

BARNSTON ISLAND FERRY AGREEMENT

This Agreement is dated for reference this 1st day of April, 2018

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA

as represented by the Minister Responsible for the Transportation Act
c/o The Ministry of Transportation and Infrastructure,
Marine Branch
940 Blanshard St.
Victoria, British Columbia V8W 9T5

(the "Province")

AND:

BC TRANSPORTATION FINANCING AUTHORITY,
a corporation continued under the *Transportation Act*
940 Blanshard Street
Victoria, British Columbia V8W 9T5

("BCTFA")

AND:

@
a corporation having an office at
@
@
(the "Contractor")

(together, the "Parties")

WHEREAS:

- A** The Province and BCTFA are the owners of or otherwise have rights in and to the Ferry Facility and Watercraft located on Barnston Island in the Greater Vancouver Regional District and in the City of Surrey, British Columbia;
- B** The Province wishes to engage the Contractor to utilize the Ferry Facility and Watercraft and to operate and provide the Ferry Service;
- C** The Contractor has been selected as the Preferred Proponent under the RFP and has agreed to operate and provide the Ferry Service in keeping with this Agreement; and
- D** The Parties have agreed to foster a working relationship based on a shared sense of purpose, mutual respect and trust and a commitment to engage in timely communications and general cooperation concerning the obligations set forth herein, each to the other.

ACCORDINGLY, the parties agree as follows:

1. Engagement

1.1 The Province hereby engages the Contractor to carry out and provide the Work.

2. Ferry Service

2.1 The Contractor shall operate and provide the Ferry Service in accordance with Schedules B and M (including all appendices), and in accordance with the terms of this Agreement, the Charter and the Licence.

2.2 On the Commencement Date, the Contractor shall:

- (a) have provided to the Province a clearance letter from the Workers' Compensation Board indicating that the status of the Contractor is "active and in good standing";
- (b) utilize the specimen SMS attached hereto as Schedule B Appendix B2 and complete the SMS and its Operational Documents to the Province's satisfaction; and
- (c) have completed the 'beginning of term' transition services to the Province's satisfaction in accordance with Schedule B Appendix B7.

3. Communication and Reporting

3.1 The Contractor shall communicate with Stakeholders, the Province and Government Authorities, and provide reports and plans to the Province all as set out in Schedule B Appendices B3 and B4 and the Contractor's Communication Plan attached hereto as Schedule M..

3.2 All reports and plans (including but not limited to the SMS), required in accordance with the terms of this Agreement, the Charter and the Licence are and will remain the exclusive property of the Province, including copyright, in accordance with and pursuant to Section 31.2.

4. Contractor's Tenure on Land and Watercraft Charter

4.1 The Province and BCTFA have granted to the Contractor a licence to use and occupy the Ferry Facility, and a charter over the Watercraft that is attached as Schedule F and Schedule E, respectively.

5. Potential Provincial Tug and/or Replacement Watercraft

5.1 The Contractor acknowledges that the Province intends on providing a tug to the Contractor for use in providing the Ferry Service within or shortly after the first Contract Year. If and when this tug is provided by the Province to the Contractor,

the Province shall provide the notice as required in Section 5.2 below, and the Charter shall be amended to include the tug at a five (\$5) charter fee for the remainder of this Agreement, and included in the list of Assets in Schedule C on the delivery date of the Province's tug to the Contractor, and the parties will reduce the Service Fee by the costs of the Contractor's tug to the Province or the Contractor's third party tug lease/charter charges (as the case may be) notwithstanding the 1% threshold stipulated in Schedule J Section 5 or as the parties may otherwise agree in writing.

- 5.2 The Province shall give the Contractor at least three (3) months' prior written notice of the date that the Province reasonably expects to deliver the tug to the Contractor for utilization in the Ferry Service. The Province's notice described in this Section 5.2 shall be deemed to be a Change Order requiring the Contractor:
 - (a) to utilize the new tug in the provision of the Ferry Service;
 - (b) after six (6) months in service, the Contractor shall calculate and provide evidence satisfactory to the Province of any direct changes to the Contractor's operating costs as between the two tugs (not including the charter fee) and the Contractor will prepare and submit to the Province, pursuant to Schedule J Section 4.1, a change valuation, prepared at its own cost, with such detail as the Province may reasonably require to enable it to properly evaluate the change valuation, including a detailed summary of the prices, costs, charges and mark-ups. The change valuation shall be a reasonable estimate of the net amount of all changes in costs incurred and/or saved (exclusive of the charter fee) by the Contractor to implement the proposed change; and
 - (c) if Contractor's operating costs decrease, the amount of such decrease shall be for the exclusive benefit of the Province, notwithstanding the 1% threshold stipulated in Schedule J Section 5, and the Service Fee will be commensurately decreased.
- 5.3 The Contractor acknowledges that the Province intends on providing a replacement watercraft to the Contractor for use in providing the Ferry Service during the Term. This replacement watercraft would replace the Contractor's or Province's tug and the Watercraft. If and when this replacement watercraft is provided by the Province to the Contractor, the Province shall provide notice as required in section 5.4 below, and the Charter shall be amended to include the replacement watercraft at a five dollar (\$5) charter fee for the remainder of this Agreement, and included in the List of Assets in Schedule C on the delivery date of the replacement watercraft to the Contractor. For certainty, this replacement watercraft shall be deemed to be the Watercraft for this Agreement as of the date of delivery to the Contractor.
- 5.4 The Province shall give the Contractor at least twelve (12) months prior written notice of the date that the Province reasonably expects to deliver the

replacement watercraft to the Contractor for utilization in the Ferry Service. The Province's notice described in this Section 5.4 shall be deemed to be a Change Order requiring the Contractor to:

