pursuant to paragraph 3.4.3, designated in the Expert Dispute Notice, it may, by notice in writing delivered to the other Party and to the members of the General Panel within the aforesaid 5-Working Day period, refer the matter for resolution by an Expert drawn on a rotational basis from the General Panel (provided that in no circumstance will the member of the General Panel designated as Expert in the Expert Dispute Notice resolve any disagreement regarding the choice of himself or herself as Expert), whose decision in relation to such disagreement must be delivered within 3 Working Days of delivery of such notice. Any such decision will be final and binding on the Parties and not subject to appeal, arbitration, litigation or any other dispute resolution process.
- 3.5 The Expert selected pursuant to paragraph 3.4 of this Schedule 16 will determine the appropriate process for timely and cost effective resolution of the Dispute and, without limiting the generality of the foregoing, the Expert has discretion to, among other things:
- 3.5.1 solicit submissions and documents from the Parties, and impose deadlines for the receipt of such submissions;
 - 3.5.2 require some or all of the evidence to be provided by affidavit;
 - 3.5.3 direct the Parties or either of them to prepare and provide the Expert with such documents, test results or other things as the Expert may require to assist the Expert in the resolution of the Dispute and rendering of a decision;
 - 3.5.4 require either Party to supply or prepare for examination by the Expert and the other Party any document or information the Expert considers necessary;
 - 3.5.5 inspect the Project Facilities, giving reasonable notice to each Party of the time when, and the place where, the Expert intends to conduct any inspection;
 - 3.5.6 convene meetings of the Parties to have the Parties discuss the issues in Dispute in the presence of the Expert;
 - 3.5.7 take, or require either or both Parties to take and provide to the Expert, such measurements, make such calculations, perform such tests, audit such processes and procedures, and take any and all such other measures and

steps as the Expert considers necessary to make a final determination in the Dispute; and

- 3.5.8 seek advice from one or more of the Panels or any other qualified independent professional advisors in respect of the Dispute.
- 3.6 The Expert will render a decision as soon as possible and, in any event, will use all reasonable efforts to render a decision no later than 10 Working Days after the date of selection of the Expert, or such longer period of time as agreed to in writing by the Parties. The Expert may give reasons or a summary of reasons for the Expert's decision, but will not be required to provide reasons.
- 3.7 The Expert will keep all information about the Dispute confidential and will not disclose that information to anyone other than the Parties.
- 3.8 Each Party will bear its own costs of the process for resolution of the Dispute by the Expert (including all legal fees and expenses). The Parties will share equally, and be responsible for their respective shares of, all costs of the Expert as and when due.
- 3.9 Unless and until revised, cancelled, varied or overturned by an Arbitrator or court of competent jurisdiction in accordance with the provisions of paragraph 5 of this Schedule 16, the Expert's determination will be final and binding on the Parties and not subject to appeal, arbitration, litigation or any other dispute resolution process, and each of the Parties expressly waives all rights of appeal in connection with the Expert's determination.

4. REFERRAL OF DISPUTES TO ARBITRATION

- 4.1 If:
 - 4.1.1 the amount awarded by the Expert to a Party pursuant to paragraph 3 of this Schedule 16 is more than the following amounts, or if the result of the Expert's determination pursuant to paragraph 3 results in a Party doing or not doing something that has a value or consequence to that Party or to the other Party that is, in the reasonable opinion of any Party, more than the following amounts:
 - 4.1.1.1 \$250,000 in the aggregate; or
 - 4.1.1.2 \$50,000 per year, in the case of a decision by the Expert that would result in either a recurring annual payment (for a period of at least 5 years) by the Province or a recurring annual cost to the Concessionaire;
 - 4.1.2 the Dispute involves issues other than monetary claims by one Party against the other Party which a Party reasonably believes are material and significant to that Party; or
 - 4.1.3 a Notice of Dispute has been issued for a Dispute in relation to a decision of the Independent Certifier,

then either Party may, by written notice given in accordance with paragraph 4.2 of this Schedule 16, require that the Dispute be resolved by arbitration pursuant to paragraph 5 of this Schedule 16; provided, however, that no Party may require that a Dispute referred to in paragraph 4.1.1 or 4.1.2 be resolved by arbitration pursuant to paragraph 5 of this Schedule 16 unless the Dispute has first been referred for resolution to an Expert pursuant to paragraph 3 of this Schedule 16.

- 4.2 If a Party is entitled to refer a Dispute to which paragraph 3 of this Schedule 16 applies to arbitration pursuant to paragraph 4.1 or otherwise initiate or pursue any dispute resolution process, appeal or legal proceeding (including any appeal or litigation permitted pursuant to paragraph 5.8 or 6 of this Schedule 16), then, unless the Parties otherwise expressly agree in writing, all submissions prepared by a Party in connection with any proceedings involving the Expert or the Arbitrator (as the case may be) and all information, documents, notes and records prepared by the Expert or the Arbitrator (as the case may be) and all decisions and determinations of the Expert or the Arbitrator (as the case may be), will be confidential and inadmissible in any such arbitration, dispute resolution process, appeal or legal proceeding.

5. **ARBITRATION**

- 5.1 If a Dispute is referred to arbitration pursuant to paragraph 4 of this Schedule 16, the *Commercial Arbitration Act* (British Columbia) will apply to any arbitration conducted hereunder except to the extent that its provisions are modified by the express provisions of this paragraph 5 or by agreement of the Parties.
- 5.2 A Party (the "Initiating Party") may commence arbitration proceedings by giving a written notice to the other Party (the "Responding Party") stating the nature of the Dispute, the determination of the Expert or the Independent Certifier (as applicable) that is to be the subject of the arbitration, and any amount involved and the remedy sought. Within 10 Working Days following receipt of such notice by the Responding Party, the Initiating Party and the Responding Party will designate a single arbitrator acceptable to both of them. If the Parties fail to appoint such a single arbitrator within such period of time, the Initiating Party will, by written notice to the Responding Party, appoint an arbitrator. The Responding Party will, within 10 Working Days following receipt of such notice, appoint an arbitrator by written notice to the Initiating Party, and the two arbitrators so appointed will select a third arbitrator acceptable to both of them. If the Responding Party fails to appoint an arbitrator within such period of time (or such additional period of time as the Parties may agree), the Arbitrator appointed by the Initiating Party shall hear the Dispute as a single arbitrator. If the two arbitrators so appointed are unable to agree upon the third arbitrator within 10 Working Days following the appointment of the arbitrator by (or on behalf of) the Responding Party, either Party may apply under the *Commercial Arbitration Act* (British Columbia) to a judge of the Supreme Court of British Columbia to appoint the third arbitrator, and the provisions of the *Commercial Arbitration Act* (British Columbia) will govern such appointment.
- 5.3 The single arbitrator or panel of arbitrators appointed pursuant to paragraph 5.2 of this Schedule 16 to act hereunder (the "Arbitrator") will have appropriate qualifications by profession or occupation to decide the matter in Dispute.
- 5.4 Within 10 Working Days following the appointment of the Arbitrator (or, where the Arbitrator is a panel of arbitrators, the appointment of the last member of such panel)

pursuant to paragraph 5.2 of this Schedule 16, the Initiating Party will send to the Responding Party and the Arbitrator a statement (the "Statement") setting out in reasonable detail the facts and any contentions of law on which the Initiating Party relies and the relief that it claims. Within 10 Working Days following receipt of such Statement, the Responding Party will send to the Initiating Party and the Arbitrator a response (the "Response") to the Statement setting out in reasonable detail which of the facts and contentions of law in the Statement the Responding Party admits or denies, on what grounds, and any other facts and contentions of law on which it relies. Within 10 Working Days following receipt of such Response, the Initiating Party may send to the Responding Party and the Arbitrator a reply to the Response (the "Initiating Party's Reply"). Within 10 Working Days following receipt of the Initiating Party's Reply, the Responding Party may send to the Initiating Party and the Arbitrator a reply to the Initiating Party's Reply (the "Responding Party's Reply") (the Initiating Party's Reply and the Responding Party's Reply being referred to in this Schedule 16, collectively, as "Replies" and, individually, as a "Reply"). Every Statement, Response and Reply given in accordance with the foregoing will be accompanied by copies (or, if they are especially voluminous, lists) of all essential documents and other materials on which the Party concerned relies.

- 5.5 After submission of the Statement, Response and Replies, if any, given in accordance with paragraph 5.4 of this Schedule 16, the Arbitrator will forthwith meet with and give directions to the Parties for the further conduct of the arbitration. There will be no oral discovery unless agreed by the Parties or otherwise ordered by the Arbitrator.
- 5.6 Meetings and hearings of the Arbitrator will take place in Vancouver, British Columbia or in such other place as the Parties may agree. Subject to the foregoing, the Arbitrator may at any time fix the date, time and place of meetings and hearings in the arbitration and will give the Parties adequate notice thereof. All meetings and hearings will be in private unless the Parties otherwise agree, and each Party may be represented at any meetings or hearings by legal counsel. Each Party may examine and re-examine its witnesses and cross-examine those of the other Party at the arbitration.
- 5.7 Subject to the provisions of the *Commercial Arbitration Act* (British Columbia), the Arbitrator will send a decision in writing to the Parties within 30 days following the conclusion of all hearings referred to in paragraph 5.6 of this Schedule 16 unless such period of time is extended for a fixed period by the Arbitrator on written notice to each Party because of illness or other cause beyond the Arbitrator's control and, unless the Parties otherwise agree, will state the reasons for the decision. If the Arbitrator is a panel, the decision of the majority of the panel will be deemed to be the decision of the Arbitrator.
- 5.8 Subject to the provisions of the *Commercial Arbitration Act* (British Columbia), and with the exception of monetary awards in excess of \$5,000,000 or errors in law, the decision of the Arbitrator will be final and binding on the Parties and not subject to any appeal, further arbitration, litigation or any other dispute resolution process, provided that the Arbitrator has followed the rules and procedures herein in good faith and has proceeded in accordance with the principles of natural justice. If the decision results in an award in excess of \$5,000,000, the decision of the Arbitrator may be appealed on a question of fact or on a question of mixed fact and law where permitted pursuant to the provisions of the *Commercial Arbitration Act*. If the

decision is alleged to have been based upon an error in law, a Party may appeal the decision in that regard pursuant to the provisions of the *Commercial Arbitration Act* (British Columbia).

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

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

6. PROVISIONAL REMEDIES

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

7. CONTINUING PERFORMANCE

7.1 At all times, notwithstanding the existence of any Dispute or the referral of any Dispute for resolution under this Schedule 16, except as may otherwise be expressly provided in the Agreement, the Parties will continue to comply with, observe and perform all of their respective obligations (including the obligation of the Concessionaire to proceed with the conduct of the Operations) in accordance with the provisions of the Agreement without prejudice to the right to contest, dispute and challenge the relevant matter in accordance with the provisions of the Agreement. Without limitation to the foregoing, and for illustrative purposes only, in the event of a Dispute with respect to the reasonableness of any approval by the Province, the Concessionaire will comply with such decision but, where permitted under the terms of the Agreement, may submit the question of reasonableness for determination pursuant to the provisions of this Schedule 16. To the extent that any such Dispute involves a disagreement as to the nature or scope of the Concessionaire's obligations hereunder (including as to the performance or method of performance of any of the Operations), the Concessionaire will comply with all instructions given by the Province's Representative pending the outcome of the Dispute, but without prejudice to the rights of the Concessionaire as ultimately determined in accordance with the Disputes Resolution Procedure.

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

8. RIGHTS PENDING FINAL RESOLUTION OF DISPUTE

If the Party receiving a notice of termination of the Agreement disputes the right of the Party giving such notice to terminate the Agreement by making application to the Disputes Resolution Procedure in this Schedule 16, it must state in the Notice of Dispute if it elects to accept such termination without prejudice to its right to assert a claim for damages for the alleged wrongful termination or to any other rights to which it is entitled under the Agreement. Such election will be irrevocable and the Party making the election will only be entitled to seek its damages, if any. If the disputing Party does not so elect, subject to the rights of the senior Funders under the Direct Agreement, the termination of the Agreement will occur upon the expiry of a period of 30 days following a final decision of the Arbitrator to the effect that the right to terminate was validly exercised.

9. COSTS OF ARBITRATION

Pending determination by the Arbitrator, the Parties will share equally, and be responsible for their respective shares of, all costs relating to the arbitration as and when due.

10. LEGAL PROCEEDINGS

Except as expressly contemplated in this Schedule 16, neither any Expert nor any Arbitrator may be required to testify or otherwise be compellable in or in connection with any appeal, litigation, arbitration, dispute resolution process or legal proceeding, nor will any of their respective information, documents, notes, records, decisions, determinations or written reasons be used or referred to or admissible in or in connection with any such appeal, litigation, arbitration, dispute resolution process or legal proceeding (and, for greater certainty, all such notes, records, decisions, determinations and written reasons will be confidential).

SCHEDULE 17**LIAISON PROCEDURES****Part 1****GENERAL PRINCIPLES**

1. The Parties will develop the Liaison Procedures on the basis of the following principles:
 - 1.1 there is to be full consultation and co-operation between the Parties so far as possible;
 - 1.2 matters are to be prepared on a joint basis so far as possible;
 - 1.3 each Party is to be given a reasonable opportunity to consider matters, and where information is supplied it should include or be accompanied by sufficient explanatory or other material to enable the information to be properly considered; and
 - 1.4 where practical, matters arising are to be discussed immediately between those concerned so that where in any Liaison Procedures there is reference to any material being sent for comment, this will be a reference to the final form of material the substance of which has previously been discussed between those concerned.
2. While Liaison Procedures are guidelines of the best current assessment of sensible work practice, they may require amendment in light of practical experience and, if so, they are to be amended accordingly.
3. Where any Party is dissatisfied with the operations of any Liaison Procedures and/or considers that they should be amended in any way, the matter will be referred to the Disputes Resolution Procedure.

