

MAINTENANCE AGREEMENT

SERVICE AREA NO. <>

THIS AGREEMENT dated for reference the <> **day of** <>, **200<>**.

BETWEEN:

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

AND:

<>, a body corporate, incorporated under the laws of the Province of British Columbia under Certificate of Incorporation No. <> and having its registered office at <>, <>, **British Columbia**, <> (the "Contractor")

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AND:

<>, a body corporate, incorporated under the laws of the Province of British Columbia under Certificate of Incorporation No. <> and having its registered office at <>, <>, **British Columbia**, <> (the "Contractor")

WHEREAS:

- A. The Province has agreed to appoint and retain the Contractor to provide certain highways maintenance services; and
- B. The Contractor has agreed to provide such services for the Province on the terms of this Agreement.

NOW THEREFORE in consideration of the premises and the covenants, agreements, representations, warranties and payments hereinafter contained the parties agree as follows:

1. DEFINITIONS

1.1 In this Agreement, unless the context otherwise requires:

- (a) **"Act"** means the *Transportation Act*, S.B.C. 2004, c. 44;
- (b) **"Additional Maintenance Services"** means the labour, materials and equipment provided by the Contractor on the written direction of the Minister for the purpose of maintaining Highways in excess of the level of services required for Maintenance Services and in excess of the Emergency and Additional Maintenance Cap specified in the Maintenance Specifications;
- (c) **"Adjusted Annual Price"** means the sum payable by the Province to the Contractor, inclusive of all applicable taxes, duties and other charges, in consideration for the provision of Maintenance Services during a Contract Year subsequent to the First Contract Year, as calculated in accordance with the

Annual Adjustment Process, and as that sum may be adjusted during that Contract Year in accordance with Articles 6 or 7;

- (d) **"Agreement"** means this agreement;
- (e) **"Anniversary Date"** means in the first year of the Term the date which is one year after the Commencement Date and thereafter, in each successive year of the Term, the date which is one year after the previous Anniversary Date;
- (f) **"Annual Adjustment Process"** means the annual adjustment process described in Schedule 2;
- (g) **"Annual Price"** means the Base Annual Price or the Adjusted Annual Price, as the case may be, applicable to a particular Contract Year;
- (h) **"Appropriation"** has the same meaning as given it under section 1 of the FAA;
- (i) **"Automated Weather Stations"** means the same as in Schedule 20 entitled "Automated Weather Stations Schedule";
- (j) **"Base Annual Price"** means the sum of \$<>.<> payable by the Province to the Contractor, inclusive of all applicable taxes, duties and other charges, in consideration for the provision of Maintenance Services during the First Contract Year, as that sum may be adjusted during that Contract Year in accordance with Articles 6 or 7;
- (k) **"BCBC"** means the British Columbia Buildings Corporation;
- (l) **"BCBC Triple Net Lease"** means any real property license of occupation relating to the Service Area entered into between the Contractor and BCBC concurrent with this Agreement and dated the same day as this Agreement, as extended or amended from time to time;
- (m) **"Bonds"** means the performance bond and labour and material payment bond in the format and containing the terms specified in Schedule 1 with the "Bond Amount" in each such Bond being equal to at least \$2,000,000.00, and includes any additional or replacement bond and any agreement extending or amending any bond as set out in Article 10 and in Schedule 1;
- (m.1) **"CAP Assessment Period"** means a Contractor Assessment Program Assessment Period, namely, each six-month period running from April 1 to September 30 and from October 1 to March 31;
- (n) **"Claim"** means any demand, commencement of legal proceedings, settlement discussions or alternative dispute resolution mechanisms and any termination, suspension, abandonment, discontinuance, appeal or review thereof;

- (o) **"Commencement Date"** means <>, 2006;
- (p) **"Commercial Vehicles Permit Agreement"** means the agreement described in Schedule 15 which will be entered into by the Contractor and the Province effective on the Commencement Date;
- (q) **"Contract Month"** means a period during the Term commencing on and including the <> day of a calendar month and ending on but excluding the same day of the next succeeding calendar month;
- (r) **"Contract Year"** means a period during the Term which commences on and includes
 - (i) the Commencement Date and ends on but excludes the first Anniversary Date,
 - (ii) each succeeding Anniversary Date and ends on but excludes the next following Anniversary Date, or
 - (iii) the ninth Anniversary Date and ends on and includes the Expiry Date;
- (s) **"Contractor"** means <>;
- (t) **"Contractor Assessment Program"** means a discretionary program whereby the Minister rates the Contractor's performance under this Agreement;
- (u) **"Contractor's Expenses"** means for the purpose of sections 9.9 and 9.10, amounts, based on the fees set out in Part 2 of the Fee Schedule, payable to the Contractor under this Agreement for repairs or restorations made by or on behalf of the Contractor, with respect to damage to Government Property, caused by persons other than the Contractor or the Controlled Persons;
- (u.1) **"Contractor's Non-Conformance Status Reports"** means the summary reports on the status of the Non-Conformance Reports issued by the Contractor to be prepared and delivered by the Contractor to the Minister as part of the reporting requirements under the Quality Management System;
- (v) **"Controlled Persons"** means the Contractor's subcontractors, servants, employees, agents, management, shareholders, directors and suppliers;
- (w) **"Cost Impact"** means for the purposes of section 7.3, the direct dollar cost change (positive or negative) in material, equipment and labour costs, reasonably required by the Contractor for the provision of Maintenance Services arising directly or indirectly as a result of a notice delivered under section 7.2;
- (x) **"Cost Schedule"** means

- (i) in respect of a change to Highways made during the First Contract Year, as a result of a notice delivered under section 6.1, Schedule 10, and
 - (ii) in respect of any such change made during a subsequent Contract Year, the cost schedule produced by the Minister for that Contract Year using the same format as Schedule 10 and delivered to the Contractor pursuant to section 8 of Schedule 2;
- (y) **"Daily Cost"** means, in respect of a particular Contract Year, the Annual Price for that Contract Year divided by the total number of days in that Contract Year (representing the per diem costs to the Province of the Contractor providing the Maintenance Services during that Contract Year);
- (z) **"Direct Cost Fee Component"** means, for the purpose of Article 7 and in respect of a particular Contract Year, 80% of the Annual Price for that Contract Year (representing an estimated allowance for the direct costs of material, equipment and labour for the provision of Maintenance Services during that Contract Year);
- (aa) **"Direct Plus Rates"** means the rates described in Schedule 19, as that Schedule, or any part thereof as, may be modified or replaced from time to time by the Province, in the sole discretion of the Province, and on written notice to the Contractor;
- (bb) **"Dispute Resolution Protocol"** means the dispute resolution protocol attached as Schedule "14";
- (cc) **"Emergency"** means any of the occurrences described in the Maintenance Specifications for "Flood Control and Washout Response", "Mud, Earth and Rock Slide Response" and "Structural Damage Response", that may entitle the Contractor to receive payment for work performed by the Contractor in excess of the level of services required for Maintenance Services;
- (dd) **"Emergency and Additional Maintenance Caps"** means the maximum specified cost amounts set out in the Maintenance Specifications, which are included within Maintenance Services and are to be incurred by the Contractor in providing Maintenance Services
- (i) in respect of any applicable specified Emergency, and
 - (ii) in respect of certain applicable works described in the Maintenance Specifications,
- and **"Emergency and Additional Maintenance Cap"** means any one of such maximum specified cost amounts;
- (ee) **"Emergency Services"** means the provision of all labour, materials and equipment for the purpose of maintaining the Highways in an Emergency beyond

the applicable Emergency and Additional Maintenance Cap specified in the Maintenance Specifications for each applicable Emergency;

- (ff) **"Equipment"** means the maintenance equipment used in providing the Services by the Contractor;
- (gg) **"Equipment Fleet Operations Policy"** means the policy which establishes the Province's standards for the operation of the Contractor's equipment fleets as described in Schedule 12;
- (hh) **"Event of Default"** means any event described in section 18.1;
- (ii) **"Expiry Date"** means <>, 20<>;
- (jj) **"FAA"** means the *Financial Administration Act*, R.S.B.C. 1996, c.138;
- (kk) **"Fee Schedule"** means the schedule of fees for the provision of Services attached as Schedule 3, as may be revised in accordance with section 8 of Schedule 2;
- (ll) **"First Contract Year"** means the Contract Year described in paragraph 1.1(r)(i);
- (mm) **"Force Majeure"** means
 - (i) acts of God, wars (declared or undeclared), revolutions, riots, insurrections, lockouts, or strikes, provided that any such event is a major disabling event or circumstance in relation to the normal operations of the party directly affected as a whole, which is beyond the reasonable control of that party and results in a material delay, interruption or failure by that party in carrying out its duties, covenants or obligations under this Agreement, provided always that lack of money, financing or credit to resolve such contingencies will not be deemed an event of Force Majeure; and
 - (ii) for the purposes of section 20.3, the failure by the Contractor to obtain or maintain in force comprehensive general liability insurance as described in Article 9, provided that:
 - (A) the Contractor has used its best efforts to obtain the insurance;
 - (B) the Contractor's failure to retain the insurance, that is in place, is not due to the Contractor's breach of the terms of an existing insurance contract placed in compliance with Article 9;
 - (C) the Contractor's failure to obtain the insurance does not occur as a result of the Contractor's lack of money, financing or credit or

due to the Contractor's performance record under this Agreement;
and

(D) the Province and the Contractor have not resolved the issue of the Contractor's failure to obtain insurance in a manner that is acceptable to both of them.

- (nn) **"Government Property"** means Highways and all structures and other property appurtenant thereto owned or administered by the Province, including all signs, guardrails, pavement, roadbeds, shoulders, culverts, tunnels, bridges, fences and posts, which the Contractor is obligated to replace, repair or maintain under this Agreement;
- (oo) **"Gravel License"** means the license described in Schedule 13 to enter on and occupy the Gravel Pits in order to process, store and remove "Material", as defined in the Gravel License, for the purposes of this Agreement;
- (pp) **"Gravel Pits"** means the same as it is defined in the Gravel License;
- (qq) **"Highways"** means all highways, as defined in the Act, under the administration of the Minister or highways that are by arrangement maintained by the Province and includes
- (i) all ancillary works, excavations, embankments and improvements reasonably related to the operation of the highways;
 - (ii) all licenses, properties, rights of way and easements ancillary to highways existing as of the date of this Agreement as determined by reference to the records of the Province;
 - (iii) any highways added, deleted or changed in classification in accordance with Article 6;
 - (iv) any highways described in Schedule 11; and
 - (v) any highways that are vested in any Municipality (as that term is defined in the *Local Government Act*. R.S.B.C. 1996 c.323), at the discretion of the Minister and on written notice from the Minister to the Contractor;
- (rr) **"Hired Equipment Policy"** means the hired equipment policy of the Province as approved by the Minister from time to time and so entitled;
- (ss) **"Insurer Premium Quote(s)"** means the premium quote or quotes obtained by the Contractor to provide the comprehensive general liability insurance required by Article 9 and Schedule 18 of the Agreement for the first year of the Term of the Agreement, in the amount of \$<>.<>;

