

SCHEDULE "13"

Gravel License

1. Definitions

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

- (a) **"BCBC Improvements"** means any Premises or Building Equipment existing on the Gravel Pits at any time during the Term;
- (b) **"Building Equipment"** means the same as in the Facilities License;
- (c) **"Contractor's Stockpiles"** means
 - (i) all stockpiles of Material processed by or for the Contractor 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 contractor or the Province and which have been sold or transferred to the use of the Contractor;
- (d) **"Gravel Fees Appendix"** means the fee provisions attached as Appendix "B" attached to this Gravel License;
- (e) **"Gravel Pits"** means those gravel pits described in Appendix "A" attached to this Gravel License;
- (f) **"Maintenance Agreement"** means the Road and Bridge Maintenance Agreement between the Contractor and the Province to which this Gravel License is attached as an Appendix, and the definitions for Anniversary Date, Commencement Date, Contract Month, Contract Year, Expiry Date, First Contract Year and Term set out therein also apply where those terms are used in this Gravel License.
- (g) **"Material"** means Pit-Run, winter abrasive (with or without salt), crush, sealcoat and any other aggregate used for maintenance of highways which may be processed from Pit-Run and includes any by-products resulting from the processing of Pit-Run;
- (h) **"Pit-Run"** means pit-run granular aggregate;
- (i) **"Premises"** means the same as in the Facilities License; and
- (j) **"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 Contractor 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*.

2. Limits on License

2.1 In this Gravel License, unless the context otherwise requires:

2.2 The Contractor acknowledges and agrees that this Gravel License does not grant to the Contractor any proprietary or property rights or interests in any of the Gravel Pits or in any of the Material at the Gravel Pits.

2.3 This Gravel License is subject to all Subsisting Rights.

2.4 The Contractor acknowledges and agrees with the Province that:

- (a) any interference with the rights of the Contractor under this Gravel License 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 License and the Contractor 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 Contractor with any of the Subsisting Rights will be borne by the Contractor; and
- (c) the Contractor will not commence or maintain proceedings under section 65 of the *Land Act* in respect of any interference with rights of the Contractor under this Gravel License arising directly or indirectly out of the exercise or operation of any of the Subsisting Rights.

3. Contractor's Covenants

3.1 The Contractor will:

- (a)** only use Material removed from the Gravel Pits for the purpose of performing its obligations under the Maintenance Agreement;
- (b)** not remove Material from the Gravel Pits except from locations or stockpiles on the Gravel Pits approved by the Minister or from the Contractor's Stockpiles;
- (c)** clearly mark and segregate each of the Contractor's Stockpiles from other stockpiles in a manner satisfactory to the Minister;
- (d)** conduct its operations at the Gravel Pits in accordance with any applicable "pit development plan" as may be established by the Province from time to time;
- (e)** not place or maintain any improvements on any of the Gravel Pits without the prior written consent of the Minister;
- (f)** make and keep each of the Gravel Pits in a safe, clean and sanitary condition satisfactory to the Minister and, unless otherwise specified by notice in writing by the Minister to the Contractor, make and keep safe, clean and sanitary any improvements at the Gravel Pits;
- (g)** comply with any directives issued by the Minister in respect of environmental protection or preservation arising from the Contractor's occupation or use of the Gravel Pits;
- (h)** permit the authorized representatives of the Minister to enter any of the Gravel Pits at any time for any purpose;
- (i)** 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 unauthorized by the Minister;
- (j)** provide drainage control measures at the Gravel Pits as required by the Province;
- (k)** not interfere with the activities of any person authorized by the Minister to enter on and use any of the Gravel Pits under a prior or subsequent license granted by the Province;
- (l)** arrange, at the written request of the Minister and at the expense of the Contractor, for a quantity survey to be undertaken by a person reasonably qualified to do so in the opinion of the Minister to confirm the quantity of Material removed from the Gravel Pits or located in the Contractor's Stockpiles, or both;
- (m)** comply with any gravel management plan of the Province as may be made applicable to any or all of the Gravel Pits by notice in writing from the Minister to the Contractor from time to time;