SCHEDULE 17**LIAISON PROCEDURES****Part 2****OPERATIONS, EMERGENCIES AND TRAFFIC MANAGEMENT**

The Liaison Procedures to be developed pursuant to Section 14.5.1 of this Agreement will, *inter alia*:

1. be agreed by the Concessionaire and the Province and, as appropriate, with the police, the fire and ambulance services, the Ministry and its public relations department ("Communications Division"), the Phase 1 Section Contractor and third party operations and maintenance contractors referred to in Section 15.5.3 (as appropriate), other affected highway authorities, the Town of Golden, the Government of Canada, represented by Parks Canada and any other affected Relevant Authority;
2. provide for periodic meetings between the persons referred to in paragraph 1 above to discuss issues affecting the subject matter of the relevant Liaison Procedures;
3. set out procedures for the imposition of temporary speed limits or lane restrictions to accommodate poor visibility, adverse weather conditions, incidents and accidents (but on the understanding that in the case of emergency all agreed procedures may be overridden by the police);
4. set out agreed procedures for the handling of any emergency, including without limitation access procedures and routes for the emergency services (police, fire and ambulance) and notification of any changes to such routes;
5. provide for the appointment by the Concessionaire of the Concessionaire's Representative or another responsible representative of the Concessionaire whose duty it will be to liaise with the Province's Agent or the Province's Representative, as the case may be, and the other persons referred to in paragraph 1 of this Part 2 above in accordance with the Liaison Procedures; and
6. set out agreed access arrangements to enable the Concessionaire, the Minister and any other affected highway authority each to carry out its respective duties and functions.

SCHEDULE 17**LIAISON PROCEDURES****Part 3****PUBLIC COMMUNICATIONS**

1. Without prejudice to the provisions of Parts 1 and 2 of this Schedule 17, the Liaison Procedures to be agreed between the Concessionaire and the Communications Division referred to in paragraph 1 of Part 2 of this Schedule 17 will take account of the principles in paragraph 2 below, will comply with the provisions of paragraph 3 below and the Highway Corridor Management Specifications for Highway Concessions located on the Resource Documents DVD.
2. The principles referred to in paragraph 1 of this Part 3 above are as follows:
 - 2.1 recognition of the national and local importance of the Concession Highway;
 - 2.2 development of procedures and strategies for dealing with any public communications relating to the Project, the Concession Highway, the Operations, and any matters affecting the same;
 - 2.3 without prejudice to paragraph 2.2 of this Part 3 above, development of procedures and strategies for dealing with key media issues, which will include (without limitation) the following in relation to the Project, the Concession Highway, the Operations, and any matters affecting the same:
 - 2.3.1 issues which are likely to be controversial;
 - 2.3.2 issues which are likely to attract national or regional interest; and
 - 2.3.3 issues which are likely to affect any local community;
 - 2.4 cooperation between the Parties, any representatives or members of the Province and the relevant local authorities in relation to the organisation or holding of any events, exhibitions or public meetings by either the Province or the Concessionaire in relation to the Project, the Concession Highway, the Operations, or any matters affecting the same and the contents of and participants in such events, exhibitions or public meetings; and
 - 2.5 mutual respect for the respective roles of each of the Parties.
3. The provisions referred to in paragraph 1 of this Part 3 above are as follows:
 - 3.1 the Concessionaire and the Province will each from time to time nominate a representative (the "Media Spokesperson") who will be responsible for any public and media communications relating to the Project, the Concession Highway, the Operations, and any matters affecting the same. The Media Spokespersons for the

time being will be as set out below until such time as either Party notifies the other as to a change in its Media Spokesperson:

3.1.1 The Concessionaire

Mike Kelly

Telephone: 250-837-5935

Facsimile: 604-742-1004

3.1.2 The Province

Murray Tekano

Telephone: 250-344-3407

Facsimile: 250-344-3406

- 3.2 without prejudice to Section 50.6 of the Agreement [Public Communications Regarding Disputes] and except as provided for in an approved communications plan contemplated in paragraph 2 of Part 4 of this Schedule, neither the Concessionaire nor the Province will make any public statement or public announcement in relation to the Project, the Concession Highway, the Operations, or any matters affecting the same without the prior written approval (such approval not to be unreasonably withheld or delayed) by the Media Spokesperson of the other Party of the content of such statement or announcement unless, in the case of the Province, such statement or announcement is for parliamentary, governmental, statutory or judicial purposes.
4. Any and all paid advertising must be approved in advance by the Public Affairs Bureau.

SCHEDULE 17

LIAISON PROCEDURES

Part 4

COMMUNITY RELATIONS

The Province and the Concessionaire will, throughout the Contract Period, share certain responsibilities for communications and consultation in the manner described in this Part 4 and in accordance with the Highway Corridor Management Specifications for Highway Concessions located on the Resource Documents DVD to provide communities, businesses, residents and other stakeholders with an efficient and consistent approach to communications and consultation.

1. PRINCIPAL CATEGORIES

There are four principal categories of communications and consultation:

1.1 Traffic Communications

Traffic communications involves providing timely, accurate information to the public and stakeholders regarding current and expected traffic conditions for the Concession Highway, particularly regarding delays and closures associated with construction and maintenance.

1.2 Community Relations

Community relations involves ongoing two-way communications with the public and stakeholders. This includes dealing with ongoing public inquiries, problem solving, project updates, and regular public reporting. It is distinct from public and stakeholder consultation.

1.3 Public and Stakeholder Consultation

Public and stakeholder consultation involves gathering input from the public and stakeholders on the scope and nature of the Operations, including comments at key design milestones such as pre-design, preliminary design, and detailed designs. Public and stakeholder consultation is distinct from community relations, in that community relations includes ongoing two-way communications while public and stakeholder consultation involves gathering specific input on design options, consistent with any applicable approved corridor-wide community consultation plan.

1.4 Media Relations

Media relations involves interacting with and responding to requests from the media.

2. LEAD AND SUPPORTING ROLES

Within each category of communications and consultation, the Concessionaire will play either lead or supporting roles, working with the Province to provide communications, community relations, consultation and related services.

All matters related to paid advertising including but not limited to paid advertising relating to traffic closures and conditions or any other traffic communications for which the Concessionaire has responsibility under this Agreement must be coordinated with and approved by the Province (Public Affairs Bureau).

An overview of the responsibilities associated with lead and supporting roles is provided below.

Lead responsibilities include:

- Developing communication and consultation plans (and where the Concessionaire is in the lead, obtaining approval by the Province) and implementing approved communication and consultation plans.
- Establishing and maintaining constructive relationships with the public and stakeholders.
- Covering costs related to carrying out lead responsibilities.

Supporting responsibilities include:

- Assisting with the development of communication and consultation plans.
- Conducting the Operations in a manner consistent with communication and consultation plans.
- Maintaining constructive relationships with the public and stakeholders and supporting the lead party and its team members as the primary contact with the public and stakeholders.
- Providing information, as required by the lead party and its team members, to support all communication activities.
- Attending and participating in community consultation meetings and other community relations meetings, as necessary, throughout the Contract Period.
- Demonstrated consideration and application as appropriate of public and stakeholder input throughout the Contract Period and reporting to the public and stakeholders regarding the manner in which public and stakeholder input will be used.
- Engaging an individual or firm experienced in developing and implementing a communications plan, consistent with the supporting responsibilities.
- Covering costs related to carrying out supporting responsibilities.

3. TRAFFIC COMMUNICATIONS

Traffic management remains a Concessionaire responsibility throughout the Contract Period. The Concessionaire will take the lead in traffic communications including development and implementation of a comprehensive traffic communications plan. The plan should include a variety of driver awareness and education tools such as regular bulletins, web tools, coordination with the Provincial Highway Conditions Centre, and others.

4. COMMUNITY RELATIONS

Until Substantial Completion, the Province will take the lead role in community relations, while the Concessionaire will take the supporting role. During that period, the parties shall work together for the transition of the responsibility for community relations to the Concessionaire.

After Substantial Completion, the Concessionaire will have full responsibility (both the lead and supporting roles) for delivering a comprehensive community relations program that provides the public and stakeholders with relevant information on a regular basis and handles public inquiries and concerns in a timely effective manner.

The Concessionaire must report regularly to the Province on community relations activities and issues.

5. PUBLIC AND STAKEHOLDER CONSULTATION

Until Substantial Completion, the Province will take the lead role in public and stakeholder consultation, while the Concessionaire will take the supporting role including the provision of consultation materials regarding pre-design, preliminary design, and detailed designs, and attendance and participation in consultation activities, such as small group meetings, open houses, and council presentations. The Concessionaire will work with the Province to demonstrate and report to the public and to stakeholders that their input has been considered, along with financial and technical information.

The Parties will work together to ensure the transition of the lead role in public and stakeholder consultation from the Province to the Concessionaire after Substantial Completion.

After Substantial Completion, the Concessionaire will have full responsibility (both the lead and supporting roles) for public and stakeholder consultation.

The Concessionaire must report regularly to the Province on consultation activities and issues.

6. MEDIA RELATIONS

Except as delegated by the Province for matters that may include, but are not limited to, day-to-day media communications concerning traffic closures and delays, the Province is responsible for, and will take the lead role in, media relations throughout the Contract Term. The Concessionaire will support the Province in media relations by responding in a timely manner to issues and providing information as needed.

The Concessionaire must report regularly to the Province on media relations activities and issues.

SCHEDULE 18

[NOT USED]

SCHEDULE 19**DELEGATED OBLIGATIONS, RIGHTS, POWERS AND FUNCTIONS****Part 1****DELEGATED OBLIGATIONS**

1. The obligations of the Minister that are set out in section 70 of the Transportation Act are imposed on the Concessionaire in relation to the Project Facilities, the Site and the Adjacent Areas (including, for greater certainty, the Works).
2. The common law obligations of the Minister are imposed on the Concessionaire in relation to the Project Facilities, the Site and the Adjacent Areas (including, for greater certainty, the Works).

SCHEDULE 19**DELEGATED OBLIGATIONS, RIGHTS, POWERS AND FUNCTIONS****Part 2****DELEGATED RIGHTS, POWERS AND FUNCTIONS**

1. The rights, powers and functions of the Minister that are set out in the following sections of the following enactments, are delegated to the Concessionaire, in relation to the Project Facilities, the Site and the Adjacent Areas (including, for greater certainty, the Works).
 - 1.1 Section 2(1)(a) Transportation Act, save and except that the rights, powers and functions of the Minister to remove, discontinue, close and dispose of the whole or any part or parts of the Project Facilities, the Site and the Adjacent Areas (including, for greater certainty, the Works), are not delegated to the Concessionaire.
 - 1.2 Section 16 Transportation Act
 - 1.3 Section 22 Transportation Act
 - 1.4 Section 47 Transportation Act, save and except that the rights, powers and functions of the Minister to remove, discontinue, close and dispose of the whole or any part or parts of the Project Facilities, the Site and the Adjacent Areas (including, for greater certainty, the Works), that is or are designated as arterial highway are not delegated to the Concessionaire.
 - 1.5 Section 49 Transportation Act
 - 1.6 Section 50 Transportation Act
 - 1.7 Section 51(1) Transportation Act
 - 1.8 Section 51(2)(a), (b), (c), (d) Transportation Act
 - 1.9 Section 51(3) Transportation Act
 - 1.10 Section 55 Transportation Act
 - 1.11 Section 61(1)(a) Transportation Act, save and except that the rights, powers and functions of the Minister to remove, discontinue, close and dispose of the whole or any part or parts of the Project Facilities, the Site and the Adjacent Areas (including, for greater certainty, the Works), are not delegated to the Concessionaire.
 - 1.12 Section 61(1)(b), (c) Transportation Act
 - 1.13 Section 61(2) Transportation Act
 - 1.14 Section 135 (1) Motor Vehicle Act
 - 1.15 Section 204(3) Motor Vehicle Act
 - 1.16 Section 214(2) Motor Vehicle Act

SCHEDULE 20

[NOT USED]

SCHEDULE 21

PRIVACY PROTECTION

1. DEFINITIONS

1.1 In this Schedule:

- 1.1.1 “**Act**” means the *Freedom of Information and Protection of Privacy Act* (British Columbia), as amended from time to time;
- 1.1.2 “**contact information**” means information to enable an individual at a place of business to be contacted and includes the name, position name or title, business telephone number, business address, business email or business fax number of the individual;
- 1.1.3 “**personal information**” means recorded information about an identifiable individual, other than contact information, collected or created by the Concessionaire as a result of this Agreement or any previous agreement between the Province and the Concessionaire dealing with the same subject matter as this Agreement.

2. PURPOSE

2.1 The purpose of this Schedule 21 [Privacy Protection] is to:

- 2.1.1 enable the Province to comply with its statutory obligations under the Act with respect to personal information; and
- 2.1.2 ensure that, as a service provider, the Concessionaire is aware of and complies with its statutory obligations under the Act with respect to personal information.

3. COLLECTION OF PERSONAL INFORMATION

- 3.1 Unless this Agreement otherwise specifies or the Province otherwise directs in writing, the Concessionaire may only collect or create personal information that is necessary for the performance of the Concessionaire's obligations, or the exercise of the Concessionaire's rights, under this Agreement.
- 3.2 Unless this Agreement otherwise specifies or the Province otherwise directs in writing, the Concessionaire must collect personal information directly from the individual the information is about.
- 3.3 Unless this Agreement otherwise specifies or the Province otherwise directs in writing, the Concessionaire must tell an individual from whom the Concessionaire collects personal information:
 - 3.3.1 the purpose for collecting it;

3.3.2 the legal authority for collecting it; and

3.3.3 the title, business address and business telephone number of the person designated by the Province to answer questions about the Concessionaire's collection of personal information.

4. ACCURACY OF PERSONAL INFORMATION

The Concessionaire must make every reasonable effort to ensure the accuracy and completeness of any personal information to be used by the Concessionaire or the Province to make a decision that directly affects the individual the information is about.

5. REQUESTS FOR ACCESS TO PERSONAL INFORMATION

If the Concessionaire receives a request for access to personal information from a person other than the Province, the Concessionaire must promptly advise the person to make the request to the Province unless this Agreement expressly requires the Concessionaire to provide such access and, if the Province has advised the Concessionaire of the name or title and contact information of an official of the Province to whom such requests are to be made, the Concessionaire must also promptly provide that official's name or title and contact information to the person making the request.

6. CORRECTION OF PERSONAL INFORMATION

6.1 Within 5 Working Days of receiving a written direction from the Province to correct or annotate any personal information, the Concessionaire must annotate or correct the information in accordance with the direction.

6.2 When issuing a written direction under paragraph 6.1, the Province must advise the Concessionaire of the date the correction request to which the direction relates was received by the Province in order that the Concessionaire may comply with paragraph 6.3.