- (ss.1) **"Local Area Specifications"** means the specifications set out in and otherwise described as such in Schedule 22;
- (tt) **"Maintenance Services"** means the provision of all labour, materials and equipment for the purpose of providing the maintenance services described as such in the Maintenance Specifications as described in Schedule 21, as those maintenance services may be changed from time to time in accordance with Article 7 and includes Quantified Maintenance Services and Routine Maintenance Services;
- (uu) **"Maintenance Specifications"** means those specifications in Schedule 21 and as described in the manual of the Ministry of Transportation dated February, 2003 entitled "2003/2004 Highway Maintenance Contracts-Maintenance Specifications", any subsequent amendments including but not limited to the October 30, 2003 amendments to same and the Local Area Specifications, as such specifications, Schedules and manual may be amended by the Province from time to time by written notice to the Contractor;
- (vv) **"Minister"** means the member of the Executive Council of the Province who is charged with the administration of the 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 this Agreement;
- (ww) **"Non-Conformance Reports"** means those reports issued in writing by either the Minister or the Contractor which document the Contractor's failure to comply with the Contractor's covenants in this Agreement;
- (xx) **"OHS Regulation"** means the British Columbia Regulation 296/97 entitled "*Occupational Health and Safety Regulation*";
- (yy) **"Prime Contractor"** means the "prime contractor" as defined in the *Workers Compensation Act*;
- (zz) **"Provider License"** means the license to use the Provider System described in Schedule 7;
- (aaa) **"Provider System"** means the provider system described in Schedule 7;
- (bbb) **"Province"** means Her Majesty the Queen in right of the Province of British Columbia, represented by the Minister of Transportation;
- (ccc) **"Provincial Material"** means all materials, equipment, components, supplies and personal property of any nature or kind including, without limitation, the RWIS Material, that are provided by or on behalf of the Province or the Minister to the Contractor prior to or during the Term;

- (ddd) **"QMS Price"** means the sum of \$100,000 in the first Contract Year and the sum of \$25,000 in each Contract Year after the first Contract Year;<>
- (eee) **(intentionally left blank)**
- (fff) **"Quality Management System"** means the quality management system developed by the Contractor or the Minister, and as amended from time to time by the Minister in the Minister's sole discretion by notice to the Contractor;
- (ggg) **"Quantified Maintenance Services"** means those quantified maintenance services described as such in the Maintenance Specifications and classified by work activity in Schedule 5;
- (hhh) **"Quantified Work Plan"** means an annual plan that apportions on a monthly basis the work described as quantified maintenance in the Maintenance Specifications;
- (iii) **"Recovered Amount"** means an amount recovered by the Minister in respect of a Claim relating to damage to Government Property as referred to in Article 9.10;
- (jjj) **"Revised Daily Cost"** means, in respect of a particular Contract Year, the revised daily cost to the Province of the Contractor providing the Maintenance Services during that Contract Year as calculated from time to time by the Minister pursuant to subsection 6.4 (b);
- (kkk) **"Routine Maintenance Services"** means those routine maintenance services described as such in the Maintenance Specifications;
- (III) **"RWIS Material"** means the same as in Schedule 20, entitled "Automated Weather Stations Schedule";
- (mmm) **"Safety Program"** means an occupational health and safety program described in the *Workers Compensation Act* and the *OHS Regulation*;
- (nnn) **"Services"** means the services to be provided by the Contractor to the Province as described in Article 5 and includes Maintenance Services, Additional Maintenance Services and Emergency Services;
- (ooo) **"Service Area"** means the area described in Schedule 8;
- (ppp) **"Stockpile License"** means the licence described in Schedule 23 to enter on and occupy the Stockpile Sites in order to store and remove "Material", as defined in the Stockpile License, for the purposes of this Agreement;
- (qqq) **"Stockpile Sites"** means the stockpile sites as defined in the Stockpile License;

- (rrr) **"Subcontracting Procedures"** means the subcontracting procedures set out in Schedule 17, as amended by the Minister from time to time by notice to the Contractor;
- (sss) **"Subcontractors"** means subcontractors at arms length to the Contractor, determined to the satisfaction of the Minister in the Minister's sole discretion, having a direct contract with the Contractor to provide labour or labour and equipment (other than hired equipment on an all found or bare rental basis) to perform Maintenance Services but does not include dependent contractors as defined in the *Labour Relations Code*, R.S.B.C. 1996, c.244 unless specifically approved by the Minister;
- (ttt) **"Surety Premium Quote(s)"** means the premium quote or quotes obtained by the Contractor to provide the bonds required by Article 10.1 and Schedule 1 of the Agreement for the first year of the term of the Agreement in the amount of \$<>;
- (uuu) **"Term"** means the term of this Agreement described in section 3.2;
- (vvv) **"Unit Price"** means those prices, inclusive of all applicable taxes, charges and duties, allocated to specific categories of work activities included within Quantified Maintenance Services and described in Schedule 5;
- (www) **"Workers Compensation Act"** means the *Workers Compensation Act*, R.S.B.C. 1996, c. 492;
- (xxx) **"Working Day"** means any day which is not a Saturday, a Sunday or a day on which Provincial government offices are closed in British Columbia; and
- (yyy) **"Yard Lease/Sublease"** means, where applicable, an Agreement to Lease or Sublease which imposes obligations and confers rights on the Contractor with respect to a yard/maintenance facility located in the Service Area as attached in Schedule 16.

2. REPRESENTATIONS AND WARRANTIES

2.1 The Contractor represents and warrants to the Province on the execution of this Agreement and at all times during the Term that:

- (a) it is a corporation duly organized and validly existing under the laws of British Columbia, under the *Business Corporations Act* (Canada) or under the laws of any other province or state in which case it is registered extra-provincially in British Columbia;
- (b) it is in good standing with respect to the filing of annual reports according to the records of the Office of the Registrar of Companies of British Columbia;
- (c) it has the power and capacity to enter into this Agreement and to observe, perform and comply with the terms of this Agreement;
- (d) all necessary proceedings have been taken and done to authorize the execution and delivery of this Agreement by the Contractor;
- (e) this Agreement has been legally and properly executed by the Contractor and is legally binding upon and enforceable against the Contractor in accordance with its terms;
- (f) this Agreement, the Commercial Vehicles Permit Agreement, the BCBC Triple Net Lease if applicable and the Yard Lease/Sublease, if applicable, have been duly authorized by all necessary corporate action of the Contractor and that they are valid, subsisting and legally binding upon and enforceable against the Contractor in accordance with their terms;
- (g) all information, statements, documents and reports furnished or submitted by the Contractor to the Province in connection with this Agreement, including the Quantified Work Plan, and any other agreement referred to in subsection 2.1 (f) are true and correct;
- (h) it has no knowledge of any fact that materially adversely affects or, so far as it can foresee, might materially adversely affect its properties, assets, condition (financial or otherwise), business or operations or its ability to fulfill its obligations under this Agreement;
- (i) the observance and performance of the terms and conditions of this Agreement, or any other agreement referred to in subsection 2.1 (f), will not constitute a breach by it of or a default by it under
 - (i) any statute, regulation or bylaw of Canada or of the Province of British Columbia applicable to or binding on it,
 - (ii) its constating documents, or

- (iii) any contract or agreement to which it is a party;
- (j) the authorized capital of the Contractor, if applicable, is as disclosed in Schedule 4;
- (k) the legal and beneficial ownership and effective control of all of the authorized, issued and outstanding voting shares of the Contractor, if applicable, is as disclosed in Schedule 4;
- (l) there are no agreements, options or rights of any kind held by any person with respect to any of the voting shares of the Contractor, if applicable, except as disclosed in Schedule 4;
- (m) the Contractor has good safekeeping, marketable title to and possession of all its assets, free and clear of all liens, charges or encumbrances except those disclosed in Schedule "4";
- (n) the Contractor is not a party to, or threatened with, any litigation and has no knowledge of any claims against it that would materially affect its undertaking or financial condition;
- (o) there are no liabilities of the Contractor, contingent or otherwise, that are not disclosed or reflected in Schedule 4 herein except those incurred in the ordinary course of its business:
- (p) if the Contractor is a partnership, then the identification of all of the partners of the partnership and their respective interests in the partnership are as disclosed in Schedule 4;
- (q) if the Contractor is a partnership and if any of the partners of the partnership are corporate entities, then

 - (i) Schedule 4 discloses the authorized capital of each corporate partner, the legal and beneficial ownership and effective control of the authorized, issued and outstanding voting shares of each corporate partner, and any agreements, options or rights of any kind held by any person with respect to any voting shares of each corporate partner, and
 - (ii) the representations and warranties required under the other paragraphs of Article 2.1 with respect to a Contractor which is a corporation are true for each corporate partner.
- (r) the Contractor has filed all tax, corporate information and other returns, required to be filed by the laws of British Columbia, Canada and any other jurisdiction where it is required to file such returns, and has complied with all workers compensation legislation and other similar legislation to which it may be subject and has paid all

taxes, fees and assessments calculated to be due by the Contractor under those laws as of the date of this Agreement;

- (s) the Contractor is not in breach of any statute, regulation or bylaw applicable to the Contractor or its operations;
 - (t) the Contractor holds all permits, licences, consents and authorities issued by any federal, provincial, regional or municipal government or an agency of any of them, that are necessary in connection with the operations of the Contractor;
 - (u) the making of this Agreement, and the performance of and compliance with the terms of this Agreement does not conflict with and will not result in a breach of, or constitute a default under, the memorandum or articles of the Contractor or the acceleration of any indebtedness under, any terms, provisions or conditions of, any indenture, mortgage, deed of trust, agreement, security agreement, license, franchise, certificate, consent, permit, authority or other instrument to which the Contractor is a party or is bound or any judgment, decree, order, rule or regulation of any court or administrative body by which the Contractor is bound or, to the knowledge of the Contractor, any statute, regulation or bylaw applicable to the Contractor;
 - (v) it has no knowledge of any untrue or incorrect representation or assurance, whether verbal or written, given by the Contractor, its directors or officers to the Province in connection with this Agreement;
 - (w) it has sufficient trained staff, facilities, materials, appropriate equipment and approved subcontractual agreements in place and available to enable it to fully perform the Services;
 - (x) it has independently reviewed all labour relations issues related to the performance of the Contractor's obligations under this Agreement; and
 - (y) it has received from the Province and reviewed the Maintenance Specifications including but not limited to the Local Area Specifications.
- 2.2** All representations, warranties, covenants and agreements made in this Agreement and all certificates and other documents delivered by, or on behalf of, the Contractor are material and will conclusively be deemed to have been relied upon by the Province, notwithstanding any prior or subsequent investigation by the Province.
- 2.3** All statements contained in any certificate or other document delivered by or on behalf of the Contractor to the Province under this Agreement or in connection with any of the transactions contemplated by this Agreement will be deemed to be representations and warranties of the Contractor under this Agreement.
- 2.4** The provisions of sections 2.1 and 2.2 will continue in full force and effect notwithstanding the fulfillment by the Contractor of any or all of its obligations under this Agreement or the

payment by the Province to the Contractor of any or all of the monies that the Province becomes liable to pay to the Contractor pursuant to this Agreement.

3. APPOINTMENT AND TERM

- 3.1** The Province retains the Contractor to provide the Services in accordance with the terms of this Agreement.
- 3.2** The Contractor will provide the Services during the term of this Agreement which term will, notwithstanding the date of execution and delivery of this Agreement, be deemed to commence on the Commencement Date and will end on the Expiry Date or such date of earlier termination as may be established in accordance with Article 18 or any other termination provisions of this Agreement.
- 3.3** The Province will be under no obligation to renew, extend or renegotiate the terms of this Agreement following its termination or expiration.
- 3.4** The Minister may, in the Minister's sole discretion, terminate this Agreement if the Contractor's Proposal, submitted in response to the Request for Proposal which was issued by the Province with respect to the solicitation of proposals for road and bridge maintenance in the Service Area, is rejected by the Minister for any reason.
- 3.5** The Province's obligations under this Agreement are subject to the following conditions precedent:
- (a)** the Contractor fulfilling all obligations which it is required to fulfill under the RFP prior to the Commencement Date despite the Contractor's execution of the Agreement;
 - (b)** the Contractor's fulfillment of its obligations included in Article 9.2 on or before the 30th day prior to the Commencement Date;
 - (c)** the Contractor providing written confirmation, on the 30th day prior to the Commencement Date, in a form satisfactory to the Minister, that all of the representations and warranties included in Article 2 are true and accurate as of the date of the confirmation;

The foregoing conditions shall be satisfied by the Contractor, on written notice to the Province, or waived by the Province, on written notice to the Contractor, to be received on the dates specified for performance, failing which this Agreement shall be terminated without prejudice to the rights and remedies of the Province under the Request for Proposal process, this Agreement, at law and in equity.