- (n) permit persons authorized by the Province to enter on any of the Gravel Pits and remove Material except from the Contractor's Stockpiles;
- (o) 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 Contractor 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 Contractor unless such taxes are being contested in good faith by the Contractor and the Contractor may in law withhold payment of them and in such event the Contractor will pay all costs of contestation and will not in any way render any of the Gravel Pits subject to seizure;
- (p) observe, abide by and comply with all laws, bylaws, orders, directions, ordinances and regulations of any competent governmental authority in any way affecting the Gravel Pits, improvements on the Gravel Pits, or their use;
- (q) 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 License;
- (r) with respect to any Material from the Gravel Pits processed by or for the Contractor,
 - (i) not remove such Material from the Gravel Pits until the quantity survey report(s) in respect of such Material has been delivered to the Province in accordance with section 3 of the Gravel Fees Appendix, and
 - (ii) pay to the Province the Gravel Usage Fee in respect of such Material in accordance with section 1 (a) of the Gravel Fees Appendix, regardless of whether such Material is removed from the Gravel Pits or stockpiled at the Gravel Pits;
- (s) pay to the Province the Gravel Usage fee in respect of all Pit-Run removed from the Gravel Pits by or for the Contractor and used in unprocessed form for the purposes of the Maintenance Agreement in accordance with section 1 (b) of the Gravel Fees Appendix;
- (t) not remove Pit-Run from the Gravel Pits for processing outside the Gravel Pits without the prior approval of the Minister;
- (u) not remove processed Material from the Gravel Pits for storing or stockpiling outside the Gravel Pits without the prior approval of the Minister;
- (v) pay for the cost of the supply to, or use and consumption on, the Gravel Pits of electricity, gas, water and other utilities provided that the cost of such utilities is determined by separate metering;

- (w) unless otherwise directed by the Minister, at all times keep and maintain any improvements, save for any BCBC Improvements, 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; and
- (x) repair any improvements, save for any BCBC Improvements, on the Gravel Pits in accordance with directives as may be issued by the Province from time to time.

3.2 The Contractor will perform its obligations set out in Appendix "C" attached to this Gravel License.

4. **Province's Covenants**

4.1 The Province will:

- (a) advise the Contractor 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) within 30 days after the Commencement Date, provide the Contractor with a report (showing quantities and locations) of all stockpiles of Material at the Gravel Pits as of the Commencement Date;
- (c) within 30 days after each Anniversary Date and the Expiry Date, provide the Contractor with a report showing the quantity of Material removed during the immediately preceding Contract Year from each Gravel Pit by the Province or persons authorized by the Province (other than the Contractor); and
- (d) not, without the consent of the Contractor, remove or authorize other persons to remove Material from the Contractor's Stockpiles.

5. **Fees**

5.1 In consideration of the license granted by the Province to the Contractor in this Gravel License, the Contractor will pay fees to the Province in accordance with the Gravel Fees Appendix.

6. **Records and Reports**

6.1 The Contractor will maintain records of:

- (a) all Pit-Run removed from the Gravel Pits and used in unprocessed form for the purposes of the Maintenance Agreement; and
- (b) all Pit-Run from the Gravel Pits processed by the Contractor into other Material

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

6.2 The Contractor will:

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

6.3 The Contractor 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 Minister may reasonably require.

6.4 The Contractor will, no later than 10 days after the end of each Contract Month during the Term, deliver to the Province a detailed statement, in a form satisfactory to the Minister, showing for each Gravel Pit the quantity of Pit-Run removed from the Gravel Pit and used by the Contractor in unprocessed form during the previous Contract Month.