6.3 Within 5 Working Days of correcting or annotating any personal information under paragraph 6.1, the Concessionaire must provide the corrected or annotated information to any party to whom, within one year prior to the date the correction request was made to the Province, the Concessionaire disclosed the information being corrected or annotated.

6.4 If the Concessionaire receives a request for correction of personal information from a person other than the Province, the Concessionaire must promptly advise the person to make the request to the Province and, if the Province has advised the Concessionaire of the name or title and contact information of an official of the Province to whom such requests are to be made, the Concessionaire must also promptly provide that official's name or title and contact information to the person making the request.

7. PROTECTION OF PERSONAL INFORMATION

The Concessionaire must protect personal information by making reasonable security arrangements against such risks as unauthorized access, collection use, disclosure or disposal, including any expressly set out in this Agreement.

8. STORAGE AND ACCESS TO PERSONAL INFORMATION

Unless the Province otherwise directs in writing, the Concessionaire must not store personal information outside Canada or permit access to personal information from outside Canada.

9. RETENTION OF PERSONAL INFORMATION

Unless this Agreement otherwise specifies, the Concessionaire must retain personal information until directed by the Province in writing to dispose of it or deliver it as specified in the direction.

10. USE OF PERSONAL INFORMATION

10.1 Unless the Province otherwise directs in writing, the Concessionaire may only use personal information if that use is:

10.1.1 for the performance of the Concessionaire's obligations, or the exercise of the Concessionaire's rights, under this Agreement; and

10.1.2 in accordance with paragraph 13.

11. DISCLOSURE OF PERSONAL INFORMATION

11.1 Unless the Province otherwise directs in writing, the Concessionaire may only disclose personal information inside Canada to any person other than the Province if the disclosure is for the performance of the Concessionaire's obligations, or the exercise of the Concessionaire's rights, under this Agreement.

11.2 Unless this Agreement otherwise specifies or the Province otherwise directs in writing, the Concessionaire must not disclose personal information outside Canada.

12. INSPECTION OF PERSONAL INFORMATION

In addition to any other rights of inspection the Province may have under this Agreement or under statute, the Province may, at any reasonable time and on reasonable notice to the Concessionaire, enter on the Concessionaire's premises to inspect any personal information in the possession of the Concessionaire or any of the Concessionaire's information management policies or practices relevant to its management of personal information or its compliance with this Schedule and the Concessionaire must permit, and provide reasonable assistance to, any such inspection.

13. COMPLIANCE WITH THE ACT AND DIRECTIONS

13.1 The Concessionaire must in relation to personal information comply with:

13.1.1 the requirements of the Act applicable to the Concessionaire as a service provider, including any applicable order of the commissioner under the Act; and

13.1.2 any direction given by the Province under this Schedule.

- 13.2 The Concessionaire acknowledges that it is familiar with the requirements of the Act governing personal information that are applicable to it as a service provider.

14. NOTICE OF NON-COMPLIANCE

If for any reason the Concessionaire does not comply, or anticipates that it will be unable to comply, with a provision in this Schedule in any respect, the Concessionaire must promptly notify the Province of the particulars of the non-compliance or anticipated non-compliance and what steps it proposes to take to address, or prevent recurrence of, the non-compliance or anticipated non-compliance.

15. TERMINATION OF AGREEMENT

In addition to any other rights of termination which the Province may have under this Agreement or otherwise at law, the Province may, subject to any provisions in this Agreement establishing mandatory cure periods for defaults by the Concessionaire, terminate this Agreement by giving written notice of such termination to the Concessionaire, upon any failure of the Concessionaire to comply with this Schedule in a material respect.

16. INTERPRETATION

- 16.1 In this Schedule, references to paragraphs by number are to paragraphs of this Schedule unless otherwise specified in this Schedule.
- 16.2 Any reference to the “Concessionaire” in this Schedule includes any subcontractor or agent retained by the Concessionaire to perform obligations under this Agreement and the Concessionaire must ensure that any such subcontractors and agents comply with this Schedule.
- 16.3 The obligations of the Concessionaire in this Schedule will survive the termination of this Agreement.
- 16.4 If a provision of this Agreement (including any direction given by the Province under this Schedule) conflicts with a requirement of the Act or an applicable order of the commissioner under the Act, the conflicting provision of this Agreement (or direction) will be inoperative to the extent of the conflict.
- 16.5 The Concessionaire must comply with the provisions of this Schedule despite any conflicting provision of this Agreement or the law of any jurisdiction outside Canada.

SCHEDULE 22
COLLATERAL AGREEMENTS

Part 1

OPERATOR'S COLLATERAL AGREEMENT

THIS AGREEMENT is made as of the 28th day of October, 2005

AMONG:

- (1) **HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA**, as represented by the **MINISTER OF TRANSPORTATION** (the "**Province**")

OF THE FIRST PART

AND

- (2) **BC TRANSPORTATION FINANCING AUTHORITY**, a corporation continued under the *Transportation Act*, S.B.C. 2004, c. 44 ("**BCTFA**")

OF THE SECOND PART

AND

- (3) **H M C SERVICES INC.**, a corporation incorporated under the laws of the Province of British Columbia (the "**Operator**")

OF THE THIRD PART

AND

- (4) **TRANS-PARK HIGHWAY GENERAL PARTNERSHIP**, a general partnership established under the laws of the Province of British Columbia (the "**Concessionaire**")

OF THE FOURTH PART

WHEREAS:

- A. The Province, BCTFA and the Concessionaire have entered into the Concession Agreement pursuant to which the Concessionaire will carry out the Project described therein.

- B. The Concessionaire and the Operator have entered into the Operating and Maintenance Contract pursuant to which the Operator has agreed to perform work and provide services in connection with the operation, maintenance and rehabilitation of the Project Facilities, the Site and the Adjacent Areas.
- C. The Operator has provided the Concessionaire with the Operating and Maintenance Contract Performance Securities in connection with the Operating and Maintenance Contract.
- D. The Concession Agreement requires the Concessionaire to enter into, and to cause the Operator to enter into, this Agreement with the Province and BCTFA.

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

1. **DEFINITIONS**

In this Agreement, unless the context otherwise requires:

- (a) “**Agreement**” means this Agreement;
- (b) “**Concession Agreement**” means the agreement titled “Kicking Horse Canyon Project Concession Agreement” made among the Province, BCTFA and the Concessionaire and dated as of the 28th day of October, 2005;
- (c) “**Concessionaire**” has the meaning given on the first page of this Agreement;
- (d) “**Contractor**” means Trans-Park Highway Constructors, an unincorporated joint venture formed between Flatiron Constructors Canada Ltd. and Parsons Overseas Company of Canada Ltd.;
- (e) “**Default Notice**” has the meaning given in Section 5(a);
- (f) “**Direct Agreement**” means the agreement titled “Direct Agreement for the Kicking Horse Canyon Project Concession Agreement” made among the Province, BCTFA, CIT Group Securities (Canada) Inc. and the Concessionaire and dated as of the 28th day of October, 2005;
- (g) “**Interface Agreement**” means the Interface Agreement dated as of the 28th day of October, 2005 among the Concessionaire, the Contractor and the Operator;
- (h) “**Operating and Maintenance Contract Performance Securities**” means the Performance Securities provided or to be provided by or on behalf of the Operator pursuant to the terms of the Operating and Maintenance Contract;
- (i) “**Operator**” has the meaning given on the first page of this Agreement;
- (j) “**Operator Direct Agreement**” means that certain agreement made among the Operator, the Concessionaire, and CIT Group Securities (Canada) Inc. as the administrative agent and dated as of the 28th day of October, 2005;

- (k) **“Operator's Data”** has the meaning given in Section 4(a);
- (l) **“Party”** means any of the Province, BCTFA, the Operator or the Concessionaire, and **“Parties”** means the Province, BCTFA, the Operator and the Concessionaire;
- (m) **“Province”** has the meaning given on the first page of this Agreement;
- (n) **“Step-In Notice”** has the meaning given in Section 7(a);
- (o) **“Substitute”** has the meaning given in Section 7(a); and
- (p) other words and expressions with initial capital letters used in this Agreement which are defined in the Concession Agreement have the same meanings when used in this Agreement as are given to them in the Concession Agreement.

2. INTERPRETATION

This Agreement will be interpreted according to the following provisions, save to the extent that the context or the express provisions of this Agreement otherwise require:

- (a) the headings and sub-headings and references to them in this Agreement are for convenience of reference only, do not constitute a part of this Agreement, and shall not be taken into consideration in the interpretation or construction of, or affect the meaning of, this Agreement;
- (b) the words “herein”, “hereto” and “hereunder” and other words of like import refer to this Agreement as a whole and not to the particular provision in which such word may be used;
- (c) all references to Sections are references to Sections of this Agreement;
- (d) words importing the singular include the plural and vice versa;
- (e) words importing a particular gender include all genders;
- (f) all references to any agreement, document, standard, principle or other instrument include (subject to all relevant approvals and any other provision of this Agreement or the Concession Agreement expressly concerning such agreement, document, standard, principle or other instrument or amendments thereto) a reference to that agreement, document, standard, principle or instrument as amended, supplemented, substituted, novated or assigned;
- (g) “person” includes an individual, corporation, partnership, joint venture, association, trust, pension fund, union, government, governmental body, governmental agency, authority, board, tribunal, commission or department and the heirs, beneficiaries, executors, personal or other legal representatives or administrators of an individual, and the receivers and administrators of a corporation;

- (h) whenever the terms “will” or “shall” are used in this Agreement they are to be construed and interpreted as synonymous and are to be read as “shall”;
- (i) the words “includes” or “including” are to be construed as being without limitation;
- (j) general words are not given a restrictive meaning:
 - (i) if they are introduced by the word “other”, by reason of the fact that they are preceded by words indicating a particular class of act, matter or thing; or
 - (ii) by reason of the fact that they are followed by particular examples intended to be embraced by those general words;
- (k) if the time for doing an act falls or expires on a day that is not a Working Day, the time for doing such act will be extended to the next Working Day;
- (l) the words of this Agreement are to be given their natural meaning. The Parties have had the opportunity to take legal advice on this Agreement and no provision is, therefore, to be construed *contra proferentem*;
- (m) no provision of this Agreement is intended to derogate from or be inconsistent with or in conflict with any Laws and Regulations and should not be interpreted in a manner as to result in any derogation, inconsistency or conflict and if any such provision is found by a court of competent jurisdiction to be inconsistent with or in conflict with any Laws and Regulations, the applicable Laws and Regulations will prevail and such provision will be read down or rendered inoperative (either, generally or in such particular situation, as appropriate), to the extent of such conflict or inconsistency, as the case may be, and if any such provision is found by a court of competent jurisdiction to derogate from any Laws and Regulations, then such provision will be read down or rendered inoperative (either, generally or in such particular situation, as appropriate) to the extent of the derogation and for purposes of this Section 2(m), the following will be excluded from the definition of the defined phrase “Laws and Regulations”: “and the law of equity”, “ordinances”, “codes (including design and construction codes)”, “directives”, “guidelines”, and “rules or policies of any Governmental Authority”, and the word “or” will be added between the word “orders,” and the word “injunctions”; and
- (n) each and every representation, warranty, covenant and undertaking of the Concessionaire set forth in this Agreement shall be interpreted and construed as a representation, warranty, covenant and undertaking binding upon each of the Partners, on a joint and several basis.

3. AGREEMENTS REGARDING OPERATING AND MAINTENANCE CONTRACTS, INTERFACE AGREEMENT AND OPERATING AND MAINTENANCE CONTRACT PERFORMANCE SECURITIES

- (a) Except to the extent permitted in the Concession Agreement, the Concessionaire and the Operator will not terminate, make or agree to any material amendment to or material variation of, or in any material respect depart from, or waive or fail to enforce any rights they may have under, or enter into any agreement or

document which would materially affect the interpretation or application of, the terms of the Operating and Maintenance Contract except in compliance with the provisions of Section 2.3.2 of the Concession Agreement. The Concessionaire and the Operator will provide to the Province a certified true copy of all documents entered into in accordance with the foregoing.

- (b) Each of the Parties acknowledges having received and reviewed a copy of the Concession Agreement, the Operating and Maintenance Contract, the Interface Agreement and the Operating and Maintenance Contract Performance Securities and acknowledges the terms thereof.
- (c) If the Operator gives the Concessionaire any notice of any default(s) under the Operating and Maintenance Contract and/or the Interface Agreement that may give the Operator a right to terminate the Operating and Maintenance Contract and/or the Interface Agreement or to treat either of them as having been repudiated by the Concessionaire or to discontinue the Operator's performance thereunder, then the Operator will concurrently provide the Province and BCTFA with a copy of such notice and set out in reasonable detail the default(s).

4. OPERATOR'S DATA

- (a) In relation to all drawings, details, plans, specifications, reports and other documents and data of any nature whatsoever and any designs and inventions contained in them which have been or are hereafter provided by the Operator in the course of carrying out and performing its obligations under the Operating and Maintenance Contract (including any and all Design Data now or hereafter owned by the Operator) (the "Operator's Data"), the Operator hereby grants to the Province and BCTFA a perpetual, unrestricted, transferable and assignable, non-exclusive, worldwide, irrevocable and non-terminable royalty-free licence (which term as used in this Section 4 includes, where applicable, a sub-licence) (carrying the right to grant sub-licences) to use and reproduce all or any of the Operator's Data for any purpose (whether during or after the Contract Period) relating to the design, construction, completion, commissioning or testing of the Works, the operation, maintenance, rehabilitation or improvement of the Project Facilities, the Site and the Adjacent Areas or the conduct of any other Operations or the carrying out of any statutory or other duties or functions in respect of the Project Facilities, the Site and the Adjacent Areas, including the right to make any alterations, adaptations or additions to any Operator's Data.
- (b) With respect to Operator's Data arising during the Contract Period, the licence granted pursuant to Section 4(a) will take effect immediately upon the coming into existence of such Operator's Data.
- (c) The Operator agrees on a reasonable request at any time and following reasonable prior written notice to give the Province and BCTFA or any person(s) authorized by either of them access to the Operator's Data and to provide copies (including copy negatives and CAD disks) thereof at the Province's or BCTFA's (as the case may be) expense.
- (d) The Operator represents and warrants to and covenants with the Province and BCTFA that each item of Operator's Data is its own original work or, if any item of

Operator's Data is not original, the Operator 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:

- (i) such item to be so acquired or brought into existence and to be used for the purposes of the Project by the Operator and the Concessionaire and their respective contractors or subcontractors of any tier; and
- (ii) the Operator to grant the licence granted in Section 4(a) and to comply with all of its obligations under this Section 4,

and that in any event no such item infringes or will infringe any third party's copyright, moral rights, design rights, trade mark or other intellectual property rights.