The foregoing conditions are included for the sole benefit of the Province and may be unilaterally waived by the Province at any time prior to the dates specified for satisfaction of the conditions.

4. LEGAL RELATIONSHIP INDEPENDENT CONTRACTOR

- 4.1** The Contractor is an independent contractor and not the servant, employee, partner or agent of the Province or the Minister.
- 4.2** The Contractor will not, in any manner whatsoever, commit or purport to commit the Province or the Minister to the payment of any money to any person.
- 4.3** The Minister may, from time to time, give such instructions to the Contractor as the Minister considers necessary in connection with provision of the Services, which instructions the Contractor will comply with, but the Contractor will not be subject to the control of the Minister with respect to the manner in which such instructions are carried out.
- 4.4** No partnership, joint venture or agency will be created or will be deemed to be created by this Agreement or any action of the parties under this Agreement.
- 4.5** The Contractor is the Prime Contractor in connection with the provision of the Services and this Agreement, and will, no later than 15 days after the Commencement Date, deliver written notice to the Province,
- (a)** of the name of the person appointed by the Contractor who will discharge the responsibilities of a “qualified coordinator” as described in the OHS Regulation and the *Workers Compensation Act*, for the Contractor; and
 - (b)** confirming that the Safety Program has been initiated and is readily available in accordance with the *Workers Compensation Act* and the *OHS Regulation*, in connection with this Agreement.
- 4.6** The Minister may, from time to time,
- (a)** on prior written notice to the Contractor, appoint a contractor other than the Contractor as the Prime Contractor in connection with works and activities that may be undertaken and performed at any location or locations in the Service Area, for a period of time, and such works and activities, location(s), and period(s) of time will be specified and defined by the Minister in the written notice; and
 - (b)** on conclusion of the works and activities referenced in subsection (a), deliver written notice to the Contractor of the conclusion of such works and activities and, upon receipt of such notice the Contractor will resume the responsibilities of the Prime Contractor in connection with the Services and the Agreement at the applicable location.

5. SERVICES

- 5.1** The Contractor will provide Maintenance Services to the Province, on or in respect of all Highways within the Service Area, in accordance with the terms and conditions of this Agreement.
- 5.2** The Minister may, in the Minister's sole discretion, instruct the Contractor to provide Emergency Services or Additional Maintenance Services, as the case may be, to the Province, and the Contractor will provide such services in accordance with the terms and conditions of this Agreement. The Minister's instructions shall be given in advance in writing or in the case of Emergency Services where necessary shall be confirmed in writing as soon as practicable.
- 5.3** The Contractor will deliver to the Province a Quantified Work Plan satisfactory to the Minister, as follows:
- (a)** by no later than 30 days after the Commencement Date, for the First Contract Year; and
 - (b)** each year thereafter on or before an Anniversary Date, for the Contract Year commencing on that Anniversary Date.
- 5.4** When the Quantified Work Plan is submitted by the Contractor to the Minister for approval, the Minister will, as soon as reasonably practicable, and in any event not later than 5 Working Days after receiving the proposed plan, advise the Contractor whether the plan is satisfactory to the Minister and, if not satisfactory, in what respects it is not satisfactory.
- 5.5** If the Contractor does not deliver the Quantified Work Plan by the applicable date as specified in section 5.3, the Minister may impose on the Contractor a Quantified Work Plan by delivering to the Contractor a copy of the Quantified Work Plan as prepared by the Minister.
- 5.6** The Minister may, in the Minister's sole discretion, and after consultation with the Contractor, re-allocate for a Contract Year, on a value for value basis any of the specific items within Quantified Maintenance Services on 30 days written notice to the Contractor, based on the Unit Prices set out in Schedule 5, as those Unit Prices may have been adjusted in accordance with the Annual Adjustment Process and any such re-allocations will terminate at the end of the current Contract Year.
- 5.7** If, as a result of one or more re-allocations by the Minister under section 5.6 during a Contract Year, the quantity of any particular item of Quantified Maintenance Services, to be performed during that Contract Year, changes by more than 20% from the quantities specified in Schedule 5, then:
- (a)** either party may, by written notice to the other party, request that a new Unit Price for the item subject to that change be determined by the parties;

- (b) upon a notice being given under subsection 5.7(a), the parties will enter into good faith negotiations to determine a new Unit Price for that item; and
- (c) any new Unit Price determined under this section will only be in effect from the date of the re-allocation which triggered the application of this section until the end of the Contract Year in which that re-allocation took place.

5.8 The Contractor will perform:

- (a) the Quantified Maintenance Services in accordance with this Agreement and the applicable Quantified Work Plan; and
- (b) the Routine Maintenance Services, Emergency Services and Additional Maintenance Services in accordance with this Agreement.

5.9 Decisions of the Minister under section 5.6 will be final and binding on the parties.

5.10 Any materials, equipment or improvements installed or deposited on the Highways by the Contractor during the Term as part of the Services will immediately become the sole property of the Province and the Contractor will, at the request of the Minister, assign or transfer to the Province any warranties available with respect to the same.

5.11 Unless otherwise directed by the Minister, any materials, equipment or improvements installed or deposited on the Highways which are:

- (a) de-installed or removed from the Highways by the Contractor during the Term in accordance with the Contractor's obligations under this Agreement;
- (b) damaged, deteriorated or otherwise not in compliance with the applicable manufacturers specifications or Maintenance Specifications such that they are no longer usable to perform the Services; and
- (c) reasonably determined by the Minister to have a value at the time of their de-installation or removal of less than \$5,000.,

will, upon their de-installation or removal, become the sole property of the Contractor.

5.12 If there are two or more parties who enter into this Agreement as joint Contractors, or if any additional party is added as an additional Contractor at any time during the Term, then all Contractors shall be obligated jointly and severally under this Agreement.

6. CHANGES TO HIGHWAYS WITHIN SERVICE AREA

6.1 The Province may, in its sole discretion, for any purpose whatsoever, including without limitation, in connection with the commencement, completion, suspension, or administration, of construction or improvement projects relating to one or more of the Highways or portions thereof:

- (a)** on one day's written notice to the Contractor, add a Highway within the Service Area which was created by the deposit of a plan under the *Land Title Act*, R.S.B.C. 1996, c. 250 or by any other means under the *Land Act*, R.S.B.C. 1996, c. 245; and
- (b)** on 30 days' written notice to the Contractor, make an addition or deletion to, or change the classification of, Highways within the Service Area other than as provided for under subsection 6.1(a),

and the Contractor will perform Maintenance Services, and any Additional Maintenance Services or Emergency Services as may be required pursuant to any written direction from the Minister for same, on these changed Highways.

6.2 Notwithstanding any other provision of this Agreement, the Contractor will not be entitled to any additional compensation in any form whatsoever, nor will the compensation payable hereunder be reduced, as a result of the changes referred to in a notice delivered under section 6.1, unless the cumulative net change in the Daily Cost for the then current Contract Year (determined in accordance with section 6.4 and the Cost Schedule) exceeds 2%, positive or negative, as calculated by the Minister in accordance with section 6.4, and in such case, the fees payable pursuant to subsection 12.1 (a) and that portion of the Annual Price attributable to the remainder of that Contract Year, will be adjusted by the change in Daily Cost determined by the Minister under section 6.4, from the effective date of the latest change made pursuant to section 6.1 to the end of that Contract Year.

6.3 If the fees payable to the Contractor under subsection 12.1 (a) for a particular Contract Year are adjusted pursuant to section 6.2, then:

- (a)** the Contractor will not be entitled to any additional compensation in any form whatsoever, nor will the compensation payable hereunder be reduced, as a result of the changes referred to in any further notice delivered under section 6.1 during that Contract Year unless the cumulative net change in the Revised Daily Cost for that Contract Year exceeds 2%, positive or negative, as determined by the Minister in accordance with section 6.4, and in each such case, the fees payable pursuant to subsection 12.1 (a) and that portion of the Annual Price attributable to the remainder of that Contract Year, will be adjusted by the change in the Revised Daily Cost determined by the Minister under section 6.4, from the effective date of the latest change made pursuant to section 6.1 to the end of that Contract Year; and

- (b) each adjustment in compensation under section 6.2 and subsection 6.3(a) during a Contract Year will result in a new Revised Daily Cost for that Contract Year, the quantities of Quantified Maintenance Services will be adjusted *pro rata* to reflect such additions, deletions or changes and the provisions of subsection 6.3(a) will apply to all subsequent changes made pursuant to section 6.1.

6.4 The Minister will:

- (a) on or before the effective date of each notice delivered under section 6.1, complete the calculations under Part I of the Cost Schedule;
- (b) on or before the effective date of a change in compensation under sections 6.2 or 6.3, calculate a Revised Daily Cost in accordance with Part 2 of the Cost Schedule; and
- (c) provide copies of the calculations to the Contractor forthwith.

6.5 The calculations of the Minister under section 6.4 will be final and binding on the parties.

6.6 If the Province gives a notice under section 6.1 which results in an increase or decrease in Maintenance Services which exceeds 3% with respect to any single notice given under Sections 6.1 (a) or (b) then the Minister will make and deliver the calculations as required in section 6.4, and if the Contractor or the Minister is of the view that the compensation adjustment will not properly recognize the Contractor's altered circumstances which arise from the change in Maintenance Services then:

- (a) either the Province or the Contractor may within 30 days of delivery of the calculations under section 6.4, advise the other party in writing of its disagreement, specifying its reasons; and
- (b) if the parties have not resolved, through consultation and negotiation, the disagreement disclosed under subsection 6.6(a), within 60 days of delivery of the notice under subsection 6.6(a), the unresolved issues may be referred by either party to arbitration pursuant to Article 19, and in determining that issue the arbitrator will take into consideration:
 - (i) the increase/decrease in Maintenance Services relative to the amount of Maintenance Services prior to the increase/decrease,
 - (ii) the practical effect of the change on the business operations of the Contractor, including direct cost changes (plus or minus) and the indirect costs of the significant change (plus or minus) in Maintenance Services arising as a result of a notice under section 6.1, without a corresponding reduction/increase in fixed and overhead costs,
 - (iii) whether, in the aggregate, the change in compensation, as calculated under Section 6.4, will result in a improvement or deterioration in the

Contractor's financial condition, and

(iv) the provisions of this Agreement.

- 6.7** The Contractor will be limited to the compensation adjustments, specified in Sections 6.2, 6.3 and 6.6 and, the Contractor will not have any other remedies either in contract under this Agreement or for claims for damages in tort with respect to any notices issued under section 6.1.