7. Termination

- 7.1** The Province may, in its sole discretion, delete any of the Gravel Pits from this Gravel License by giving to the Contractor at least 30 days written notice of the deletion and sections 7.2, 7.3 and 7.4 of this Gravel License will apply to any deleted Gravel Pit as if this Gravel License had been terminated or had expired in respect of that Gravel Pit as of the effective date of deletion.
- 7.2** On the expiration or termination of this Gravel License, the Contractor will
- (a)** cease occupation of the Gravel Pits; and
 - (b)** remove all buildings, machinery, plant equipment, apparatus and any other improvements or fixtures owned or leased by the Contractor located at the Gravel Pits.
- 7.3** Any buildings, machinery, plant equipment, apparatus and other improvements or fixtures owned or leased by the Contractor remaining at the Gravel Pits later than 30 days after expiration or termination of this Gravel License:
- (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 Contractor will pay to the Province, on demand, all costs of removal.
- 7.4** If, on the expiration or termination of this Gravel License, the Contractor has not made arrangements with the prior written approval of the Province to transfer the Contractor's rights in respect of Material in the Contractor's Stockpiles to the highway maintenance contractor retained by the Province to replace the Contractor, then the Province will:
- (a)** arrange for a quantity survey of all processed Material (excluding processing by-products) in the Contractor's Stockpiles to be undertaken by a person reasonably qualified to do so in the opinion of the Minister; and
 - (b)** make a payment to the Contractor of \$2 per cubic metre of such Material that is in the Contractor's Stockpiles and that is in accordance with the Province's specifications, based on the quantity survey undertaken pursuant to subsection 7.4(a).

8. Interpretation

- 8.1** Unless the context otherwise requires, any reference to "this Gravel License" means this schedule and all of the appendices attached to it.
- 8.2** The headings or captions in this Gravel License are inserted for convenience only and do not form a part of this Gravel License and in no way define, limit, alter or enlarge the scope or meaning of any provision of this Gravel License.
- 8.3** Each appendix attached to this Gravel License is an integral part of this Gravel License as if set out at length in the body of this Gravel License.

EXHIBIT "A"
(TO APPENDIX "A" Gravel License)

APPENDIX "B" (TO GRAVEL LICENSE)**Gravel Fees Appendix****Gravel Usage Fees**

1. The Contractor 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 stockpiled at or removed from the Gravel Pits, in accordance with the following provisions:
 - (a) In the case of any Pit-Run processed by or for the Contractor at a Gravel Pit from Material from the Gravel Pit during a particular Contract Month, such fees will be paid by set off against any sums due and owing by the Province to the Contractor under the Maintenance Agreement after the delivery of the quantity survey report for such Material in accordance with section 3 of this Appendix.
 - (b) In the case of any Pit-Run removed by or for the Contractor from Gravel Pits and used in unprocessed form for the purposes of the Maintenance Agreement during a particular Contract Month, such fees will be paid by set off against any sums due and owing by the Province to the Contractor under the Maintenance Agreement after the delivery of the detailed statement(s) for said Contract Month in accordance with section 6.4 of the Gravel License.
2. The Gravel Usage fee, subsequent to the First Contract Year will be adjusted annually by the Province, in its sole discretion and on written notice of adjustment to the Contractor.

Quantity Surveys

3. Within 15 days of the completion of any processing by or for the Contractor at a Gravel Pit of Pit-Run from Material from the Gravel Pit, the Contractor will deliver to the Province a quantity survey report produced by a person reasonably qualified to do so in the opinion of the Minister certifying the quantity of Pit-Run produced by such processing, which report will form the basis for calculating the fees payable under section 1(a) of this Appendix.

Fees Exclusive of Taxes

4. All fees required to be paid by the Contractor to the Province under this Gravel License are exclusive of applicable taxes.

APPENDIX "C" (TO GRAVEL LICENSE)**Obligations under *Mines Act***

In this Appendix:

1.
 - (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 Contractor 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 Contractor 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 Contractor or to the Province by virtue of any activities or operations of the Contractor 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; and
 - (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.