- (e) The Operator undertakes at the request of the Province or BCTFA to execute all documents and do all acts which may be necessary to bring into effect or confirm the terms of any licence or sub-licence contained or referred to in Section 4(a).
- (f) The provisions of this Section 4 will survive the expiry or termination of this Agreement for any reason.

5. NO TERMINATION BY OPERATOR WITHOUT DEFAULT NOTICE

- (a) The Operator will not exercise any right it may have to terminate the Operating and Maintenance Contract or to treat it as having been repudiated by the Concessionaire or to discontinue the Operator's performance thereunder unless:
 - (i) the Operator first delivers a written notice (a "Default Notice") to the Province and BCTFA setting out in reasonable detail the default(s) on which the Operator intends to rely in terminating the Operating and Maintenance Contract or to treat it as having been repudiated by the Concessionaire or to discontinue the Operator's performance thereunder; and
 - (ii) within 90 days of the Province and BCTFA receiving the Default Notice:
 - A. the default(s) on which the Operator intends to rely in terminating the Operating and Maintenance Contract or to treat it as having been repudiated by the Concessionaire or to discontinue the Operator's performance thereunder have not been remedied; and
 - B. the Operator has not received a Step-In Notice from the Province or BCTFA; and
 - (iii) the Senior Funders have not exercised their step-in rights under the Direct Agreement or Operator Direct Agreement.
- (b) If the Operator delivers a Default Notice to the Province and BCTFA pursuant to Section 5(a)(i), the Province will pay the Operator in accordance with and at the times specified in the Operating and Maintenance Contract for work performed

by the Operator during the period commencing on the date when the Operator, but for the provisions of Section 5(a) above, would have been entitled to suspend its performance under or terminate the Operating and Maintenance Contract as a consequence of the default(s) specified in the Default Notice and ending on the earliest to occur of:

- (i) the date upon which the Province gives the Operator a written notice confirming that neither the Province nor BCTFA are exercising their step-in rights under Section 7(a);
- (ii) the date upon which a Step-In Notice is given by the Province or BCTFA under Section 7(a) (in which event the provisions of Section 7(b) will apply in accordance with its terms); and
- (iii) the date upon which the Senior Funders (or the Agent or any other Representative) exercise any right to step-in and assume any of the Concessionaire's rights and/or obligations under the Operating and Maintenance Contract or to transfer, novate or assign the Operating and Maintenance Contract; and
- (iv) the expiry of the 90-day period referred to in Section 5(a).

For greater certainty, the Province will not be liable pursuant to the provisions of this Section 5(b) for payment of any amounts owing by the Concessionaire to the Operator under the Operating and Maintenance Contract for work performed by the Operator prior to the time at which the Operator, but for the provisions of Section 5(a) above, would have been entitled to suspend its performance under or terminate the Operating and Maintenance Contract as a consequence of the default(s) specified in the Default Notice.

6. DUTY OF CARE, REPRESENTATION AND WARRANTY

The Operator represents and warrants to and covenants with the Province and BCTFA on behalf of itself and its subcontractors of any tier that:

- (a) it has performed and will continue to perform all of the terms of the Operating and Maintenance Contract and the Interface Agreement to be performed on the Operator's part and that it has carried out, supplied and performed and will carry out, supply and perform the works and services it is to carry out, supply and perform under the Operating and Maintenance Contract in a good and workmanlike manner using suitable goods, materials and methods and in accordance with the Operating and Maintenance Contract;
- (b) it has provided and will maintain in full force and effect all of the Operating and Maintenance Contract Performance Securities in accordance with the terms of the Operating and Maintenance Contract; and
- (c) it has exercised and will continue to exercise all the reasonable professional skill, care and diligence to be expected of a properly qualified contractor experienced in carrying out, providing and performing works and services of similar scope, size, type and complexity including, without limiting the generality of the

foregoing, the selection of goods and materials, any design and the satisfaction of the performance specifications and requirements referred to or to be inferred from the Operating and Maintenance Contract and the Technical Requirements.

Notwithstanding the foregoing, the Province and BCTFA shall not be entitled to rely on the Operator's representation, warranty and covenant in this Section 6 as a basis for an action against the Operator until the Province and/or BCTFA exercises its Step-in Rights under Section 7 of this Agreement.

6A. DELAY

The Operator will not, by reason of the exercise by the Province or BCTFA of their rights under this Agreement, have any liability for delay in the completion of the work to be completed by it under the Operating and Maintenance Contract except to the extent such liability to the Province or BCTFA arises under the Operating and Maintenance Contract after the exercise by the Province or BCTFA of their Step-In-Rights under this Agreement.

7. STEP-IN RIGHTS

(a) Subject to the provisions of the Direct Agreement including without limitation Section 3.5 thereof and the provisions of the Operator Direct Agreement, the Province or BCTFA may at any time:

- (i) within 90 days of the Province and BCTFA receiving a Default Notice unless prior to expiry of such 90-day period the default(s) on which the Operator intends to rely in terminating the Operating and Maintenance Contract or treat it as having been repudiated by the Concessionaire or to discontinue the Operator's performance thereunder have been remedied; or
- (ii) if the Province's right to terminate the Concession Agreement has arisen and is continuing,

deliver a notice (a "Step-In Notice") electing to replace the Concessionaire under the Operating and Maintenance Contract and the Interface Agreement with the Province or BCTFA or a third party designated by the Province or BCTFA in the Step-In Notice (the "Substitute").

(b) Subject to Section 7(d), upon receipt by the Operator of a Step-In Notice:

- (i) the Concessionaire and the Operator will be deemed to be released from their obligations under the Operating and Maintenance Contract and the Interface Agreement to each other (except with respect to any and all indemnities from the Concessionaire in favour of the Operator and from the Operator in favour of the Concessionaire); and the Province, BCTFA or the Substitute, as applicable, and the Operator will be deemed to assume those same obligations towards each other (except with respect to any and all indemnities from the Concessionaire in favour of the Operator in respect of matters occurring in the period prior to receipt by the Operator of the Step-In Notice);

- (ii) the rights of the Concessionaire against the Operator under the Operating and Maintenance Contract and the Interface Agreement and vice versa will be deemed to be cancelled (except with respect to any and all indemnities from the Concessionaire in favour of the Operator and from the Operator in favour of the Concessionaire); and the Province, BCTFA or the Substitute, as applicable, and the Operator will be deemed to acquire those same rights against each other (except with respect to any and all indemnities from the Concessionaire in favour of the Operator in respect of matters occurring in the period prior to receipt by the Operator of the Step-In Notice);
- (iii) the rights and benefits previously available to the Concessionaire under the Operating and Maintenance Contract Performance Securities (without prejudice to claims by the Concessionaire under the Operating and Maintenance Contract Performance Securities arising in respect of matters occurring prior to the date of receipt of the Step-In Notice by the Operator) will be transferred and assigned to the Province, BCTFA or the Substitute, as applicable (provided, for greater certainty, that any limitations on the maximum liability of the issuers of the Operating and Maintenance Contract Performance Securities will continue in effect);
- (iv) at the Province's or BCTFA's request, the Operator will enter into, and the Province or BCTFA will or will cause the Substitute to enter into, as applicable, all such agreements or other documents as reasonably necessary to give effect to the foregoing, including without limitation an agreement between the Province, BCTFA or the Substitute, as applicable, and the Operator on substantially the same terms as the Operating and Maintenance Contract (except for claims under any indemnities from the Concessionaire in favour of the Operator or from the Operator in favour of the Concessionaire arising in respect of matters occurring on or prior to the date of the new agreement) and the Interface Agreement;
- (v) at the Province's or BCTFA's request, the Operator will and will cause the issuers of the Operating and Maintenance Contract Performance Securities to enter into, and the Province or BCTFA will or will cause the Substitute, as applicable, to enter into all such agreements or other documents necessary to give effect to the provisions of this Section 7(b), including assignments and necessary consents to assignments of the Operating and Maintenance Contract Performance Securities to the Province, BCTFA or the Substitute, as applicable, or replacement performance securities from the issuers of the Operating and Maintenance Contract Performance Securities in favour of the Province, BCTFA or the Substitute, as applicable, on the same terms as the Operating and Maintenance Contract Performance Securities except with respect to necessary ministerial changes (which assignments or replacement performance securities, for greater certainty, will be consistent with the provisions of paragraph 7(b)(iii) above) and, in the case of the issuance of replacement performance securities as aforesaid, the original Operating and Maintenance Contract Performance Securities (except with respect to claims by the Concessionaire thereunder in

respect of matters occurring prior to the date of receipt of the Step In Notice by the Operator) will be cancelled.

In the event the Province or BCTFA causes a Substitute to enter into the agreements and other documents as are necessary to give effect to the foregoing, the Operator will have no right to approve the Substitute where such Substitute is any of the following:

- (vi) any Ministry, office, instrumentality or agency of the Province;
- (vii) any person whose obligations under such agreements or other documents are guaranteed by the Province or any Ministry, office, instrumentality or agency of the Province;
- (viii) a Qualifying Bidder as defined in the Concession Agreement in circumstances of an assignment, transfer or novation of the Concession Agreement; or
- (ix) any person who has the financial standing and the financial resources reasonably necessary to enable it to perform the obligations of the Concessionaire under the Operating and Maintenance Contract.

Otherwise, the Substitute shall be subject to the approval of the Operator, such approval not to be unreasonably withheld or delayed and the Province or BCTFA will provide such information relating to any proposed Substitute not falling within subparagraphs 7(b)(vi) and (vii) as the Operator may reasonably request to demonstrate to the Operator, acting reasonably, that the Substitute has the financial standing and the financial resources reasonably necessary to enable it to perform the obligations of the Concessionaire under the Operating and Maintenance Contract to the extent such information is readily available to the Province or BCTFA.

- (c) Subject to Section 7(d), the Concessionaire will, at its own cost, cooperate fully with the Province, BCTFA and any Substitute in order to achieve a smooth, efficient and orderly transfer of the Operating and Maintenance Contract, the Interface Agreement and the Operating and Maintenance Contract Performance Securities to the Province, BCTFA or the Substitute, as applicable, and to avoid or mitigate in so far as reasonably practicable any inconvenience, including the administration of the Operating and Maintenance Contract and the Interface Agreement, ongoing supervisory activities and scheduling.
- (d) A notice in writing from the Agent exercising the Senior Funders' rights under the Direct Agreement or the Operator Direct Agreement to step-in and assume the Concessionaire's rights and obligations under the Operating and Maintenance Contract or to novate or assign the Operating and Maintenance Contract that is received by the Operator prior to the receipt of a Step-In Notice given pursuant to this Agreement will have priority over the Step-In Notice given pursuant to this Agreement, and in such circumstances only the notice received from the Agent will take effect and the Step-In Notice given pursuant to this Agreement will not bind the Operator.

- (e) If a Step-In Notice is given by the Province or BCTFA pursuant to this Agreement and, prior to the expiration of the 90-day period of time following delivery of a Province Collateral Agreement Notice (as defined in the Direct Agreement), a notice in writing from the Agent exercising the Senior Funders' right under the Direct Agreement or the Operator Direct Agreement to step-in and assume the Concessionaire's rights and obligations under the Operating and Maintenance Contract or to transfer, novate or assign the Operating and Maintenance Contract is received by the Operator, then, unless by such time the Operating and Maintenance Contract has been transferred, novated or assigned to a Substitute, the exercise by the Province or BCTFA, as the case may be, of its step-in rights pursuant to this Agreement will be deemed to have terminated, all rights and obligations of the Province arising from delivery of the Step-In Notice will be deemed to be cancelled and the provisions of Section 7(b) that would come into force and effect upon the delivery of a Step-In Notice will be deemed not to have come into force or effect.
- (f) The Operator will ensure, through measures satisfactory to the Province and BCTFA acting reasonably, that the terms of the Operating and Maintenance Contract Performance Securities permit the exercise by the Province and BCTFA of their step-in rights under this Agreement and that the exercise by the Province or BCTFA of their step-in rights under this Agreement will not entitle the issuer of any Operating and Maintenance Contract Performance Security to terminate, alter, amend or not comply with its obligations under the Operating and Maintenance Contract Performance Security, and that the terms of all Operating and Maintenance Contract Performance Securities will remain in full force and effect notwithstanding the exercise of such step-in rights and will provide further that upon the Province exercising its step-in rights, the Province will be entitled to all rights and benefits under such Operating and Maintenance Contract Performance Securities as though the Province were the originally named beneficiary thereunder.

7A. AMOUNTS PAID BY THE PROVINCE, BCTFA OR SUBSTITUTE

Any amounts paid by the Province, BCTFA or a Substitute to the Operator pursuant to this Agreement or any agreement or other document entered into pursuant hereto (including, for greater certainty, any amounts paid by the Province to the Operator pursuant to Section 5 hereof and any amounts paid by the Province, BCTFA or a Substitute pursuant to Section 7(b) hereof or any agreement or other document entered into pursuant thereto) will be deemed to be amounts owing by the Concessionaire to the Province under the Concession Agreement and, subject to Section 44.8 [Rights of Set-Off] of the Concession Agreement, may be set-off against any payments to be made by the Province to the Concessionaire under the Concession Agreement including the Total Performance Payment and any Termination Sum (which term, for this purpose, will be deemed to include any Adjusted Highest Qualifying Bid Price).

7B. Appropriation

The Operator and the Concessionaire acknowledge that they are aware of the provisions of subsection 28(2) of the *Financial Administration Act*, R.S.B.C. 1996, c. 138.

8. OPERATOR LIABILITY

- (a) The obligations and liabilities of the Operator under this Agreement, the Operating and Maintenance Contract and/or the Interface Agreement will not be modified, released, limited, diminished or in any way affected by:
- (i) any independent inspection, investigation or enquiry into any matter which may be made or carried out by or on behalf of the Province or BCTFA, or by any failure or omission to carry out any such inspection, investigation or enquiry;
 - (ii) the appointment by the Province or BCTFA of any other person to make or carry out any inspection, investigation or enquiry or to review the progress of or otherwise report to the Province in respect of the Project or any aspect thereof, or by any action or omission of such person whether or not such action or omission might give rise to any independent liability of such person to the Province.
- (b) In the event that the Province or BCTFA delivers a Step-In Notice, the Operator will have no greater liability to the Province, BCTFA or any Substitute than it would have had to the Concessionaire under the Operating and Maintenance Contract, and the Operator will be entitled in any proceedings by the Province, BCTFA or any Substitute to rely on any liability limitations in the Operating and Maintenance Contract.