7. CHANGES TO MAINTENANCE SERVICES

7.1 In order to promote and enhance public safety and efficiency, the Contractor will:

- (a)** in consultation with the Province, continually review and re-evaluate the Maintenance Services and in conducting that review will take into account changing technology in the highways and bridge maintenance industry, changing economic and environmental conditions and changing public requirements;
- (b)** advise the Province if the Contractor considers that any part of the Maintenance Services should be changed in a material way, and submit the proposed change to the Province for its consideration; and
- (c)** reasonably co-operate with the Province in tests to accommodate new maintenance technology.

7.2 The Minister may, in the Minister's sole discretion, either as a result of reviews or proposals under section 7.1 or on the Minister's own initiative, change the Maintenance Services, including changes to the Maintenance Specifications, by delivery of written notice thereof to the Contractor specifying the change and the Contractor will forthwith perform the Maintenance Services, as so changed.

7.3 If a notice is delivered under section 7.2, then the Minister will concurrently:

- (a)** determine the number which is the total pro-rated amount of the Direct Cost Fee Component applicable from the effective date of the notice under section 7.2 to the end of the then current Contract Year;
- (b)** determine the number which is the total amount of the Cost Impact of the change
 - (i)** resulting from the notice under section 7.2, and
 - (ii)** resulting from any earlier notices under section 7.2 during that Contract Year which have not resulted in an adjustment of the Annual Price for that Contract Year,

from the effective date of the most recent notice under section 7.2 to the end of that Contract Year; and

- (c)** calculate the percentage change resulting from notices under section 7.2 by dividing the number under subsection 7.3 (b) (as numerator) by the number under subsection 7.3 (a) (as denominator) and expressing the result as a percentage and notify the Contractor of the results of such calculations.

When making a determination of the Cost Impact under paragraph 7.3(b), the Minister may, in the Minister's sole discretion, take into account costs and other information that the

Minister deems relevant, so as to include only the Contractor's increase/decrease in direct costs arising from the change in Maintenance Services and to exclude those of the Contractor's fixed and overhead costs which will not increase or decrease as a consequence of a change in Maintenance Services, with the intent being that after allowing for the percentage change under paragraph 7.3(c) the Contractor's financial condition will be neither better or worse, as a result of the change to the Maintenance Services.

- 7.4** The fees payable pursuant to Part I of the Fee Schedule and that portion of the Annual Price or Adjusted Annual Price attributable to the remainder of the then current Contract Year, as at the effective date of the most recent notice delivered under section 7.2, will be adjusted positively or negatively, as the case may be, by the full amount of the percentage change calculated under subsection 7.3 (c) effective from the effective date of the most recent notice delivered under section 7.2 to the end of that Contract Year.
- 7.5** If the Contractor disagrees with a determination of the Minister under sections 7.3 or 7.4, it may:
- (a)** within 30 days of delivery of the notice under subsection 7.3 (c), advise the Province in writing of its disagreement, specifying the reasons therefor; and
 - (b)** if the parties have not resolved the disagreement disclosed under subsection 7.5 (a) within 60 days of delivery of the notice under subsection 7.5 (a), the unresolved issues under sections 7.3 and 7.4 may be referred by either party to arbitration pursuant to Article 19 and in determining that issue the arbitrator will take into consideration,
 - (i)** service level changes relative to existing obligations;
 - (ii)** the practical effect of the change on the business operations of the Contractor, including direct cost increases and decreases and the indirect cost of a reduction in Maintenance Services without a corresponding reduction in fixed and overhead costs;
 - (iii)** whether, in the aggregate, the change in compensation, as calculated under Sections 7.3 and 7.4, will result in an improvement or deterioration in the Contractor's financial condition; and
 - (iv)** the provisions of this Agreement.
- 7.6** The Contractor will receive the Annual Price or Adjusted Annual Price, as amended by section 7.4, while the dispute resolution process under section 7.5 is in process and the Minister will make any further adjustments to the Annual Price or Adjusted Annual Price which may result from an arbitrators award under section 7.5 effective from the date of the notice delivered under section 7.2.
- 7.7** Any amendment made to the "Standard Specifications for Highway Construction", as defined in Maintenance Specifications, subsequent to the Commencement Date will, to the

extent the amendment impacts on the performance of the Maintenance Services, be considered to be a change to the Maintenance Services for the purposes of this Article 7.

- 7.8** Any revisions to the “Standard Specifications for Highway Construction”, defined in the Maintenance Specifications, will apply to the performance of Services under this Agreement, effective from the date of issue of the revision, unless the Minister issues a written exemption notice to the Contractor.
- 7.9** If there is a change made by the Minister to any item of Quantified Maintenance Services under section 7.2, then:
- (a)** within 30 days of such a change becoming effective, either party may, by written notice to the other party, request that a new Unit Price for the affected item of Quantified Maintenance Services be determined by the parties;
 - (b)** upon a notice being given under subsection 7.9(a), the parties will enter into good faith negotiations to determine a new Unit Price for that item; and
 - (c)** any new Unit Price determined under this section will remain in effect from the date of the notice which triggered the application of this section until the end of the Term, subject to any further adjustments to that Unit Price as may be made in accordance with this Agreement.

8. MATERIALS, LICENSES AND PERMIT

8.1 The Contractor will, as applicable, in respect of each item of Provincial Material:

- (a) receive, unload, store, reload and be responsible for the Provincial Material;
- (b) if requested by the Province,
 - (i) provide an accounting for and inventory of the Provincial Material satisfactory to the Minister, and
 - (ii) allow persons specified by the Minister access to the Provincial Material, for any purpose including without limitation, for the purposes of transporting the same; and
- (c) maintain and identify all inventories of Provincial Material separate from any other property,

all at no expense to the Province.

8.2 The Provincial Material will, at all times, remain the exclusive property of the Province and the Province may, in its sole discretion, as applicable, dispose of the same, or any part thereof, to the Contractor.

8.3 The Province grants to the Contractor a license to use the Provider System during the Term on the terms and conditions set out in the Provider License and the Contractor will observe and comply with these terms and conditions.

8.4 The Province grants to the Contractor a license to enter on and occupy the Gravel Pits during the Term for the purpose of processing, storing and removing "Material", as defined in the Gravel License, on the terms and conditions set out in the Gravel License and the Contractor will observe and comply with these terms and conditions.

8.5 The Province grants to the Contractor a license to enter on and occupy the Stockpile Sites during the Term for the purpose of storing and removing "Material" as defined in the Stockpile License, on the terms and conditions as set out in the Stockpile License and the Contractor will observe and comply with these terms and conditions.

9. INSURANCE, INDEMNITY AND REIMBURSEMENT FOR CONTRACTOR'S EXPENSES

9.1 The Contractor will obtain and maintain in force during the Term:

- (a)** comprehensive general liability insurance providing coverage of not less than \$10 million inclusive per occurrence for bodily injury, death and property damage and including loss of use of property, which may arise directly or indirectly out of the acts or omissions of the Contractor, or Subcontractors, including all persons, firms or corporations who perform any of the Services, or any of them, in any way relating to maintenance of Highways within the Service Area or the performance of Services otherwise under this Agreement with the Province added as an additional named insured in the manner specified in Schedule 18;
- (b)** automobile liability insurance in an amount not less than \$10 million and automobile physical damage insurance including collision and comprehensive coverage, covering all automobiles and vehicles owned, rented or leased by the Contractor, that are required by law to be licensed; and
- (c)** equipment insurance covering all equipment owned, rented or leased (with policy limits and conditions that may be applicable to any rental or lease agreements) by the Contractor and utilized in the performance of the Services by the Contractor, or Subcontractors, including all persons, firms or corporations who perform any of the Services, or any of them, against "all risks" of loss or damage

and the terms of the foregoing insurance coverage will meet the insurance requirements in Schedule 18 and will be placed with an insurer or insurers acceptable to the Minister.

9.2 Evidence satisfactory to the Minister that the insurance required under section 9.1 has been obtained must be submitted by the Contractor to the Minister not later than the 30th day prior to the Commencement Date and the Contractor will, upon the request of the Minister made at any time or times, submit to the Minister evidence, satisfactory to the Minister, that the insurance remains in force and effect.

9.3 The Contractor will ensure that the insurance described in section 9.1 may not be cancelled or materially changed in any way whatsoever without the insurer or insurers giving not less than 30 days prior written notice to the Province and if notice of cancellation or material change is given the Contractor's obligations under Section 9.1 will continue in effect.

9.4 The Contractor will provide 30 days' written notice to the Minister of any expiry, non-renewal, lapse, refusal to extend by the insurer, cancellation or any material change of the insurance policy or policies required by the Contractor pursuant to this Article.

9.5 The Contractor will, at the request of the Minister, in the Minister's sole discretion, secure insurance to replace the insurance coverage provided in compliance with Section 9.1 with new coverage terms or increased policy limits, as specified by the Minister.

- 9.6** The Minister may, in the Minister's sole discretion, review the insurance requirements stipulated by this Article and Schedule 18 and the Contractor will cooperate as required to implement any changes arising from this review.
- 9.7** The Contractor will indemnify and save harmless the Province and the Minister from and against all claims, liabilities, demands, losses, damages, costs and expenses, legal defence costs and expenses, fines, penalties, assessments and levies made against or incurred, suffered or sustained by the Province and the Minister or either of them at any time or times (whether before or after the expiration or sooner termination of this Agreement) where the same or any of them are based upon or arise out of or from anything done or omitted to be done by the Contractor and the Controlled Persons or any of them pursuant to this Agreement including, without limitation, any claim against the Province for failure to supervise or inspect the work which is performed by the Contractor pursuant to this Agreement which indemnity will survive the expiration or sooner termination of this Agreement.
- 9.8** The Contractor will be responsible for compliance with all conditions and regulations under the *Workers Compensation Act*, and for all assessments and levies which may be made thereunder.
- 9.9** Subject to section 9.10 the Province will reimburse the Contractor for any Contractor's Expenses if the Minister is satisfied that:
- (a)** the Contractor's Expenses have been solely and properly incurred for the purpose of repairing or restoring Government Property damaged by persons other than the Contractor or the Controlled Persons; and
 - (b)** all such repairs or restorations of Government Property damaged by persons other than the Contractor or the Controlled Persons have been repaired or restored in accordance with this Agreement.
- 9.10** Any reimbursement by the Province under section 9.9 is, unless the damage to Government Property has been caused by the Province, subject to the following terms and conditions:
- (a)** the reimbursement will apply only if the Minister has made a Claim respecting damage to Government Property in accordance with this Article and has received a Recovered Amount in respect of such Claim;
 - (b)** the Minister may deduct from the Recovered Amount all reasonable expenses incurred by the Minister in making such Claim;
 - (c)** the Minister may allocate the Recovered Amount as between the Province and the Contractor such that each shall be entitled to a portion of the Recovered Amount representing its proportionate share of expenses incurred to repair or restore the Government Property;

- (d) in no event will the Province be required to reimburse the Contractor for an amount in excess of the Recovered Amount less any expenses deducted by the Minister in making such Claim;
 - (e) the Contractor will not make or purport to make on its own behalf or on behalf of the Province any claims whatsoever for damage to Government Property or for any Contractor's Expenses except to the Province to obtain reimbursement under section 9.9;
 - (f) the Contractor will assign to the Province all of its rights to make a Claim with respect to damage to Government Property;
 - (g) the decision to make a Claim and all decisions respecting the conduct of a Claim will be within the Minister's sole discretion;
 - (h) if the Minister has made an election under Section 9.11, then the Contractor will not be entitled to any reimbursement under Section 9.9; and
 - (i) the provisions of section 9.9 and 9.10 survive the expiration or sooner termination of this Agreement.
- 9.11** Notwithstanding the restrictions on reimbursement by the Province included in Section 9.10, the Province, at the discretion of the Minister, may elect to treat the damage to Government Property as Emergency Services or Additional Maintenance Services with compensation to the Contractor pursuant to the terms of this Agreement which govern those services.
- 9.12** If the Province makes an election under section 9.11 then the payment due to the Contractor for Emergency or Additional Maintenance Services performed as a result of the election, will not exceed the Recovered Amount received or, expected to be received, by the Province with respect to the damages to Government Property.
- 9.13** The Contractor will co-operate with the Province and its counsel in any and all investigation, settlement and judicial determination of any claims made against the Province or the Contractor and any claims relating to damage to Government Property relating directly or indirectly to this Agreement and will cause the Controlled Persons to be similarly bound.