9. DISCLOSED DATA DISCLAIMER AND INDEMNITY

- (a) Neither the Province nor BCTFA gives 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 the date of execution of this Agreement) relevant or material to the Project, the Project Facilities, the Site or the Adjacent Areas or any obligations undertaken by the Operator under the Operating and Maintenance Contract. Neither the Province nor BCTFA will be liable to the Operator in respect of any failure to disclose or make available (whether before or after the execution of this Agreement) to the Concessionaire or the Operator any information, documents or data, nor to keep the Disclosed Data up to date, nor to inform the Concessionaire or the Operator (whether before or after execution of this Agreement) of any inaccuracy, error, omission, unfitness for purpose, defect or inadequacy in the Disclosed Data.
- (b) Neither the Province nor BCTFA will have any liability to the Operator (whether in contract, tort, by statute or otherwise howsoever and whether or not arising out of any negligence on the part of the Province or BCTFA or any of their respective employees, contractors or agents) in respect of any inaccuracy, error, omission, unfitness for purpose, defect or inadequacy of any kind whatsoever in the Disclosed Data.

10. CONCESSIONAIRE AS PARTY

The Concessionaire is a party to this Agreement for the purpose of giving its consent to the provisions hereof. The Concessionaire acknowledges and agrees that the Operator will not be in breach of the Operating and Maintenance Contract by complying with its obligations hereunder.

11. ASSIGNMENT

- (a) The Concessionaire will not, without the prior written consent of the Province and BCTFA, assign, transfer, charge, subcontract, subparticipate or otherwise dispose of any interest in this Agreement except to the extent it is entitled to do so under the Concession Agreement.
- (b) The Province and BCTFA may assign or otherwise dispose of the benefit of the whole or part of this Agreement in conjunction with a permitted assignment under the terms of the Concession Agreement and only to a permitted assignee thereunder, on written notice to the Concessionaire and the Operator and otherwise will not, without the prior written consent of the Concessionaire or the Operator not to be unreasonably withheld or delayed, assign or otherwise dispose of the benefit of the whole or part of this Agreement. Notwithstanding the foregoing, no consent of the Concessionaire or the Operator will be required in the event of an assignment by the Province or BCTFA or other disposal of the benefit of the whole or part of this Agreement to any person referred to in subparagraphs 7(b)(vi), (vii), (viii) and (ix).
- (c) The Operator will not, without the prior written consent of the Province and BCTFA, assign, transfer, charge, subcontract, subparticipate or otherwise dispose of any interest in this Agreement.

12. NOTICES

Any notices required or permitted under this Agreement will be in writing and (a) delivered personally, (b) sent by a recognized express mail or courier service, with delivery receipt requested, or (c) sent by confirmed facsimile transmission with telephonic confirmation, to the following addresses:

If to the Province
or BCTFA: 5B – 940 Blanshard Street
Victoria, British Columbia V8W 9T5
Tel No.: 250-387-3260
Fax No.: 250-387-6431
Attn: Assistant Deputy Minister, Highways Department
Ministry of Transportation

If to the Operator: **H M C Services Inc.**
2310 Kirton Avenue
Armstrong, British Columbia V0E 1B0
Tel No.: 250-546-6389
Fax No.: 250-546-8761
Attn: Joe Wrobel

If to the
Concessionaire: **Trans-Park Highway General Partnership**
675 Cochrane Drive, West Tower, Suite 630
Markham, Ontario L3R 0B8

Tel No.: 905-530-2114
Fax No.: 905-530-2214
Attn: John McArthur

- (a) Where any notice is provided or submitted to a Party via facsimile, an original of the notice sent via facsimile will also promptly be delivered personally or sent by a recognized express mail or courier service, with delivery receipt requested.
- (b) A Party may at any time and from time to time change its nominated address or facsimile number by prior notice to the other Parties, and such change will be effective on the day that next follows the recipient Parties' receipt of such notice.
- (c) Notices given by mail will be effective upon the earlier of (i) actual receipt, and (ii) 7 days after mailing if mailed within Canada, and 21 days after mailing if mailed outside of Canada. Notices delivered personally will be effective upon delivery. Notices given by facsimile will be deemed to have been received where there is confirmation of uninterrupted transmission by a transmission report and where there has been no telephonic communication by the recipient to the sender (to be confirmed in writing) that the facsimile has not been received in legible form:
 - (i) within 3 hours after sending, if sent on a Working Day between the hours of 9 a.m. and 4 p.m.; or
 - (ii) by noon on the next following Working Day, if sent after 4 p.m. on a Working Day but before 9 a.m. on that next following Working Day.
- (d) If the Party giving the notice or communication knows or ought reasonably to know of difficulties or disruption with the postal system which might affect the delivery of mail:
 - (i) any such notice will not be mailed but will be made or given by personal delivery or by facsimile transmission; and
 - (ii) where such difficulties or disruption arise after mailing but before the date of receipt as provided in this Section 12, the Party giving such notice will make or give such notice by personal delivery or by facsimile transmission.
- (e) To be effective, notices and all formal communications under this Agreement must be in writing and delivered as provided in this Section 12, and must be signed by an authorized representative of the Party giving the notice. E-mails will not be used for and will not constitute notices under this Agreement.
- (f) Oral communications will not constitute formal communication under this Agreement and no Party has any obligation to act on any oral communication, instruction or assurance unless and until it is confirmed in writing. Any action taken by a Party based on oral communications, instructions or assurances will

be at that Party's sole risk and will be without liability to or recourse against the other Parties.

13. AMENDMENTS

No oral or written amendment or modification of this Agreement, either before or after execution and delivery of this Agreement, will be of any force or effect unless such amendment or modification is in writing and is signed by a duly authorized officer of each Party sought to be bound thereby.

14. WAIVER

- (a) No waiver of any rights under this Agreement will be binding or effective unless the waiver is in writing and signed by an authorized representative of the Party giving such waiver.
- (b) Any Party's waiver of any of its rights under this Agreement or of any breach or failure to enforce any of the terms, covenants, conditions or other provisions of this Agreement at any time will not in any way affect, limit, modify, or waive that Party's right thereafter to enforce or compel strict compliance with every term, covenant, condition and other provision hereof, any course of dealing or custom of the trade notwithstanding.

15. TIME IS OF THE ESSENCE

Time is of the essence of this Agreement and each provision herein.

16. INDEPENDENT CONTRACTOR

The Parties are independent contractors. This Agreement is not intended to and does not create or establish between the Parties any relationship as partners, joint venturers, employer and employee, master and servant or principal and agent. Neither the Concessionaire nor the Operator nor any of its or their representatives are or will be deemed to be an employee or agent of the Province or BCTFA for any purpose.

17. ENTIRE AGREEMENT

Except where provided otherwise in this Agreement, this Agreement constitutes the entire agreement between the Parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings, whether oral, written, express or implied, concerning the subject matter of this Agreement.

18. SEVERABILITY

If any provision of this Agreement is declared invalid, unenforceable or illegal by the courts of any jurisdiction to which it is subject, such provision may be severed and such invalidity, unenforceability or illegality will not prejudice or affect the validity, enforceability and legality of the remaining provisions of this Agreement.

19. ENUREMENT

This Agreement will enure to the benefit of and be binding upon each of the Parties and their respective successors and permitted transferees and assigns.

20. DISPUTE RESOLUTION

Any dispute under this Agreement will be resolved in accordance with the Disputes Resolution Procedure.

21. GOVERNING LAW AND JURISDICTION

(a) This Agreement will be governed by and construed in accordance with the laws of the Province of British Columbia and the laws of Canada applicable therein and will be treated in all respects as a contract in the Province of British Columbia, without regard to conflict of laws principles.

(b) Subject to the provisions of Section 20, the Parties agree to submit to the non-exclusive jurisdiction of the courts of British Columbia as regards any claim or matter arising in relation to this Agreement.

22. FURTHER ASSURANCE

Each Party shall do all things and execute all further documents necessary to give full effect to this Agreement.

23. PROOF OF AUTHORITY

The Province reserves the right to require everyone executing this Agreement on behalf of the Concessionaire or the Operator to provide proof, in a form acceptable to the Province, that they have the requisite authority to execute this Agreement on behalf of and to bind the Concessionaire or the Operator, respectively.

24. CONFIDENTIALITY

The Operator will comply with the obligations on the part of the Concessionaire contained in Section 50 [Confidentiality] of the Concession Agreement.

25. COUNTERPARTS

This Agreement may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all of the Parties will constitute a full, original and binding agreement for all purposes. Counterparts may be executed either in original or faxed form provided that any Party providing its signature in faxed form will, upon any other Party's request, promptly forward to such Party an original signed copy of this Agreement which was so faxed.

IN WITNESS WHEREOF the Parties have executed this Agreement as of the 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 in the presence of:)
)
)
)
)

(Witness)

JOHN DYBLE
Deputy Minister, Ministry of Transportation

BC TRANSPORTATION FINANCING AUTHORITY

Per: _____
JOHN DYBLE
Chief Executive Officer

H M C SERVICES INC.

Per: _____
JOE WROBEL
President

TRANS-PARK HIGHWAY GENERAL PARTNERSHIP

by its partners:

TRANS-PARK HIGHWAY INVESTMENT INC.

Per: _____
JOHN McARTHUR
President

Per: _____
STEVE SKELTON
Vice-President

TRANS-PARK HIGHWAY INC.

Per: _____
JOHN McARTHUR
President

Per: _____
STEVE SKELTON
Vice-President

SCHEDULE 22
COLLATERAL AGREEMENTS

Part 2

CONTRACTOR'S COLLATERAL AGREEMENT

THIS AGREEMENT is made as of the 28th day of October, 2005

AMONG:

- (1) **HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA**, as represented by the **MINISTER OF TRANSPORTATION** (the "**Province**")

OF THE FIRST PART

AND

- (2) **BC TRANSPORTATION FINANCING AUTHORITY**, a corporation continued under the *Transportation Act*, S.B.C. 2004, c. 44 ("**BCTFA**")

OF THE SECOND PART

AND

- (3) **TRANS-PARK HIGHWAY CONSTRUCTORS**, an unincorporated joint venture formed between Flatiron Constructors Canada Ltd., a corporation incorporated under the laws of the Province of British Columbia and Parsons Overseas Company of Canada Ltd., a corporation incorporated under the laws of Canada (the "**Contractor**")

OF THE THIRD PART

AND

- (4) **ROYAL BAM GROUP N.V.**, a corporation incorporated under the laws of the Netherlands ("**Royal**")

OF THE FOURTH PART

AND

- (5) **PARSONS CORPORATION**, a corporation incorporated under the laws of Delaware (“**Parsons**” and together with Royal, the “**Guarantors**”)

OF THE FIFTH PART

AND

- (6) **TRANS-PARK HIGHWAY GENERAL PARTNERSHIP**, a general partnership established under the laws of the Province of British Columbia (the “**Concessionaire**”)

OF THE SIXTH PART

WHEREAS:

- A. The Province, BCTFA and the Concessionaire have entered into the Concession Agreement pursuant to which the Concessionaire will carry out the Project described therein.
- B. The Concessionaire and the Contractor have entered into the Design-Build Contract pursuant to which the Contractor has agreed to provide design services and perform construction work required to carry out the Project.
- C. The obligations of the Contractor under the Design-Build Contract have been jointly and severally guaranteed by the Guarantors pursuant to the Design-Build Contract Guarantee.
- D. The Contractor has provided the Concessionaire with the Design-Build Contract Performance Securities in connection with the Design-Build Contract.
- E. The Concession Agreement requires the Concessionaire to enter into, and to cause the Contractor and the Guarantors to enter into, this Agreement with the Province and BCTFA.

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

1. DEFINITIONS

In this Agreement, unless the context otherwise requires:

- (a) “**Agreement**” means this Agreement;
- (b) “**Concession Agreement**” means the agreement titled “Kicking Horse Canyon Project Concession Agreement” made among the Province, BCTFA and the Concessionaire and dated as of the 28th day of October, 2005;

- (c) **“Concessionaire”** has the meaning given on the first page of this Agreement;
- (d) **“Contractor”** has the meaning given on the first page of this Agreement;
- (e) **“Contractor Direct Agreement”** means that certain agreement made among the Contractor, Royal, Parsons and the Concessionaire and dated the 28th day of October, 2005;
- (f) **“Contractor’s Data”** has the meaning given in Section 4(a);
- (g) **“Default Notice”** has the meaning given in Section 5(a);
- (h) **“Design-Build Contract Performance Securities”** means the Performance Securities provided or to be provided by the Contractor pursuant to the terms of the Design-Build Contract;
- (i) **“Designer”** means any person appointed by the Contractor from time to time to undertake the design of any portion of the Project Facilities (including the Works) or any other works in connection with the design, construction, operation, maintenance, rehabilitation or improvement of the Project Facilities or such substitute as may be appointed by the Concessionaire for the time being in accordance with Section 45.4.1 or 45.4.2, in each case being a firm employing duly qualified and experienced Professional Engineers;
- (j) **“Direct Agreement”** means the agreement entitled “Direct Agreement for the Kicking Horse Canyon Project Concession Agreement” made among the Province, BCTFA, CIT Group Securities (Canada) Inc. and the Concessionaire and dated as of the 28th day of October, 2005;
- (k) **“Guarantors”** has the meaning given on the first page of this Agreement;
- (l) **“Interface Agreement”** means the interface agreement dated the 28th day of October, 2005 among the Concessionaire, the Contractor and the Operator;
- (m) **“Party”** means any of the Province, BCTFA, the Contractor, the Guarantors or the Concessionaire, and **“Parties”** means the Province, BCTFA, the Contractor, the Guarantors and the Concessionaire;
- (n) **“Province”** has the meaning given on the first page of this Agreement;
- (o) **“Step-In Notice”** has the meaning given in Section 7(a);
- (p) **“Substitute”** has the meaning given in Section 7(a); and
- (q) other words and expressions with initial capital letters used in this Agreement which are defined in the Concession Agreement have the same meanings when used in this Agreement as are given to them in the Concession Agreement.

2. **INTERPRETATION**

This Agreement will be interpreted according to the following provisions, save to the extent that the context or the express provisions of this Agreement otherwise require:

- (a) the headings and sub-headings and references to them in this Agreement are for convenience of reference only, do not constitute a part of this Agreement, and shall not be taken into consideration in the interpretation or construction of, or affect the meaning of, this Agreement;
- (b) the words “herein”, “hereto” and “hereunder” and other words of like import refer to this Agreement as a whole and not to the particular provision in which such word may be used;
- (c) all references to Sections are references to Sections of this Agreement;
- (d) words importing the singular include the plural and vice versa;
- (e) words importing a particular gender include all genders;
- (f) all references to any agreement, document, standard, principle or other instrument include (subject to all relevant approvals and any other provision of this Agreement or the Concession Agreement expressly concerning such agreement, document, standard, principle or other instrument or amendments thereto) a reference to that agreement, document, standard, principle or instrument as amended, supplemented, substituted, novated or assigned;
- (g) “person” includes an individual, corporation, partnership, joint venture, association, trust, pension fund, union, government, governmental body, governmental agency, authority, board, tribunal, commission or department and the heirs, beneficiaries, executors, personal or other legal representatives or administrators of an individual, and the receivers and administrators of a corporation;
- (h) whenever the terms “will” or “shall” are used in this Agreement they are to be construed and interpreted as synonymous and are to be read as “shall”;
- (i) the words “includes” or “including” are to be construed as being without limitation;
- (j) general words are not given a restrictive meaning:
 - (i) if they are introduced by the word “other”, by reason of the fact that they are preceded by words indicating a particular class of act, matter or thing; or
 - (ii) by reason of the fact that they are followed by particular examples intended to be embraced by those general words;
- (k) if the time for doing an act falls or expires on a day that is not a Working Day, the time for doing such act will be extended to the next Working Day;

- (l) the words of this Agreement are to be given their natural meaning. The Parties have had the opportunity to take legal advice on this Agreement and no provision is, therefore, to be construed *contra proferentem*;
- (m) no provision of this Agreement is intended to derogate from or be inconsistent with or in conflict with any Laws and Regulations and should not be interpreted in a manner as to result in any derogation, inconsistency or conflict and if any such provision is found by a court of competent jurisdiction to be inconsistent with or in conflict with any Laws and Regulations, the applicable Laws and Regulations will prevail and such provision will be read down or rendered inoperative (either, generally or in such particular situation, as appropriate), to the extent of such conflict or inconsistency, as the case may be, and if any such provision is found by a court of competent jurisdiction to derogate from any Laws and Regulations, then such provision will be read down or rendered inoperative (either, generally or in such particular situation, as appropriate) to the extent of the derogation and for purposes of this Section 2(m), the following will be excluded from the definition of the defined phrase "Laws and Regulations": "and the law of equity", "ordinances", "codes (including design and construction codes)", "directives", "guidelines", and "rules or policies of any Governmental Authority", and the word "or" will be added between the word "orders," and the word "injunctions"; and
- (n) each and every representation, warranty, covenant and undertaking of the Concessionaire set forth in this Agreement shall be interpreted and construed as a representation, warranty, covenant and undertaking binding upon each of the Partners, on a joint and several basis.

3. AGREEMENTS REGARDING DESIGN-BUILD CONTRACT, INTERFACE AGREEMENT, DESIGN-BUILD CONTRACT PERFORMANCE SECURITIES AND DESIGN-BUILD CONTRACT GUARANTEE

- (a) The Concessionaire and the Contractor will not terminate, make or agree to any material amendment to or variation of, or in any material respect depart from or waive or fail to enforce any rights they may have under, or enter into any agreement or document which would materially affect the interpretation or application of, the terms of the Design-Build Contract or any of the Design-Build Contract Performance Securities except in compliance with the provisions of Section 2.3.2 of the Concession Agreement. The Concessionaire and the Contractor will provide to the Province a certified true copy of all documents entered into in accordance with the foregoing.
- (b) The Concessionaire, the Guarantors and the Contractor will not terminate, make or agree to any material amendment to or variation of, or in any material respect depart from or waive or fail to enforce any rights they may have under, or enter into any agreement or document which would materially affect the interpretation or application of, the terms of the Design-Build Contract Guarantee except in compliance with the provisions of Section 2.3.2 of the Concession Agreement. The Concessionaire, the Guarantors and the Contractor will provide to the Province a certified true copy of all documents entered into in accordance with the foregoing.

- (c) Each of the Province, BCTFA, the Concessionaire, the Contractor and the Guarantors acknowledges having received and reviewed a copy of the Concession Agreement, the Design-Build Contract, the Interface Agreement, each of the Design-Build Contract Performance Securities and the Design-Build Contract Guarantee and acknowledges the terms thereof.
- (d) If the Contractor gives the Concessionaire any notice of any default(s) under the Design-Build Contract and/or the Interface Agreement that may give the Contractor a right to terminate the Design-Build Contract and/or the Interface Agreement or to treat either of them as having been repudiated by the Concessionaire or to discontinue the Contractor's performance thereunder, then the Contractor will concurrently provide the Province and BCTFA with a copy of such notice and set out in reasonable detail the default(s).

3A. AGREEMENTS REGARDING DESIGN SUBCONTRACT

- (a) The Contractor will perform and will continue to perform all of the terms of any design subcontract in respect of the Works or any portion thereof to be performed on the Contractor's part and will not terminate, make or agree to make any material amendment to or variation of, or in any material respect depart from or waive or fail to enforce any rights it may have under, or enter into any agreement or document which would materially affect the interpretation or application of, the terms of any design subcontract in respect of the Works or any portion thereof 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 in accordance with the provisions of the review Procedure. The Contractor will provide to the Province a certified true copy of all documents entered into in accordance with the foregoing.
- (b) The Contractor will ensure that all portions of the design provided by the Designer or any other designer under any design subcontract in respect of the Works or any portion thereof are prepared under the supervision and direction of and, where appropriate, are prepared by professional engineers or such other professionals as appropriate to the nature of the design who are registered in British Columbia and lawfully authorized to practice in British Columbia.
- (c) The Contractor will ensure that the Designer or any other designer complies with all provisions of the Concession Agreement (including the Design and Certification Procedure, the Design Management Plan, the Design Quality Management Plan and all other Technical Requirements) applicable to the design work performed and to be performed by the Designer or any other designer pursuant to any design subcontract in respect of the Works or any portion thereof and performs all functions which, pursuant to the terms of the Concession Agreement, are to be performed by the Designer or any other designer.
- (d) The Contractor acknowledges and agrees that neither the entering into of any design subcontract in respect of the Works or any portion thereof nor anything contained therein qualifies, limits or relieves the Contractor from any of its duties or obligations under the Design-Build Contract, and that the Contractor remains and will remain liable for all design and other work to be performed and services

to be provided under the terms of the Design-Build Contract notwithstanding any default or failure to perform by the Designer or any other designer under any design subcontract in respect of the Works or any portion thereof.

- (e) All drawings, details, plans, specifications, reports and other documents and data of any nature whatsoever and any designs and inventions contained in them which have been or are hereafter provided by the Designer or any other designer in the course of performing the services provided for in any design subcontract in respect of the Works or any portion thereof will form part of the Contractor's Data as defined in and for the purposes of Section 4 of this Agreement, and the Contractor will ensure that it has full power and authority to grant the perpetual, unrestricted, transferable and assignable, non exclusive, worldwide, irrevocable and non terminable, royalty free licence or sub-licence (carrying the right to grant sub licences) in respect of all such drawings, details, plans, specifications, reports, documents, data, designs and inventions to the Province and BCTFA as contemplated by Section 4(a) of this Agreement, including the right to make any alterations, adaptations or additions to any of the same.

4. CONTRACTOR'S DATA

- (a) In relation to all drawings, details, plans, specifications, reports and other documents and data of any nature whatsoever and any designs and inventions contained in them which have been or are hereafter provided by the Contractor in the course of performing the works and services provided for in the Design-Build Contract (including any and all design data and construction data now or hereafter owned by the Contractor and including all drawings, details, plans, specifications, reports, documents, data, designs and inventions created by the Contractor or the Designer) (collectively, the "Contractor's Data"), the Contractor hereby grants to the Province and BCTFA a perpetual, unrestricted, transferable and assignable, non-exclusive, worldwide, irrevocable and non-terminable royalty-free licence (which term as used in this Section 4 includes, where applicable, a sub licence) (carrying the right to grant sub-licences) to use and reproduce all or any of the Contractor's Data for any purpose (whether during or after the Contract Period) relating to the design, construction, completion, commissioning or testing of the Works, the operation, maintenance, rehabilitation or improvement of the Project Facilities, the Site and the Adjacent Areas or the conduct of any other Operations or the carrying out of any statutory or other duties or functions in respect of the Project Facilities, the Site and the Adjacent Areas, including the right to make any alterations, adaptations or additions to any Contractor's Data.
- (b) With respect to Contractor's Data arising during the Contract Period, the licence granted pursuant to Section 4(a) will take effect immediately upon the coming into existence of such Contractor's Data.
- (c) The Contractor agrees on a reasonable request at any time and following reasonable prior written notice to give and to cause the Designer to give the Province and BCTFA or any person(s) authorized by either of them access to the Contractor's Data and to provide and to cause the Designer to provide copies (including copy negatives and CAD disks) thereof at the Province's or BCTFA's (as the case may be) expense.

- (d) The Contractor represents and warrants to and covenants with the Province and BCTFA that each item of Contractor's Data is its own original work or, if any item of Contractor's Data is not its own original work, the Contractor 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:
- (i) such item to be so acquired or brought into existence and to be used for the purposes of the Project by the Contractor and the Concessionaire and their respective contractors or subcontractors of any tier; and
 - (ii) the Contractor to grant the licence granted in Section 4(a) and to comply with all of its obligations under this Section 4,
- and that in any event no such item infringes or will infringe any third party's copyright, moral rights, design rights, trade mark or other intellectual property rights.
- (e) The Contractor undertakes at the request of the Province or BCTFA to execute and, where requested by the Province, to cause the Designer to execute all documents and do all acts which may be necessary to bring into effect or confirm the terms of any licence or sub-licence contained or referred to in Section 4(a).
- (f) The provisions of this Section 4 will survive the expiry or termination of this Agreement for any reason.

5. NO TERMINATION BY CONTRACTOR WITHOUT DEFAULT NOTICE

- (a) The Contractor will not exercise any right it may have to terminate the Design-Build Contract and/or the Interface Agreement or to treat either of them as having been repudiated by the Concessionaire or to discontinue the Contractor's performance thereunder unless:
- (i) the Contractor first delivers a written notice (a "Default Notice") to the Province and BCTFA setting out in reasonable detail the default(s) on which the Contractor intends to rely in terminating the Design-Build Contract and/or the Interface Agreement or treating either of them as having been repudiated by the Concessionaire or discontinuing the Contractor's performance thereunder; and
 - (ii) within 90 days of the Province and BCTFA receiving the Default Notice:
 - A. the default(s) on which the Contractor intends to rely in terminating the Design-Build Contract and/or the Interface Agreement or treating either of them as having been repudiated by the Concessionaire or discontinuing the Contractor's performance thereunder have not been remedied; and
 - B. the Contractor has not received a Step-In Notice from the Province or BCTFA; and

- (iii) the Senior Funders have not exercised their step-in or novation rights under the Direct Agreement or the Contractor Direct Agreement.
- (b) If the Contractor delivers a Default Notice to the Province and BCTFA pursuant to Section 5(a)(i), the Province will pay the Contractor in accordance with and at the times specified in the Design-Build Contract for work performed by the Contractor during the period commencing on the date when the Contractor, but for the provisions of Section 5(a) above, would have been entitled to suspend its performance under or terminate the Design-Build Contract as a consequence of the default(s) specified in the Default Notice and ending on the earliest to occur of:
 - (i) the date upon which the Province gives the Contractor a written notice confirming that neither the Province nor BCTFA are exercising their step-in rights under Section 7(a);
 - (ii) the date upon which a Step-In Notice is given by the Province or BCTFA under Section 7(a) (in which event the provisions of Section 7(b) will apply in accordance with its terms);
 - (iii) the date upon which the Senior Funders (or the Agent or any other Representative) exercise any right to step-in and assume any of the Concessionaire's rights and/or obligations under the Design-Build Contract or to transfer, novate or assign the Design-Build Contract; and
 - (iv) the expiry of the 90-day period referred to in Section 5(a).

For greater certainty, the Province will not be liable pursuant to the provisions of this Section 5(b) for payment of any amounts owing by the Concessionaire to the Contractor under the Design-Build Contract for work performed by the Contractor prior to the time at which the Contractor, but for the provisions of Section 5(a) above, would have been entitled to suspend its performance under or terminate the Design-Build Contract as a consequence of the default(s) specified in the Default Notice.

6. DUTY OF CARE, REPRESENTATION AND WARRANTY

The Contractor represents and warrants to and covenants with the Province and BCTFA on behalf of itself and its subcontractors of any tier (including the Designer) that:

- (a) it has performed and will continue to perform all of the terms of the Design-Build Contract and the Interface Agreement to be performed on the Contractor's part and that it has carried out, supplied and performed and will carry out, supply and perform the works and services it is to carry out, supply and perform under the Design-Build Contract in accordance with the Design-Build Contract;
- (b) it has provided and will maintain in full force and effect all of the Design-Build Contract Performance Securities in accordance with the terms of the Design-Build Contract;

- (c) it has carried out and supplied and will carry out, supply and complete the works and services it is to carry out, supply and complete under the Design-Build Contract in a good and workmanlike manner using suitable goods, materials and methods and in accordance with the Design-Build Contract; and
- (d) it has exercised and will continue to exercise all reasonable professional skill, care and diligence in carrying out, supplying and completing the works and services under the Design-Build Contract to be expected of a properly qualified design-build contractor experienced in carrying out, supplying and completing works and services of similar scope, size, type and complexity as the Project, including, without limiting the generality of the foregoing, the selection of goods and materials, design and the satisfaction of the performance specifications and requirements referred to in or to be inferred from the Design-Build Contract and the Technical Requirements.