10. BONDS

- 10.1** The Contractor will obtain and maintain the Bonds in full force and effect during the Term, subject to the provisions of Article 10.3 – 10.6, in accordance with the format and terms specified in Schedule 1.
- 10.2** The Bonds will both be issued by one surety company, or one group of surety companies, which are created and existing under the laws of Canada and duly authorized to transact the business of suretyship in Canada and the Bonds will be delivered by the Contractor to the Province prior to or on execution of this Agreement.
- 10.3** The Contractor will, no later than the last Working Day of the 54th month of the Term, deliver to the Province or cause the surety company, that issued the Bonds, to deliver to the Province the unconditional written agreement of that surety company, duly executed on behalf of the surety company and the Contractor, to extend and maintain the Bonds in full force and effect and having the same penal amount, so as to secure the observance and performance by the Contractor of this Agreement for the Term.
- 10.4** If the Contractor does not deliver the agreement required under Section 10.3, then the Contractor will deliver to the Province, no later than 60 days after the last Working Day of the 54th month of the Term, bonds issued by an alternate surety company, which have the same penal amount and terms and conditions as the Bonds and which secure the observance and performance of the Contractor under this Agreement commencing on the fifth Anniversary Date and for the remainder of the Term.
- 10.5** For the purpose of calculating the 54th month of the Term under section 10.3 and 10.4, the month that includes the Commencement Date shall be the first month of the Term.
- 10.6** In order to satisfy the requirements of section 10.4 the alternate surety company must be acceptable to the Minister at the Minister's sole discretion.

11. CONTRACTOR'S COVENANTS

11.1 The Contractor will:

- (a) observe, abide by and comply with all laws, by-laws, orders, directions, rules and regulations of any competent government authority or branch or agency thereof directly or indirectly applicable to the Contractor, this Agreement, or the Services to be performed under this Agreement;
- (b) ensure that the representations and warranties set forth in Article 2 are true and correct at all times during the Term and provide evidence to that effect to the Province on the written request of the Minister;
- (c) maintain its corporate existence and carry on and conduct its business in a proper business-like manner in accordance with good business practice and keep or cause to be kept proper books of account in accordance with generally accepted accounting principles applied on a consistent basis;
- (d) within 15 days of the delivery of a written demand from the Province, provide the Province with such information and documents with respect to the affairs of the Contractor as the Province may reasonably request;
- (e) punctually pay as they become due all accounts, expenses, wages, salaries, taxes, levies, rates, fees, contributions and assessments required to be paid by it on any of its undertaking;
- (f) observe, perform and comply with each covenant and agreement on its part contained in this Agreement, and, if applicable, any BCBC Triple Net Lease, and any Yard Lease/Sublease;
- (g) provide and maintain all financial management and technical expertise necessary for the Contractor to carry out its obligations under this Agreement;
- (h) co-operate with the Province and any other contractors providing services to the Province in the Service Area and in areas adjacent to the Service Area;
- (i) at all times promptly respond to highways maintenance complaints from members of the public, regulatory agencies, police authorities and the Province;
- (j) perform the Services in a good workerlike manner, free of defects or deficiencies and to the satisfaction of the Minister;
- (k) continually train its staff in the safe operation of highways maintenance equipment and facilities to the satisfaction of the Minister;
- (l) provide and maintain at all times sufficient staff, facilities, materials, appropriate equipment and approved subcontract agreements in place and available to it as

required to fully perform the Services, and in no event will the level of resources deployed in the field and ready to respond be less than what is required to supply the Quantified Maintenance and Routine Maintenance Services and to comply with the Quality Maintenance System;

- (m) paint, identify and light the Equipment in accordance with the Equipment Fleet Operations Policy and such other policy directives of the Minister delivered to the Contractor from time to time;
- (n) observe and comply with all laws, by-laws, orders, directions, rules and regulations of any competent government authority or branch or agency thereof relating to the environment or to occupational health and safety, including the *Workers Compensation Act*, and the *OHS Regulation*, directly or indirectly applicable to the Contractor or this Agreement, including by ensuring that the provision of and performance of the Services, complies with all such laws, by-laws, orders, directions, rules and regulations;
- (o) notwithstanding any limitation in the OHS Regulation which would exempt the Contractor from the requirement to initiate and maintain an occupational health and safety program, initiate and at all times maintain the Safety Program in connection with the Services and this Agreement, and ensure that the Safety Program
 - (i) is designed to prevent injuries and occupational diseases within the contemplation of the *Workers Compensation Act* and the *OHS Regulation*;
 - (ii) provides for the establishment and maintenance of a system or process to ensure compliance with the *Workers Compensation Act* and the *OHS Regulation* in respect of the Services and this Agreement; and
 - (iii) satisfies the requirements of an occupational health and safety program under the *Workers Compensation Act* and the *OHS Regulation*;
- (p) discharge the responsibilities of the Prime Contractor under the *Workers Compensation Act* and the *OHS Regulation*, in connection with the Services and this Agreement;
- (q) upon receipt of the Minister's written notice under section 4.6, in good faith, cooperate with the contractor appointed the Prime Contractor for the location and the period of time described in the Minister's notice, including the coordination of health and safety activities;
- (r) perform, or cause Subcontractors to perform, where applicable, all Services in a manner which meets or exceeds the specifications and performance time frames included in the Maintenance Specifications;

- (s) perform all of the Contractor's obligations included in the Maintenance Specifications;
- (t) comply with all of the Contractor's obligations included in:
 - (i) the Commercial Vehicles Permit attached as Schedule 15;
 - (ii) the Subcontracting Procedures attached as Schedule 17; and
 - (iii) the Automated Weather Stations Schedule attached as Schedule 20

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Option No. 1

Change of Contractor/ Union Employees –

- (i) offer continued employment effective on the Commencement Date to those non-management, bargaining unit employees of the Contractor performing highways Maintenance Services within the Service Area immediately before the Commencement Date (including employees on leave or layoff immediately prior to the Commencement Date) on the same terms and conditions as applied immediately before the Commencement Date;
- (ii) enter into a collective agreement, with the union representing the non-management bargaining unit employees of the Contractor performing highways maintenance services within the Service Area immediately before the Commencement Date, on substantially the same terms and conditions as were in place upon expiry of the previous maintenance agreement;
- (iii) deliver to the Province prior to the Commencement Date written confirmation of the Contractor and the union that the collective agreement referred to in (u)(ii) has been executed;
- (iv) the Contractor is hereby notified that the requirement to offer continued employment to non-management bargaining unit employees and to enter into a collective agreement in accordance with subparagraph (ii) above will not apply to any new highway maintenance agreement after expiry of this Agreement;

Option No. 2

Change of Contractor/ Non-Union Employees –

offer continued employment effective on the Commencement Date to those non-management, non-supervisory employees of the contractor performing highways maintenance services within the Service Area immediately before the Commencement Date (including employees on leave immediately prior to the Commencement Date) on the same terms and conditions as applied immediately before the Commencement Date. The Contractor is hereby notified that this requirement will not apply to any new highway maintenance agreement after expiry of this Agreement;

Option No. 3

No Change of Contractor/ Union Employees –

continue to employ effective on the Commencement Date those non-management, bargaining unit employees of the Contractor performing highways maintenance services within the Service Area immediately before the Commencement Date (including employees on leave or layoff immediately prior to the Commencement Date) on the same terms and conditions, and pursuant to a collective bargaining agreement in substantially the same form, as applied immediately before the Commencement Date except those employees who cease during the Term to be employed by the Contractor in the ordinary course of business. The Contractor is hereby notified that this requirement will not apply to any new highway maintenance agreement after expiry of this Agreement;

Option No. 4

No Change of Contractor/ Non-Union Employees –

continue to employ effective on the Commencement Date those non-management, non-supervisory employees of the Contractor performing highways maintenance services within the Service Area immediately before the Commencement Date (including employees on leave immediately prior to the Commencement Date) on the same terms and conditions as applied immediately before the Commencement Date except those employees who cease during the Term to be employed by the Contractor in the ordinary course of business. The Contractor is hereby notified that this requirement will not apply to any new highway maintenance agreement after expiry of this Agreement;

- (v) ensure, throughout the Term, that the Contractor's bridge crew includes at least one bridge worker who is a Certified Journeyman Pile Driver Bridge Worker or equivalent trade qualification;
- (w) where prior to the Commencement Date there is one or more Yard Lease/Sublease(s) in effect within the Service Area between the Province and a contractor supplying road and bridge maintenance services to the Province, enter into a lease of each facility described in each such Yard Lease/Sublease, on the terms disclosed and as required in subparagraph 3(2) of each such Yard Lease/Sublease;
- (x) provide to the Minister all of the Contractor information specified in Schedule 4 with respect to a corporate Contractor, a Contractor that is a partnership and, with respect to each corporate partner of a Contractor that is a partnership, no later than 30 days prior to the Commencement Date; and
- (y) no later than 30 days prior to the Commencement Date, provide to the Minister an executed Privacy Protection Schedule in the format specified in Schedule 9.

12. ANNUAL PRICE AND FEES

12.1 In consideration of the Contractor:

- (a)** providing the Maintenance Services and performing all other obligations of the Contractor under this Agreement, except Emergency Services and Additional Maintenance Services, the Province will, subject to the terms of this Agreement including sections 18.2 and 20.1, pay to the Contractor the Annual Price corresponding to each Contract Year, less the amount of the QMS Price payable in that Contract Year, in the manner set out in Part I of the Fee Schedule;
- (b)** providing the Emergency Services, the Province will, subject to the terms of this Agreement, pay to the Contractor fees in the amounts and in the manner set out in Part 2 of the Fee Schedule;
- (c)** providing the Additional Maintenance Services, the Province will, subject to the terms of this Agreement, pay to the Contractor fees in the amounts and in the manner set out in Part 2 of the Fee Schedule; and
- (d)** developing and delivering the Quality Management System the Province will, subject to the terms of this Agreement, pay the QMS Price to the Contractor in accordance with section 17.7.

12.2 The sums described in section 12.1 constitute the maximum amounts payable to the Contractor for its performance of the Services and the Contractor will not be entitled to any additional compensation for its performance whether or not the work actually undertaken by the Contractor is described in this Agreement and without limiting the generality of the foregoing, the Contractor will not be entitled to any compensation in a Contract Year beyond the Annual Price for that Contract Year unless:

- (a)** the Annual Price is adjusted during that Contract Year in accordance with this Agreement; or
- (b)** the Contractor performs Emergency Services or Additional Maintenance Services during that Contract Year at the request of the Minister in accordance with this Agreement.