Notwithstanding the foregoing, the Province and BCTFA shall not be entitled to rely on the Contractor's representation, warranty and covenant in this Section 6 as a basis for an action against the Contractor until the Province and/or BCTFA exercises its Step-in Rights under Section 7 of this Agreement.

6A. DELAY

The Contractor will not, by reason of the exercise by the Province or BCTFA of their rights under this Agreement, have any liability for delay in the completion of the work to be completed by it under the Design-Build Contract except to the extent such liability to the Province or BCTFA arises under the Design-Build Contract after the exercise by the Province or BCTFA of their Step-In-Rights under this Agreement.

7. STEP-IN RIGHTS

- (a) Subject to the provisions of the Direct Agreement including without limitation Section 3.5 thereof, and the provisions of the Contractor Direct Agreement, the Province or BCTFA may at any time:
 - (i) within 90 days of the Province and BCTFA receiving a Default Notice, unless prior to expiry of such 90-day period the default(s) on which the Contractor intends to rely in terminating the Design-Build Contract and/or the Interface Agreement or treating either of them as having been repudiated by the Concessionaire or discontinuing the Contractor's performance thereunder have been remedied; or
 - (ii) if the Province's right to terminate the Concession Agreement has arisen and is continuing,

deliver a notice (a "Step-In Notice") electing to replace the Concessionaire under the Design-Build Contract and the Interface Agreement with the Province or BCTFA or a third party designated by the Province or BCTFA in the Step-In Notice (the "Substitute").

- (b) Subject to Section 7(d), upon receipt by the Contractor of a Step-In Notice:
- (i) the Concessionaire and the Contractor will be deemed to be released from their obligations under the Design-Build Contract and the Interface Agreement to each other (except with respect to any and all indemnities from the Concessionaire in favour of the Contractor and from the Contractor in favour of the Concessionaire); and the Province, BCTFA or the Substitute, as applicable, and the Contractor will be deemed to assume those same obligations towards each other (except with respect to any and all indemnities from the Concessionaire in favour of the Contractor in respect of matters occurring in the period prior to receipt by the Contractor of the Step-In Notice);
 - (ii) the rights of the Concessionaire against the Contractor under the Design-Build Contract and the Interface Agreement and vice versa will be deemed to be cancelled (except with respect to any and all indemnities from the Concessionaire in favour of the Contractor and from the Contractor in favour of the Concessionaire); and the Province, BCTFA or the Substitute, as applicable, and the Contractor will be deemed to acquire those same rights against each other (except with respect to any and all indemnities from the Concessionaire in favour of the Contractor in respect of matters occurring in the period prior to receipt by the Contractor of the Step-In Notice);
 - (iii) the Guarantors and each of them will be deemed to be released from its obligations to the Concessionaire under the Design-Build Contract Guarantee (except with respect to claims under the Design-Build Contract Guarantee arising in respect of matters occurring prior to the date of receipt of the Step-In Notice by the Contractor); and the rights and benefits previously available to the Concessionaire under the Design-Build Contract Guarantee (without prejudice to claims by the Concessionaire under the Design-Build Contract Guarantee in respect of matters occurring prior to the date of receipt of the Step-In Notice by the Contractor) will be deemed to have been granted in favour of the Province, BCTFA or the Substitute, as applicable (provided, for greater certainty, that any limitations on the maximum liability of the Guarantors under the Design-Build Contract Guarantee will continue in effect);
 - (iv) the rights and benefits previously available to the Concessionaire under the Design-Build Contract Performance Securities (without prejudice to claims by the Concessionaire under the Design-Build Contract Performance Securities in respect of matters occurring prior to the date of receipt of the Step-In Notice by the Contractor or in respect of the debt service component of delay liquidated damages payable under the Design-Build Contract) will be transferred and assigned to the Province, BCTFA or the Substitute, as applicable (provided, for greater certainty, that any limitations on the maximum liability of the issuers of the Design-Build Contract Performance Securities under the Design-Build Contract Performance Securities will continue in effect);

- (v) at the Province's or BCTFA's request, the Contractor will enter into, and the Province or BCTFA will or will cause the Substitute to enter into, as applicable, all such agreements or other documents as reasonably necessary to give effect to the foregoing, including without limitation an agreement between the Province, BCTFA or the Substitute, as applicable, and the Contractor on substantially the same terms as the Design-Build Contract (except for claims under any indemnities from the Concessionaire in favour of the Contractor or from the Contractor in favour of the Concessionaire arising in respect of matters occurring on or prior to the date of the new agreement) and the Interface Agreement;
- (vi) at the Province's or BCTFA's request, the Guarantors will execute and deliver to the Province, BCTFA or the Substitute, as applicable, an agreement of joint and several guarantee from the Guarantors in favour of the Province, BCTFA or the Substitute, as applicable, on the same terms as the Design-Build Contract Guarantee (except with respect to necessary ministerial changes and which agreement, for greater certainty, will be consistent with the provisions of paragraph 7(b)(iii) above) together with all such other documents and further assurances as may reasonably be requested by the Province or BCTFA to give effect to the provisions of this Section 7(b); and
- (vii) at the Province's or BCTFA's request, the Contractor will and will cause the issuers of the Design-Build Contract Performance Securities to enter into, and the Province or BCTFA will or will cause the Substitute, as applicable, to enter into all such agreements or other documents necessary to give effect to the provisions of this Section 7(b), including assignments and necessary consents to assignments of the Design-Build Contract Performance Securities to the Province, BCTFA or the Substitute, as applicable, or replacement performance securities from the issuers of the Design-Build Contract Performance Securities in favour of the Province, BCTFA or the Substitute, as applicable, on the same terms as the Design-Build Contract Performance Securities except with respect to necessary ministerial changes (which assignments or replacement performance securities, for greater certainty, will be consistent with the provisions of paragraph 7(b)(iv) above) and, in the case of the issuance of replacement performance securities as aforesaid, the original Design-Build Contract Performance Securities (except with respect to claims by the Concessionaire thereunder in respect of matters occurring prior to the date of receipt of the Step In Notice by the Contractor) will be cancelled.

If the Province or BCTFA replaces the Concessionaire under the Design-Build Contract and the Interface Agreement pursuant to a Step In Notice and subsequently designates a Substitute, the relevant Parties will enter into (and the Province or BCTFA (as the case may be) will cause the Substitute to enter into and, in the case of the Design-Build Contract Performance Securities, the Contractor will cause the issuers of the Design-Build Contract Performance Securities to enter into) all such agreements or other documents necessary to effect and confirm the succession of the Substitute to the rights and obligations of the Province or BCTFA (as the case may be) under the agreements and other

documents referred to in this Section 7(b) previously entered into by or for the benefit of the Province or BCTFA (as the case may be) and to release the Province or BCTFA (as the case may be) from all obligations and liabilities under such agreements and other documents.

In the event the Province or BCTFA causes a Substitute to enter into the agreements and other documents as are necessary to give effect to the foregoing, the Contractor will have no right to approve the Substitute where such Substitute is any of the following:

- (viii) any Ministry, office, instrumentality or agency of the Province;
- (ix) any person whose obligations under such agreements or other documents are guaranteed by the Province or any Ministry, office, instrumentality or agency of the Province;
- (x) a Qualifying Bidder as defined in the Concession Agreement in circumstances of an assignment, transfer or novation of the Concession Agreement; or
- (xi) any person who has the financial standing and the financial resources reasonably necessary to enable it to perform the obligations of the Concessionaire under the Design-Build Contract.

Otherwise, the Substitute shall be subject to the approval of the Contractor, such approval not to be unreasonably withheld or delayed and the Province or BCTFA will provide such information relating to any proposed Substitute not falling within subparagraphs 7(b)(x) and (xi) as the Contractor may reasonably request to demonstrate to the Contractor, acting reasonably, that the Substitute has the financial standing and the financial resources reasonably necessary to enable it to perform the obligations of the Concessionaire under the Design-Build Contract to the extent such information is readily available to the Province or BCTFA.

- (c) Subject to Section 7(d), the Concessionaire will, at its own cost, cooperate fully with the Province, BCTFA and any Substitute in order to achieve a smooth, efficient and orderly transfer of the Design-Build Contract to the Province, BCTFA or the Substitute, as applicable, and to avoid or mitigate in so far as reasonably practicable any inconvenience, including the administration of the Design-Build Contract, ongoing supervisory activities and scheduling.
- (d) A notice in writing from the Agent exercising the Senior Funders' right under the Direct Agreement or the Contractor Direct Agreement to step-in and assume the Concessionaire's rights and obligations under the Design-Build Contract or to novate or assign the Design-Build Contract that is received by the Contractor prior to the receipt of a Step-In Notice given pursuant to this Agreement will have priority over the Step-In Notice given pursuant to this Agreement, and in such circumstances only the notice received from the Agent will take effect and the Step-In Notice given pursuant to this Agreement will not bind the Contractor.
- (e) If a Step-In Notice is given by the Province or BCTFA pursuant to this Agreement and, prior to the expiration of the 90-day period of time following delivery of a

Province Collateral Agreement Notice (as defined in the Direct Agreement), a notice in writing from the Agent exercising the Senior Funders' right under the Direct Agreement or the Contractor Direct Agreement to step-in and assume the Concessionaire's rights and obligations under the Design-Build Contract or to transfer, novate or assign the Design-Build Contract is received by the Contractor, then, unless by such time the Design-Build Contract has been transferred, novated or assigned to a Substitute, the exercise by the Province or BCTFA, as the case may be, of its step-in rights pursuant to this Agreement will be deemed to have terminated, all rights and obligations of the Province arising from delivery of the Step-In Notice will be deemed to be cancelled and the provisions of Section 7(b) that would come into force and effect upon the delivery of a Step-In Notice will be deemed not to have come into force or effect.

- (f) The Contractor will ensure, through measures satisfactory to the Province and BCTFA, acting reasonably, that the terms of the Design-Build Contract Performance Securities permit the exercise by the Province and BCTFA of their step-in rights under this Agreement and that the exercise by the Province or BCTFA of their step-in rights under this Agreement will not entitle the issuer of any Design-Build Contract Performance Security to terminate, alter, amend or not comply with its obligations under the Design-Build Contract Performance Security, and that the terms of all Design-Build Contract Performance Securities will remain in full force and effect notwithstanding the exercise of such step-in rights and will provide further that upon the Province exercising its step-in rights, the Province will be entitled to all rights and benefits under such Design-Build Contract Performance Securities as though the Province were the originally named beneficiary thereunder.

7A. AMOUNTS PAID BY THE PROVINCE, BCTFA OR SUBSTITUTE

Any amounts paid by the Province, BCTFA or a Substitute to the Contractor pursuant to this Agreement or any agreement or other document entered into pursuant hereto (including, for greater certainty, any amounts paid by the Province to the Contractor pursuant to Section 5 hereof and any amounts paid by the Province, BCTFA or a Substitute pursuant to Section 7(b) hereof or any agreement or other document entered into pursuant thereto) will be deemed to be amounts owing by the Concessionaire to the Province under the Concession Agreement and, subject to Section 44.8 [Rights of Set-Off] of the Concession Agreement, may be set-off against any payments to be made by the Province to the Concessionaire under the Concession Agreement including the Total Performance Payment and any Termination Sum (which term, for this purpose, will be deemed to include any Adjusted Highest Qualifying Bid Price).

7B. APPROPRIATION

The Contractor, the Guarantors and the Concessionaire acknowledge that they are aware of the provisions of subsection 28(2) of the *Financial Administration Act*, R.S.B.C. 1996, c. 138.

8. CONTRACTOR LIABILITY

- (a) The obligations and liabilities of the Contractor under this Agreement, the Design-Build Contract and/or the Interface Agreement and the obligations and

liabilities of the Guarantors and each of them under this Agreement and the Design-Build Contract Guarantee will not be modified, released, limited, diminished or in any way affected by:

- (i) any independent inspection, investigation or enquiry into any matter which may be made or carried out by or on behalf of the Province or BCTFA, or by any failure or omission to carry out any such inspection, investigation or enquiry; or
 - (ii) the appointment by the Province or BCTFA of any other person to make or carry out any inspection, investigation or enquiry or to review the progress of or otherwise report to the Province in respect of the Project or any aspect thereof, or by any action or omission of such person whether or not such action or omission might give rise to any independent liability of such person to the Province.
- (b) In the event that the Province or BCTFA delivers a Step-In Notice:
- (i) the Contractor will have no greater liability to the Province, BCTFA or any Substitute than it would have had to the Concessionaire under the Design-Build Contract, and the Contractor will be entitled in any proceedings by the Province, BCTFA or any Substitute to rely on any liability limitations in the Design-Build Contract; and
 - (ii) the Guarantors and each of them will have no greater liability to the Province, BCTFA or any Substitute than they would have had to the Concessionaire under the Design-Build Contract Guarantee, and the Guarantors will be entitled in any proceedings by the Province, BCTFA or any Substitute to rely on any liability limitations in the Design-Build Contract Guarantee.

9. DISCLOSED DATA DISCLAIMER AND INDEMNITY

- (a) Neither the Province nor BCTFA gives 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 the date of execution of this Agreement) relevant or material to the Project, the Project Facilities, the Site or the Adjacent Areas or any obligations undertaken by the Contractor under the Design-Build Contract and/or the Interface Agreement. Neither the Province nor BCTFA will be liable to the Contractor, the Guarantors or either of them or the Designer in respect of any failure to disclose or make available (whether before or after the execution of this Agreement) to the Concessionaire, the Contractor, the Guarantors or either of them or the Designer any information, documents or data, nor to keep the Disclosed Data up to date, nor to inform the Concessionaire, the Contractor, the Guarantors or either of them or the Designer (whether before or after execution of this Agreement) of any inaccuracy, error, omission, unfitness for purpose, defect or inadequacy in the Disclosed Data.
- (b) Neither the Province nor BCTFA will have any liability to the Contractor or the Designer (whether in contract, tort, by statute or otherwise howsoever and

whether or not arising out of any negligence on the part of the Province or BCTFA or any of their respective employees, contractors or agents) in respect of, and the joint and several liability of the Guarantors under the Design-Build Contract Guarantee will not be released, lessened or limited in any way as a result of, any inaccuracy, error, omission, unfitness for purpose, defect or inadequacy of any kind whatsoever in the Disclosed Data.

- (c) Prior to the Designer performing any of the Operations the Contractor will cause the Designer to provide the Province and BCTFA with an acknowledgement of the provisions of this Section 9 and a waiver of liability in respect of the Disclosed Data in a form satisfactory to the Province (acting reasonably).