12.3 Notwithstanding any other provision of this Agreement, the payment of money by the Province to the Contractor under this Agreement is subject to:

- (a)** there being sufficient monies available in an Appropriation, as defined in the FAA, to enable the Province, in any fiscal year or part thereof when any payment of money by the Province to the Contractor falls due under this Agreement, to make that payment; and

- (b) Treasury Board, as defined in the FAA, not having controlled or limited, under the FAA, expenditure under any Appropriation referred to in subsection (a) of this section.
- 12.4** The Province certifies that the property and/or Services ordered and purchased under this Agreement are for the use of, and are being purchased by, the Province with crown funds and are therefore not subject to the Goods and Services Tax.
- 12.5** The Contractor irrevocably authorizes and directs the Province to pay, on behalf of the Contractor, to BCBC, out of the amounts payable from time to time by the Province to the Contractor pursuant to this Agreement, such amounts as BCBC may, from time to time, advise the Province in writing are payable by the Contractor pursuant to any BCBC Triple Net Lease.
- 12.6** All sums due and owing by the Contractor to the Province under this Agreement will be set off by the Province during the Term.
- 12.7** All payments made under this Agreement, net of sums set off as provided under sections 12.6 and 12.9, will be paid by electronic fund transfer to the appropriate party.
- 12.8** Concurrent with each setoff payment, the Province will deliver to the Contractor an accounting of the sums due and owing by the parties under the Agreement to the date of the payment.
- 12.9** Upon receipt by the Minister of a written notice of default in payment under the Yard Lease/Sublease from the party identified as the contractor in that Agreement, the Contractor irrevocably authorizes and directs the Province to pay, on behalf of the Contractor to the party identified as the contractor in the Yard Lease/Sublease Agreement, from the amounts payable from time to time by the Province to the Contractor pursuant to this Agreement, the payments due and owing by the Contractor under the Yard Lease/Sublease.
- 12.10** The Minister may, in the Minister's sole discretion, pay an amount not exceeding 2% of the Annual Price or the Adjusted Annual Price as the case may be, to the Contractor as compensation for the Contractor's rating under the Contractor Assessment Program, such payment or payments to be made at a time or times and in the manner determined by the Minister. Any Contractor who has received a notice of Event of Default within a CAP Assessment Period will not be eligible to receive compensation for that CAP Assessment Period under this section.

13. ASSIGNMENT, SUBCONTRACTING AND HIRED EQUIPMENT

- 13.1** The Contractor will not without the prior written consent of the Minister assign, either directly or indirectly, this Agreement or any right of the Contractor under this Agreement.
- 13.2** During each Contract Year, the Contractor will cause Maintenance Services which represent not less than <>.<>% of the Annual Price for that Contract Year to be performed by Subcontractors in accordance with the Subcontracting Procedures.
- 13.3** The Contractor will have complied with section 13.2 if the required dollar amounts described in that section have been paid to Subcontractors for Maintenance Services rendered during the appropriate periods.
- 13.4** The Contractor may subcontract any obligation of the Contractor under this Agreement to any person, except if the Minister has notified the Contractor that the Minister's written consent is to be obtained prior to any such subcontracting by the Contractor.
- 13.5** The appointment of subcontractors by the Contractor will not relieve the Contractor of its responsibility to perform and comply with all terms of this Agreement, or for the quality of work, materials and services provided by it.
- 13.6** The Contractor will at all times be held fully responsible to the Province for the acts and omissions of its subcontractors and persons employed by them and no subcontract entered into by the Contractor will impose any obligation or liability upon the Province to any such subcontractor or any of its employees.
- 13.7** The Contractor will cause every subcontractor to be bound by the terms of this Agreement so far as they apply to the Services to be performed by each subcontractor.
- 13.8** Nothing in this Agreement will create any contractual relationship between the Province and a subcontractor of the Contractor.
- 13.9** The Contractor will:
- (a)** during a Contract Year cause Maintenance Services which represent not less than <>.<>% of the Annual Price for that Contract Year to be performed utilizing hired equipment;
 - (b)** comply with the Hired Equipment Policy in retaining any and all hired equipment for the purposes of providing the Services; and
 - (c)** hire such equipment at not less than the rates established in the "Equipment Rental Rate Guide" so entitled and published by the B.C. Road Builders & Heavy Construction Association and authorized by the Province from time to time.

- 13.10** For the purposes of the Hired Equipment Policy, equipment owned, leased or otherwise controlled by the Contractor, will not be eligible for listing in the primary or secondary hired equipment lists of the Province.
- 13.11** The Contractor may, with the prior written consent of the Minister, re-allocate on a value-for-value basis for a Contract Year between:
- (a)** the minimum amount of Maintenance Services to be performed during that Contract Year by subcontractors as required by section 13.2; and
 - (b)** the minimum amount of Maintenance Services to be performed during that Contract Year utilizing hired equipment as required by subsection 13.9(a).
- 13.12** The Minister may, without the prior consent of the Contractor, assign in whole or in part, either directly or indirectly, this Agreement or any rights of the Minister under this Agreement.
- 13.13** The Contractor will use its best efforts to co-operate with the Province, and any other interested parties to effect a full or partial assignment of the Minister's rights and obligations under this agreement, and a reasonable transition in performance of the Services as a result of any assignment, expiration or termination of this Agreement and this obligation will survive such expiration, termination or assignment.

14. RECORDS AND REPORTS

14.1 The Contractor will:

- (a)** establish and maintain at a location within British Columbia accurate books of account and records (including supporting documents) to the satisfaction of the Minister;
- (b)** establish, maintain and comply with a work reporting system (including a computerized maintenance management system) satisfactory to the Minister;
- (c)** give written particulars of the location within British Columbia, referred to in subsection 14.1(a), to the Minister, not later than 30 days after the Commencement Date, or give written particulars of any new location within British Columbia within 30 days of any change of location; and
- (d)** permit the Province, its servants and agents, at any time or times during normal business hours, to copy or audit, or both, any or all of the books of account and records (including supporting documents) referred to in subsection 14.1(a).

14.2 The Contractor will upon the request, from time to time, of the Minister:

- (a)** fully inform the Minister in writing or through electronic transmission of data of work identified, scheduled and completed by the Contractor in connection with provision of the Services in a format and including work activity classifications as specified by the Minister;
- (b)** upon the written request from the Province, deliver to the Province copies of any or all records demonstrating the compliance of the Contractor with the laws, by-laws, orders, directions, rules and regulations referenced in section 11.1, including the *Workers Compensation Act*, and the OHS Regulation; and
- (c)** permit the Minister at all reasonable times to inspect, examine, review and copy any and all findings, data, specifications, drawings, working papers, reports, documents and material whether complete or otherwise that have been produced, received or acquired by, or provided by or on behalf of the Province or the Minister to the Contractor as a result of this Agreement.

14.3 All case files, materials, software, manuals and memoranda of any ministry of the Province related to the provision of the Services that are, from time to time, in the possession or control of the Contractor will at all times be the exclusive property of the Province. All aforesaid items will be immediately delivered by the Contractor to the Minister on the expiration or sooner termination of this Agreement and each aforesaid item will be immediately delivered by the Contractor to the Minister on the earlier of:

- (a)** the expiration or sooner termination of this Agreement; and

- (b) the completion by the Contractor of the provision of Services under this Agreement.

14.4 The Contractor will:

- (a) provide to the Minister as required by the Minister, from time to time, reports relating to the compliance of the Contractor with the laws, by-laws, orders, directions, rules and regulations referenced in section 11.1, including the *Workers Compensation Act* and the *OHS Regulation*;
- (b) provide to the Minister, no later than the 10th Working Day of each month for the prior month, monthly and Contract Year to date summaries, of Quantified Maintenance Services which include scheduled and performed Quantified Maintenance Services allocated among the work activity classifications included in Schedule 5 and identified as to work location (highway # and km. reference);
- (c) provide to the Minister, no later than the 30th Working Day of each Contract Year for the prior Contract Year, an annual summary of Routine Maintenance Services which includes all Routine Maintenance Services performed, allocated among the work activity classifications included within the Maintenance Specifications;
- (d) allow the Province full access to the work identification data base established in the Contractor's computerized maintenance management system;
- (e) provide to the Minister, no later than June 1st of each Calendar Year, or on such date(s) as may be specified by the Minister, a report on the use of sand, salt and salt substitutes, used in providing the Maintenance Services, which includes the information and meets the requirements specified by Environment Canada and the Province for environmental monitoring and reporting on the use of sand, salt and salt substitutes for a reporting period as specified by the Minister; and
- (f) provide to the Minister those reports and comply with the reporting requirements at such time(s) as specified by the Minister to be included in the Quality Management System including delivery of the Quality Work Plan, the Quantified Work Accomplishments Report and the Summary of the Contractor's Non-Conformance Reports, all in form and content as specified in the Contractor's Quality Management System;
- (g) provide to the Minister, at such time(s) and including such information as the Minister may specify including the following reports in accordance with the forms indicated below or any modified or replacement version of such forms as may be issued by the Minister from time to time:
 - (i) Chargeable Maintenance Costs (Form H00036);
 - (ii) Wildlife Accident Report (Form H0107);
 - (iii) Maintenance Contractor's Rock Fall Report (Form H207);
 - (iv) Traffic Accident Fatality Report

- (h) provide to the Minister:

 - (i) on or before the Commencement Date, written verification issued by the Contractor's surety company of the Surety Premium Quote;
 - (ii) on or before the fifth Anniversary Date, written verification issued by the Contractor's surety company, in respect of the extension of the Bonds contemplated in Section 10.3, or of the bonds contemplated in Section 10.4, as the case may be, of the amount payable as the premium at the fifth Anniversary Date, to obtain and maintain such extended, additional or replacement bonds;
- (i) provide to the Minister on or on any date before the Anniversary Date of each Contract Year, as specified by the Province, written verification, issued by the Contractor's insurer in respect of the comprehensive general liability insurance described in Article 9 (excluding any Sudden and Accidental pollution liability coverage), of the total amount payable, excluding any premium adjustments that may be made during the course of the Contract Year, as the annual premium at the renewal or replacement of such insurance, to maintain such renewed or replacement insurance in force on the commencement of that Contract Year; and
- (j) without limiting the generality of section 11.1(d), within the time period specified by the Province in any such written demand, provide the Province with information and documents, including without limitation, information demonstrating to the satisfaction of the Province that the Insurer Premium Quote(s) and any subsequent annual insurance premium amounts are true and correct or reflect or are commensurate with available reasonable market rates, and information and documents verified by statutory declaration of any director, officer, or employee of the Contractor or any representative of the Contractor's insurer or insurers, with respect to the Insurer Premium Quote(s) and any subsequent annual insurance premium amounts delivered pursuant to Section 14.4(i) and verifications thereof, including without limitation, with respect to any one or more of the following:

 - (i) the true and correct premium cost to provide, or paid for the comprehensive general liability insurance required by Article 9.1(a) and Schedule 18 of the Maintenance Agreement (excluding the premium for any sudden and accidental pollution liability portion of such coverage), for the current, previous or subsequent Contract Year;
 - (ii) the availability or otherwise of alternative market-based quotes that may be obtained, including on a competitive basis, for the annual premium at the renewal or replacement of such insurance, to maintain such renewed or replacement insurance in force; and
 - (iii) that, to the best of the deponent's knowledge and belief, the Insurer Premium Quote(s) or any subsequent annual insurance premium amounts

delivered pursuant to Section 14.4(i) are true and correct competitively established, market premium amounts.

- 14.5** Without limiting any rights, powers and remedies existing or available to the Province under this Agreement, any other agreement, at law or in equity, if the Province is not satisfied with any information and documentation delivered by, or on behalf of, the Contractor pursuant to section 14.4(j), the Province may, in its sole discretion, deliver notice in writing to the Contractor, requiring the Contractor to use its best efforts to obtain the requisite insurance from an alternative insurer or insurers, on a competitive basis, at more competitive rates, or at rates that more closely reflect or are commensurate with available reasonable market rates, and upon receipt of such request, the Contractor will use its best efforts to obtain such insurance on such basis and at such rates as set out above.

15. AUDIT

- 15.1** The Province may, in its sole discretion, conduct a financial and accounting audit of the Contractor, including the right to inspect and take copies of the books and records of the Contractor upon reasonable notice and at reasonable times.
- 15.2** The Contractor will fully co-operate with the Province in conducting an audit under section 15.1.
- 15.3** The Contractor will, upon the request of the Minister, provide to the Province a copy of the audited (or if unavailable, unaudited) financial statements of the Contractor.
- 15.4** The Contractor will prepare, such financial information, reports or statements relating to the Contractor's financial condition and accounting records as the Minister may request and will deliver the same to the Minister at such time(s) as the Minister may specify.

16. [INTENTIONALLY LEFT BLANK]

17. QUALITY MANAGEMENT SYSTEM

- 17.1** The Contractor's Quality Management System will comply with all the requirements of this Article 17.
- 17.2** The Contractor is required to have obtained the Minister's approval for the Quality Management System prior to the Commencement Date of this Agreement, and to maintain such approval throughout the Term. The Contractor will implement, maintain, revise and document the Quality Management System, all in a manner which is subject to the Minister's approval, throughout the Term.
- 17.3** A Contractor's Quality Management System which has been granted a conditional approval but not a full approval by the Minister prior to the Commencement Date, will be deemed to satisfy the Contractor's obligations under Section 17.2. Notwithstanding same, any such conditional approval shall expire on the date that the first monthly installment of the Annual Price is due.
- 17.4** The Contractor will incorporate the principles of quality management as detailed in ISO 9001:2000 "Quality Management Systems – Requirements", in the Quality Management System.
- 17.5** The Contractor will perform its obligations under this Agreement and deliver the Maintenance Services, and any Additional Maintenance Services and Emergency Services as may be required of the Contractor, in accordance with the Maintenance Specifications and in compliance with the processes and procedures set out in the Quality Management System.
- 17.6** The Contractor will design and implement the Quality Management System to provide documented evidence that the Maintenance Services, and any Additional Maintenance Services and Emergency Services as may be required of the Contractor, are being performed and delivered in accordance with the Maintenance Specifications and the terms of this Agreement and in compliance with the processes and procedures set out in the Quality Management System.
- 17.7** The Minister will pay:
- (a)** the QMS Price, payable in the First Contract Year, on the date of the first monthly instalment of the Annual Price, and payment is conditional on the issuance of the Minister's approval of the Contractor's Quality Management System, as of the due date for payment, with a conditional approval under section 17.3 not constituting an approval for the purposes of satisfying this requirement; and

- (b) the QMS Price, payable in each Contract Year after the First Contract Year, on the date of the first monthly instalment of the Adjusted Annual Price in that Contract Year conditional on the Contractor's compliance with Section 17.8.

17.8 The Contractor will:

- (a) deliver all Contractor's Non-Conformance Status Reports monthly no later than the 10th Working Day of the month following the reporting period;
- (b) remedy all Non-Conformance Reports within the deadlines stipulated in the Non-Conformance Report or in any audit report; and
- (c) fully co-operate in all of the Province's audit and monitoring procedures.

17.9 The Quality Management System must set out the Contractor's processes and procedures for providing documented evidence that the Maintenance Services, and any Additional Maintenance Services and Emergency Services as may be required of the Contractor are being performed and delivered in accordance with the Maintenance Specifications and the terms of this Agreement, and demonstrate and detail how the Contractor will satisfy the following requirements:

- (a) the requirements of Schedule 6, including the Service Delivery Requirements set out in Schedule 6;
- (b) the preparation and delivery of complete and comprehensive documentation and records;
- (c) the preparation, updating and delivery of a quality policy and the quality manual;
- (d) the identification of processes for management review of the Quality Management System including corrective and preventative actions for continual improvement and control of non-conformances;
- (e) all of the Contractor's contractual requirements under this Agreement;
- (f) the identification, planning and prioritizing of all of the work activities required to perform the Maintenance Services and correct deficiencies;
- (g) the control of the Contractor's purchases of materials and subcontracted services;
- (h) the documentation of the sequence and interaction of all the processes set out in the Quality Management System;
- (i) the identification of all resources and information necessary to meet the Contractor's contractual requirements under this Agreement;

- (j) service delivery;
 - (k) quality control and quality assurance; and
 - (l) the implementation and provision of continual improvement processes, including but not limited to internal audits which are to be conducted by the Contractor.
- 17.10** The Minister will conduct monitoring and quality audits, at times and in a manner determined by the Minister, in order to ensure compliance with the Quality Management System through an independent review of the Contractor's work activities and performance results and to verify the status of the processes, procedures, methods, documentation, records and conditions which are necessary for the Contractor's compliance with the Quality Management System.
- 17.11** The Minister will issue and deliver to the Contractor a Non-Conformance Report, when the Minister determines, through the results of the Minister's audit, the Contractor's internal audit or otherwise, that the Contractor is failing to comply with the requirements of the Quality Management System and such failure cannot be corrected immediately.
- 17.12** The Contractor will, upon receipt of a Non-Conformance Report remedy the non-conformance within the time specified in the Non-Conformance Report or any audit report and will confirm the rectification in writing to the Minister.
- 17.13** The Contractor acknowledges and agrees that nothing in the Quality Management System will in any way derogate from the Contractor's obligations under the Agreement, including the Maintenance Specifications, and that if there is any conflict between the Quality Management System, or any part thereof, and any term of the Agreement including the Maintenance Specifications, the terms of the Agreement will prevail.

18. DEFAULT AND REMEDIES

18.1 Any of the following events will constitute an event of default whether the event is voluntary, involuntary or results from the operation of law or any judgment or order of any court or administrative or government body:

- (a) the Contractor fails to observe, perform or comply with any provision of this Agreement, the Commercial Vehicles Permit Agreement, the BCBC Triple Net Lease, or the Yard Lease/Sublease on the part of the Contractor to be observed, performed or complied with;
- (b) any representation or warranty made by the Contractor in this Agreement is materially untrue or incorrect;
- (c) any information, statement, document, certificate or report furnished or submitted by or on behalf of the Contractor to the Province or the Minister pursuant to this Agreement, the BCBC Triple Net Lease or the Yard Lease/Sublease is materially untrue or incorrect;
- (d) the Contractor fails to deliver to the Province notice, that there has occurred or is continuing a default under this Agreement, the BCBC Triple Net Lease or the Yard Lease/Sublease and which specifies the particulars of the default;
- (e) there is any *bona fide* action or proceeding, pending or threatened against the Contractor, which would, in the reasonable opinion of the Minister, have a material adverse effect upon the ability of the Contractor to fulfill its obligations under this Agreement;
- (f) an order is made, a resolution is passed or a petition is filed, for the liquidation or winding up of the Contractor;
- (g) a change occurs with respect to any of the properties, assets, condition (financial or otherwise), business or operations of the Contractor which, in the reasonable opinion of the Minister, materially adversely affects the ability of the Contractor to fulfill any of its obligations under this Agreement;
- (h) the Contractor becomes insolvent, commits an act of bankruptcy, makes an assignment for the benefit of its creditors or otherwise acknowledges its insolvency;
- (i) a bankruptcy petition is filed or presented against, or a proposal under the *Bankruptcy and Insolvency Act* (Canada) is made by, the Contractor;
- (j) a compromise or arrangement is proposed in respect of the Contractor under the *Companies' Creditors Arrangement Act* (Canada);
- (k) a receiver or receiver-manager of any property of the Contractor is appointed;

- (l) the Contractor permits any sum, which is not disputed to be due by it, to remain unpaid after legal proceedings have been commenced to enforce payment thereof;
- (m) the Contractor ceases, in the reasonable opinion of the Minister, to carry on business as a going concern;
- (n) the BCBC Triple Net Lease or Yard Lease/Sublease is, without the prior written approval of the Minister, altered, amended or varied in any material respect or terminated;
- (o) the Contractor, without the prior written approval of the Minister, assigns, sells or in any manner disposes of or encumbers all or any of its interest in, or rights acquired under, this Agreement, the BCBC Triple Net Lease or Yard Lease/Sublease;
- (p) without the prior written consent of the Minister, the direct or indirect legal or beneficial ownership and effective control of the Contractor changes from that represented in subsection 2.1 (k);
- (q) any action is taken to enforce any security interest, charge or encumbrance granted, created or issued by the Contractor; or
- (r) the failure of the Contractor to comply with one of the requirements under sections 10.3 and 10.4.

18.2 On the happening of an Event of Default, or at any time thereafter, the Minister may deliver written notice to the Contractor specifying the Event of Default and the Province may, at its option, elect to do any one or more of the following:

- (a) pursue any remedy available to it at law or in equity;
- (b) retain as a holdback from any payment due to the Contractor under section 12.1(a)
 - (i) if the Event of Default is a failure to perform Quantified Maintenance Services in accordance with this Agreement, including the Quantified Work Plan, twice the value, as determined in accordance with the Unit Prices set out in Schedule 5 (as those Unit Prices may have been adjusted in accordance with this Agreement) of the Quantified Maintenance Services not performed, or
 - (ii) if the Event of Default is a failure to perform Routine Maintenance Services in accordance with this Agreement, an amount equal to twice the value of the Routine Maintenance Services not performed, such value to be determined by the Minister in the Minister's sole discretion;

- (c) take all actions in its own name or in the name of the Contractor that may reasonably be required to cure the Event of Default in which case all payments, costs and expenses incurred will be payable by the Contractor to the Province on demand and set off against any sums owing by the Province to the Contractor present or future, including any amount retained as a holdback under section 18.2 (b);
- (d) require the Contractor to cure the Event of Default within a time period specified by the Minister;
- (e) if an Event of Default with respect to which an amount has been retained as a holdback under section 18.2 (b)
 - (i) has been cured by the Contractor to the satisfaction of the Minister within a time period specified by the Minister, then the Province may pay the amount retained to the Contractor, or
 - (ii) is not curable or has not been cured by the Contractor to the satisfaction of the Minister, within a time period specified by the Minister, then the Province may keep the amount retained as a reduction of fees otherwise payable to the Contractor under Part I of the Fee Schedule and the Contractor and the Province agree that an amount equal to twice the value of the Quantified Maintenance Services or Routine Maintenance Services not supplied, determined according to subparagraph 18.(2(b)(i) or (ii), is an appropriate estimate of the losses and damages incurred by the Province arising from the Contractor's default, after taking into account, without limitation, the Province's increased administration costs, the costs of hiring an alternate Contractor to perform the Quantified Maintenance Services or Routine Maintenance Services, the delays in the performance of those Services and the costs associated with traffic closures or delays, if any, which resulted from the default;
- (f) waive the Event of Default;
- (g) terminate this Agreement, subject to the expiration of any time period specified by a notice delivered pursuant to subsection 18.2 (d); and
- (h) terminate this Agreement effective on the fifth Anniversary Date and pursue the remedy provided for in the Bonds, without the requirement for the Minister to provide any notice, if the event of Default is as described in paragraph 18.1(r).

18.3 The rights, powers and remedies conferred on the Province under this Agreement are not intended to be exclusive and each will be cumulative and in addition to and not in substitution for every other right, power and remedy existing or available to the Province under this Agreement, any other agreement, at law or in equity and the exercise by the

Province of any right, power or remedy will not preclude the simultaneous or later exercise by the Province of any other right, power or remedy.