10. CONCESSIONAIRE AS PARTY

The Concessionaire is a party to this Agreement for the purpose of giving its consent to and agreeing to be bound by the provisions hereof. The Concessionaire acknowledges and agrees that the Contractor will not be in breach of the Design-Build Contract or the Interface Agreement and the Guarantors will not be in breach of the Design-Build Contract Guarantee by reason of complying with its obligations hereunder. Any default by the Concessionaire in the performance of its obligations under this Agreement will constitute a default by the Concessionaire under and for all purposes of the Concession Agreement.

11. ASSIGNMENT

- (a) The Concessionaire will not, without the prior written consent of the Province and BCTFA, assign, transfer, charge, subcontract, subparticipate or otherwise dispose of any interest in this Agreement except to the extent it is entitled to do so under the Concession Agreement.
- (b) The Province and BCTFA may assign or otherwise dispose of the benefit of the whole or part of this Agreement in conjunction with a permitted assignment under the terms of the Concession Agreement and only to a permitted assignee thereunder, on written notice to the Concessionaire and the Contractor and otherwise will not, without the prior written consent of the Concessionaire or the Contractor not to be unreasonably withheld or delayed, assign or otherwise dispose of the benefit of the whole or part of this Agreement. Notwithstanding the foregoing, no consent of the Concessionaire or the Contractor will be required in the event of an assignment by the Province or BCTFA or other disposal of the benefit of the whole or part of this Agreement to any person referred to in subparagraphs 7(b)(viii), (ix), (x) and (xi).
- (c) Neither the Contractor nor the Guarantors or either of them will, without the prior written consent of the Province and BCTFA, assign, transfer, charge, subcontract, subparticipate or otherwise dispose of any interest in this Agreement.

12. NOTICES

Any notices required or permitted under this Agreement will be in writing and (a) delivered personally, (b) sent by a recognized express mail or courier service, with

delivery receipt requested, or (c) sent by confirmed facsimile transmission with telephonic confirmation, to the following addresses:

If to the Province or BCTFA: 5B – 940 Blanshard Street
Victoria, British Columbia V8W 9T5

Tel No.: 250-387-3260
Fax No.: 250-387-6431
Attn: Assistant Deputy Minister, Highways Department
Ministry of Transportation

If to the Contractor: **Trans-Park Highway Constructors**
Suite 240 – 3011 Viking Way
Richmond, British Columbia V6V 1W1

Tel No.: 604-244-7343
Fax No.: 604-244-7340
Attn: Robert French

If to the Guarantors: **Royal BAM Group N.V.**
Runnenburg 9
Postal code: 3981 AZ
City: Bunnik

Tel No.: +31(0)30 659 89 88
Fax No.: +31(0)30 659 89 43
Attn: Adrian J.D. Franklin

and: **Parsons Corporation**
100 West Walnut Street
Pasadena, California 91124

Tel No.: 626-440-2000
Fax No.: 626-440-2630
Attn: Curtis Bower

If to the Concessionaire: **Trans-Park Highway General Partnership**
675 Cochrane Drive, West Tower, Suite 630
Markham, Ontario L3R 0B8

Tel No.: 905-530-2114
Fax No.: 905-530-2214
Attn: John McArthur

- (a) Where any notice is provided or submitted to a Party via facsimile, an original of the notice sent via facsimile will also promptly be delivered personally or sent by a recognized express mail or courier service, with delivery receipt requested.
- (b) A Party may at any time and from time to time change its nominated address or facsimile number by prior notice to the other Parties, and such change will be effective on the day that next follows the recipient Parties' receipt of such notice.

- (c) Notices given by mail will be effective upon the earlier of (i) actual receipt, and (ii) 7 days after mailing if mailed within Canada, and 21 days after mailing if mailed outside of Canada. Notices delivered personally will be effective upon delivery. Notices given by facsimile will be deemed to have been received where there is confirmation of uninterrupted transmission by a transmission report and where there has been no telephonic communication by the recipient to the sender (to be confirmed in writing) that the facsimile has not been received in legible form:
- (i) within 3 hours after sending, if sent on a Working Day between the hours of 9 a.m. and 4 p.m.; or
 - (ii) by noon on the next following Working Day, if sent after 4 p.m. on a Working Day but before 9 a.m. on that next following Working Day.
- (d) If the Party giving the notice or communication knows or ought reasonably to know of difficulties or disruption with the postal system which might affect the delivery of mail:
- (i) any such notice will not be mailed but will be made or given by personal delivery or by facsimile transmission; and
 - (ii) where such difficulties or disruption arise after mailing but before the date of receipt as provided in this Section 12, the Party giving such notice will make or give such notice by personal delivery or by facsimile transmission.
- (e) To be effective, notices and all formal communications under this Agreement must be in writing and delivered as provided in this Section 12, and must be signed by an authorized representative of the Party giving the notice. E-mails will not be used for and will not constitute notices under this Agreement.
- (f) Oral communications will not constitute formal communication under this Agreement and no Party has any obligation to act on any oral communication, instruction or assurance unless and until it is confirmed in writing. Any action taken by a Party based on oral communications, instructions or assurances will be at that Party's sole risk and will be without liability to or recourse against the other Parties.

13. AMENDMENTS

No oral or written amendment or modification of this Agreement, either before or after execution and delivery of this Agreement, will be of any force or effect unless such amendment or modification is in writing and is signed by a duly authorized officer of each Party sought to be bound thereby.

14. WAIVER

- (a) No waiver of any rights under this Agreement will be binding or effective unless the waiver is in writing and signed by an authorized representative of the Party giving such waiver.

- (b) Any Party's waiver of any of its rights under this Agreement or of any breach or failure to enforce any of the terms, covenants, conditions or other provisions of this Agreement at any time will not in any way affect, limit, modify, or waive that Party's right thereafter to enforce or compel strict compliance with every term, covenant, condition and other provision hereof, any course of dealing or custom of the trade notwithstanding.

15. TIME IS OF THE ESSENCE

Time is of the essence of this Agreement and each provision herein.

16. INDEPENDENT CONTRACTOR

The Parties are independent contractors. This Agreement is not intended to and does not create or establish between the Parties any relationship as partners, joint venturers, employer and employee, master and servant or principal and agent. Neither the Concessionaire nor the Contractor nor any of its or their representatives are or will be deemed to be an employee or agent of the Province or BCTFA for any purpose.

17. ENTIRE AGREEMENT

Except where provided otherwise in this Agreement, this Agreement constitutes the entire agreement between the Parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings, whether oral, written, express or implied, concerning the subject matter of this Agreement.

18. SEVERABILITY

If any provision of this Agreement is declared invalid, unenforceable or illegal by the courts of any jurisdiction to which it is subject, such provision may be severed and such invalidity, unenforceability or illegality will not prejudice or affect the validity, enforceability and legality of the remaining provisions of this Agreement.

19. ENUREMENT

This Agreement will enure to the benefit of and be binding upon each of the Parties and their respective successors and permitted transferees and assigns.

20. DISPUTE RESOLUTION

Any dispute under this Agreement will be resolved in accordance with the Disputes Resolution Procedure.

21. GOVERNING LAW AND JURISDICTION

- (a) This Agreement will be governed by and construed in accordance with the laws of the Province of British Columbia and the laws of Canada applicable therein and will be treated in all respects as a contract in the Province of British Columbia, without regard to conflict of laws principles.

BC TRANSPORTATION FINANCING AUTHORITY

Per: _____
JOHN DYBLE
Chief Executive Officer

FLATIRON CONSTRUCTORS CANADA LTD.

Per: _____
Authorized Signatory

PARSONS OVERSEAS COMPANY OF CANADA LTD.

Per: _____
Authorized Signatory

ROYAL BAM GROUP N.V.

Per: _____
Authorized Signatory

PARSONS CORPORATION

Per: _____
Authorized Signatory

TRANS-PARK HIGHWAY GENERAL PARTNERSHIP

by its partners:

TRANS-PARK HIGHWAY INVESTMENT INC.

Per: _____
Authorized Signatory

TRANS-PARK HIGHWAY INC.

Per: _____
Authorized Signatory

SCHEDULE 22

COLLATERAL AGREEMENTS

Part 3

[NOT USED]

SCHEDULE 23**CONCESSIONAIRE PROPOSAL EXTRACTS**

This Schedule 23 consists of the Concessionaire's technical proposal (being "Package 4: Technical Submission") set forth in Appendix 1 to this Schedule 23 as the "Technical Proposal" and the technical clarifications set forth in Appendix 2 to this Schedule 23 as the "Technical Clarifications".

The Technical Proposal must be read in conjunction with and may be modified by the Technical Clarifications. In the event of a conflict, the terms of the Technical Clarifications shall apply.

Drawings referenced in this Schedule 23 are references to drawings set out in Part 5 of Schedule 5 [Construction Drawings]. The construction drawings set forth in Part 5 of Schedule 5 [Construction Drawings] are subject to changes as required pursuant to the terms of this Schedule 23, and for greater certainty, the Technical Clarifications herein.

Pursuant to Section 3.7 [Concessionaire Proposal Extracts] of this Agreement, the Concessionaire shall comply with the provisions set out in this Schedule 23. For greater certainty, to the extent that the provisions set out in this Schedule 23 can reasonably be interpreted as requiring additional items or services or higher standards of quality or performance or broader scope of work than otherwise required by any other provisions in this Agreement, the Concessionaire's obligations under this Agreement shall include compliance with all such requirements.

Appendix 1 to Schedule 23

Technical Proposal

Appendix 2 to Schedule 23**Technical Clarifications**

Clarification #	Subject
TPHG 4	References required for Michael Kelly
TPHG 5	CPR clearance requirements
TPHG 13	Geotech
TPHG 14	Geotech
TPHG 16	Timing
TPHG 17	Substantial Completion
TPHG 18	Design Settlement on the high fill
TPHG 22	Alkali aggregate reactivity
TPHG 23	Grade of structural steel
TPHG 24	Rip rap Protection
TPHG 34	Bridge Parapet
TPHG 35	Rest Area Decel Lane
TPHG 36	Brake Check Storage
TPHG 37	Glenogle Acceleration Lane
TPHG 38	Islands and Luminaires
TPHG 39	Timing
TPHG 40	Substantial Completion
TPHG 43	Baseline Rock
TPHG 44	Substantial Completion
TPHG 45	Brake Check Acceleration
TPHG 46	Engineered fill for Phase 3
TPHG 47	Prime Contractor
TPHG 48	CPR twin tracking
TPHG 49	Timing
TPHG 50	Back to Back spirals
TPHG 51	Brake Check Storage
TPHG 52	Prime Contractor

SCHEDULE 24**EMPLOYEE INFORMATION AND CHANGES TO WORKFORCE****1. EMPLOYEE INFORMATION**

- 1.1 When requested in writing by the Province to do so, the Concessionaire (subject to any relevant collective agreement and applicable Laws and Regulations including applicable Privacy Legislation) will provide Employee Information (defined below) to the Province within 14 days of such notice. The Concessionaire will take and will cause its 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 information may be provided to the Province and obtaining appropriate consents from employees to the release of such information to the Province.
- 1.2 Subject to any applicable Privacy Legislation, in circumstances where the Province is entitled to exercise its Step-In Rights under Section 43.1 of this Agreement or the Concessionaire exercises its rights under Section 45 [Assignment, Subcontracting and Change in Control], the Province may disclose Employee Information to any person (a "Prospective Bidder") who has been or is to be invited to submit a bid or proposal in relation to the provision of works or services of a similar type to any of those provided by the Concessionaire under this Agreement in connection with the Project Facilities, the Site and the Adjacent Areas or any part thereof, provided that, if requested in writing by the Concessionaire to do so, the Province will ensure that prior to such disclosure the 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:
- 1.2.1 is an employee or agent (including legal advisor) of the Prospective Bidder; and
 - 1.2.2 has undertaken in writing not to disclose that information unless required by law to do so.
- 1.3 Where Employee Information has been provided, the Concessionaire will:
- 1.3.1 inform the Province of any change to the information provided or provide any new Employee Information not previously provided;
 - 1.3.2 use reasonable efforts to clarify any matter upon which clarification is requested by the Province; and
 - 1.3.3 use reasonable efforts to co-operate with any other reasonable request made by the Province concerning the Employee Information or other information concerning the Concessionaire's employees or the employees of its contractors or subcontractors,
- within 14 days of any such change, discovery of new information or receipt of such request.

- 1.4 Subject to paragraph 1.2 above and unless required by law to do so, the Province will not disclose Employee Information (or any part of that information) to any other person.
- 1.5 For the purposes of this Schedule 24 [Employee Information and Changes to Workforce], "Employee Information" means written details of:
 - 1.5.1 the total number of employees employed by the Concessionaire or any of its contractors and subcontractors of any tier whose work (or any part of it) is work undertaken for the purposes of this Agreement;
 - 1.5.2 information relating to or connected with the employment of employees falling within the scope of paragraph 1.5.1 above, including details of:
 - 1.5.2.1 terms and conditions of employment including terms incorporated from any collective agreement;
 - 1.5.2.2 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;
 - 1.5.2.3 any other information that may be relevant to the calculation of Employee Termination Payments and/or Subcontractor Breakage Costs; and
 - 1.5.2.4 such other information as the Province may reasonably require in relation to the Concessionaire's employees or the employees of its contractors and subcontractors of any tier (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).

2. CHANGES TO WORKFORCE

- 2.1 At any time after either Party has given notice to terminate this Agreement, the Concessionaire will not (except only in the case of paragraph 2.1.2 below as may reasonably be necessary to enable the Concessionaire to meet its obligations under this Agreement) without the prior written consent of the Province (which consent may not be unreasonably withheld or delayed):
 - 2.1.1 materially amend or offer, promise or agree for the future materially to amend the terms and conditions of employment of any employee falling within the scope of paragraph 1.5.1 above;
 - 2.1.2 materially increase or make offers of employment so as materially to increase the number of employees whose work (or any part of it) is work undertaken for the purposes of this Agreement; or
 - 2.1.3 do or omit to do any other thing in relation to employees falling within the scope of paragraph 1.5.1 above which is likely to increase any Employee Termination Payments and/or Subcontractor Breakage Costs included in any Termination Sum payable by the Province in connection with the termination of this Agreement.