- 18.4** No 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 act or failure to act will continue, will constitute a waiver by such party of its rights under this Agreement.
- 18.5** No interest will be payable by the Province on any amount retained as a holdback in accordance with subsection 18.2 (b).

19. DISPUTE RESOLUTION

- 19.1** Upon a dispute arising out of or in connection with any provision of this Agreement, the parties will consider in good faith whether to elect to follow the Dispute Resolution Protocol in attempting to resolve the dispute.
- 19.2** The parties will confirm in writing any election by them to follow the Dispute Resolution Protocol in respect of a particular dispute and upon any such election being made, unless otherwise agreed by the parties, the Dispute Resolution Protocol will be binding on them in respect of that dispute.
- 19.3** Nothing in this Article 19 obliges a party to elect to follow the Dispute Resolution Protocol in respect of a particular or any dispute.
- 19.4** Subject to sections 19.1 to 19.3, all disputes arising out of or in connection with subsection 7.5 (b) will be referred to and finally resolved by arbitration pursuant to the *Commercial Arbitration Act*, R.S.B.C. 1996, c.55.
- 19.5** The place of arbitration will be Victoria, British Columbia.

20. FORCE MAJEURE

20.1 If an event of Force Majeure occurs or is likely to occur,

- (a) the party directly affected will notify the other party immediately, and will use its best efforts to remove, curtail or contain the cause of the delay, interruption or failure and to resume with the least possible delay performance of its duties, covenants and obligations under this Agreement; and
- (b) if the party directly affected by the event of Force Majeure is the Contractor, then
 - (i) the Province will not be obliged to pay to the Contractor any amounts pursuant to Part I of the Fee Schedule attributable, as determined by the Minister, to the period during which the event of Force Majeure is continuing,
 - (ii) the Province will, subject to the terms of this Agreement, pay to the Contractor fees monthly in arrears, on the payment dates described in Part I of the Fee Schedule, for the time period while the Force Majeure continues which fees will be the sum of the following:
 - (A) the amount that is equal to $1/365^{\text{th}}$ of the Quantified Work value that applies to the Contract Year during which the event of Force Majeure is continuing, for each day of the applicable monthly period while the Force Majeure continues; and
 - (B) the direct costs incurred by the Contractor (excluding overhead costs) to perform Routine Maintenance Services while the event of Force Majeure continues, such direct costs to be paid in accordance with the Direct Plus Rates, except for wages, salaries and benefits, such wages, salaries and benefits will be calculated by applying the wage, salary and benefits rates that correspond to the work performed during the event of Force Majeure, and that are set out in the collective agreement between the Contractor and the trade union representing the employees of the Contractor, that is in effect, voluntarily recognized, or certified pursuant to the Labour Relations Code of British Columbia, immediately prior to the event of Force Majeure, or where there is no collective agreement, the Contractor's actual costs for wages, salaries and benefits certified in writing by the Contractor to the satisfaction of the Minister;
 - (iii) the Province's obligation to pay fees under clause (ii) of this subsection is conditional on the Contractor providing to the Province a written statement of account in respect of the fees claimed, including evidence satisfactory to the Minister of the direct costs of the Contractor described in clause (ii)(B), and

- (iv) in no event will the Province be obliged to pay fees to the Contractor under clause (ii) of this subsection in excess of the amounts pursuant to Part 1 of the Fee Schedule attributable, as determined by the Minister, to the same period and which would have been payable had the event of Force Majeure not occurred.

20.2 Notwithstanding the Contractor's inability to supply services while the event of Force Majeure continues, the Contractor must re-schedule the performance of the Quantified Work to ensure that all Quantified Work scheduled for the then current Contract Year is performed during that Contract Year.

20.3

- (a) If either party is aware or is made aware, through its dealings with the insurance industry or the highway maintenance industry, that an event of Force Majeure described in Section 1.1(mm)(ii) is likely to occur then that party will notify the other party and both parties will enter into good faith negotiations with a view to entering into a mutually acceptable agreement that will prevent the event of Force Majeure from occurring.
- (b) If either party is aware or is made aware, through its dealings with the insurance industry or the highway maintenance industry, that an event of Force Majeure described in section 1.1(mm)(ii) has occurred, then that party will notify the other party immediately.
- (c) If the party giving notice under section 20.3(b) is the Contractor, then the Minister will as soon as reasonably practicable, notify the Contractor whether or not the Minister is satisfied, in the Minister's sole discretion, that the matter described in the notice constitutes an event of Force Majeure described in section 1.1(mm)(ii), and the Minister's notice will be final and binding.
- (d) If the party giving notice under section 20.3(b) is the Province, or if the Minister has notified the Contractor under section 20.3(c) that the matter described in the Contractor's notice constitutes an event of Force Majeure described in section 1.1(mm)(ii), then the Contractor will enter into good faith negotiations with the Province with a view to resolve the event of Force Majeure and to resume, with the least possible delay, the performance of this Agreement, and the Province will not be obliged to make any payments to the Contractor in connection with this Agreement during the period that such event of Force Majeure is continuing.

21. NOTICES

21.1 Any notice, document, statement, report, demand to be given or made under this Agreement, 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 mailing in Canada with postage prepaid addressed,

(a) if to the Province or the Minister (or both of them):

Ministry of Transportation

<> **District**

<>

<>, **British Columbia**

<>

Attention: District Manager

with a copy to:<>

Ministry of Transportation

Construction and Maintenance Branch

4C-940 Blanshard Avenue

Victoria, British Columbia

V8W 3E6

Attention: Maintenance and Equipment Administrator

(b) and if to the Contractor:

<>

<>

<>

<>, **British Columbia**

<>

Attention: <>

and any such notice, document, statement, report, or demand 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.

21.2 Any notice, document, report, statement or demand desired or required to be given or made under this Agreement may be transmitted by facsimile transmission from either party

or the Minister and will be conclusively deemed validly given to and received by the intended recipient when so transmitted if transmitted to the following numbers:

(a) If to the Contractor: **(250) <>**

(b) If to the Province or the Minister: **(250) <>** with a copy to: **(250) 356-7276**.

21.3 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 this Agreement, be deemed to be the address or facsimile number of the party giving such notice.

22. MISCELLANEOUS

- 22.1** Any public announcement relating to this Agreement will be arranged by the Province in consultation with the Contractor.
- 22.2** Any property, including Provincial Material, provided by or on behalf of the Province or the Minister to the Contractor as a result of this Agreement will be the exclusive property of the Province and will, subject to the following proviso, be delivered by the Contractor to the Minister immediately following the expiration or sooner termination of this Agreement, provided that the Minister may, at any time or times prior to the expiration or sooner termination of this Agreement, give written notice to the Contractor requesting delivery by the Contractor to the Minister of all or any part of such property in which event the Contractor will immediately comply with such request.
- 22.3** The Contractor will treat as confidential and will not, without the prior written consent of the Minister, publish, release, or disclose, or permit to be published, released or disclosed either before or after the expiration or sooner termination of this Agreement, any information, including without limitation, the RWIS Material, supplied to, obtained by, or which comes to the knowledge of the Contractor as a result of this Agreement, except insofar as such publication, release or disclosure is required by law or is necessary to enable the Contractor to fulfill the obligations of the Contractor under this Agreement.
- 22.4** The Contractor 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 Minister, give rise to a conflict of interest between the obligations of the Contractor to the Province under this Agreement and the obligations of the Contractor to such other person, firm or corporation or other legal entity.
- 22.5** This Agreement constitutes the entire agreement between the parties in respect of the subject matter of this Agreement and no understandings, representations, contracts, or agreements, oral or otherwise, exist between the parties with respect to the subject matter of this Agreement except as expressly set out in this Agreement. The Contractor agrees that in entering into this Agreement the Contractor has not and does not rely upon any previous representation of the Province, or of servants, employees, agents, or representatives of the Province, whether expressed or implied, or upon any inducement or agreement of any kind or nature. All prior understandings, negotiations, representations, contracts or agreements are hereby canceled.
- 22.6** Each of the parties will, upon the reasonable request of the other, make, do, execute or cause to be made, done or executed all further and other lawful acts, deeds, things, devices, documents, instruments and assurances whatever for the better or more perfect and absolute performance of the terms and conditions of this Agreement.
- 22.7** Public disclosure of this Agreement, the agreements described in subsection 2.1(f) and any documents or other records pertaining to this Agreement or those agreements which

are in the custody or under the control of the Province, will be governed by the *Freedom of Information and Protection of Privacy Act*, R.S.B.C. 1996, c.165.

- 22.8** Time will be of the essence of this Agreement.
- 22.9** All provisions of this Agreement in favour of the Province and all rights and remedies of the Province, either at law or in equity, will survive the expiration or sooner termination of this Agreement.
- 22.10** This Agreement will enure to the benefit of and be binding upon the Province and its assigns and Contractor and its successors and permitted assigns.
- 22.11** 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 Agreement 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.
- 22.12** If any provision of this Agreement or the application thereof to any person or circumstance is invalid or unenforceable to any extent, the remainder of this Agreement 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.
- 22.13** This Agreement may only be amended by a further written agreement executed by both parties.
- 22.14** The Contractor will use its best efforts to adopt electronic modes of communication and transfer of information in formats and through modes of communication specified by the Province.

23. INTERPRETATION

23.1 A reference in this Agreement:

- (a)** to a statute whether or not that statute has been defined, means a statute of the Province of British Columbia unless otherwise stated and includes every amendment to it, every regulation made under it and any enactment passed in substitution therefor or in replacement thereof; and
- (b)** to any other agreement between the parties means that other agreement as it may be amended from time to time by the parties.

23.2 Unless the context otherwise requires, any reference to "this Agreement" means this instrument, all of the Schedules attached to it and all documents, manuals or publications referenced in the Schedules and any reference in this Agreement to any article, section, subsection or paragraph by number is a reference to the appropriate article, section, subsection or paragraph in this Agreement.

23.3 The headings or captions in this Agreement are inserted for convenience only and do not form a part of this Agreement and in no way define, limit, alter or enlarge the scope or meaning of any provision of this Agreement.

23.4 In this Agreement, "person" includes a corporation, firm, association and any other legal entity and wherever the singular or masculine is used it will be construed as if the plural, the feminine or the neuter, and wherever the plural or the feminine or the neuter is used it will be construed as the singular or masculine, as the case may be, had been used where the context or the parties so require.

23.5 Each Schedule attached to this Agreement is an integral part of this Agreement as if set out at length in the body of this Agreement.

23.6 In this Agreement, the words "including" and "includes", when following any general term or statement, are not to be construed as limiting the general term or statement to the specific items or matters set forth or to similar items or matters, but rather as permitting the general term or statement to refer to all other items or matters that could reasonably fall within the broadest possible scope of the general term or statement.

23.7 All dollar amounts expressed in this Agreement refer to lawful currency of Canada.

23.8 This Agreement will be governed by, construed and interpreted in accordance with the laws of the Province of British Columbia and the courts of competent jurisdiction, within the province of British Columbia, will have exclusive jurisdiction with respect to any legal actions commenced to enforce the provisions of this Agreement.

IN WITNESS WHEREOF the parties have executed this Agreement by their duly authorized representatives or officers as follows:

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 on the ____)
day of _____, 200<> in the presence of:)
_____) **For the Minister of Transportation**
(Witness))

THE COMMON SEAL of <>, was hereunto affixed on the)
____ day of _____, 200<> in the presence of:)
_____))
SIGNATURE _____) (C/S)
_____))
TITLE _____))
_____))