- (a) utilize the new watercraft in the provision of the Ferry Service;
- (b) after six (6) months in service, the Contractor shall calculate and provide evidence satisfactory to the Province of any direct changes to the Contractor's operating costs as result of the introduction of the replacement watercraft and the Contractor will prepare and submit to the Province, pursuant to Schedule J Section 4.1, a change valuation, prepared at its own cost, with such detail as the Province may reasonably require to enable it to properly evaluate the change valuation, including a detailed summary of the prices, costs, charges and mark-ups. The change valuation shall be a reasonable estimate of the net amount of all changes in costs incurred and/or saved (exclusive of the charter fee) by the Contractor to implement the proposed change; and
- (c) if Contractor's operating costs decrease, the amount of such decrease shall be for the exclusive benefit of the Province, notwithstanding the 1% threshold stipulated in Schedule J Section 5, and the Service Fee will be commensurately decreased.

- 5.5 If the Province gives notice under Section 5.3 and/or 5.4, and if the parties cannot agree, whether in whole or in part, upon the impact to the Contractor's operating costs or if there are other necessary consequential amendments to this Agreement or the Charter that the parties cannot agree upon, whether in whole or in part, the Charter and this Agreement will be amended on such terms as are determined by the Referee pursuant to Section G. Until such time as the Referee renders a determination, the Contractor shall utilize the tug or replacement watercraft provided by the Province, and the parties shall comply with all terms of this Agreement, including payment. Payment or reimbursement concerning the change to the Service Fee for the period from the delivery of the tug or replacement watercraft to the date of the Referee's determination shall be made within 60 days following the Referee's determination, whether it be by cash lump sum settlement or set-off from future Service Fee payments. No interest shall be due and owing for any such payment remittance to the Contractor or set-off amount, as the case may be. The Contractor shall put the Province's tug or replacement watercraft into service as of the delivery date of the Province's tug or replacement watercraft to the Contractor during the dispute period.

6. Intentionally Deleted

7. Term and Renewal Term

- 7.1 The term of this Agreement shall be for a period of ten (10) Contract Years, commencing on April 1, 2018 and expiring on March 31, 2028. The initial five (5)

years of this Agreement ("Initial Term") shall expire on March 31, 2023. The last five (5) years of this Agreement shall be for the period from April 1, 2023 and expiring on March 31, 2028 ("Renewal Term") and shall come into effect pursuant to Section 7.2.

- 7.2 Provided the Contractor duly and punctually observes and performs the covenants, agreements and provisos in this Agreement, this Agreement shall automatically renew for the Renewal Term upon all the terms covenants, agreements and provisos contained in this Agreement except for the Service Fee and adjustments to it, pursuant to Subsections 7.3 and 7.4 below, and except a further right of renewal, subject to the Contractor delivering to the Province:
 - (a) the proposed Service Fee for the Renewal Term; and
 - (b) written evidence that the bond securities (if the Contractor is furnishing bond securities, not an irrevocable letter of credit as security for the full and entire Term of this Agreement to March 31, 2028) and insurance requirements set forth in Schedule H will be kept in good standing for the Renewal Term no later than 60 days prior to the Renewal Term, being Tuesday, January 31, 2023.
- 7.3 The renewal of this Agreement is subject to:
 - (a) no later than Wednesday, March 1, 2023, updated bond documents (if the Contractor is furnishing bond securities, not an irrevocable letter of credit, as security for the full and entire Term of this Agreement to March 31, 2028) and certificates of insurance that meet or exceed the requirements set forth in Schedule H of this Agreement, with policies that will end no sooner than midnight on March 31, 2028.
- 7.4 The Service Fee and provisions that provide for adjustments to the Service Fee for the Renewal Term are subject to agreement between the Province and the Contractor provided that the Service Fee and the revision of the adjustments will not reduce the Service Fee to an amount less than what prevailed immediately prior to the Renewal Term. The Contractor shall furnish to the Province all relevant information reasonably required for the proper consideration of an amendment to the Service Fee for the Renewal Term, with such detail as the Province may reasonably require to enable it to properly consider such revisions and adjustments. This detail shall include a detailed summary of the prices, costs, charges and mark-ups in provision of the Ferry Services. If the Revised Service Fee is not established on or before April 1, 2023 by mutual agreement, the Province shall thereupon pay the Service Fee that was in effect immediately prior to the Renewal Term and the Contractor shall have ninety (90 days) from April 1, 2023, being Friday, June 30, 2023, to provide the Province with written notice of the Contractor's intention to dispute the Service Fee for the Renewal Term, for resolution as a Dispute by Referee pursuant to Section 18.3.

- 7.5 If the Referee determines an increase in the Service Fee for the Renewal Term, the Province shall thereupon pay such arrears to the Contractor without interest or penalty within 60 days of the Referee's decision.
- 7.6 Unless otherwise required by law, the parties agree that, for the purposes of any Dispute arising hereunder, any appeal from a decision of the Referee shall be referred to the Supreme Court of British Columbia.

8. Financial Arrangements

- 8.1 The Province shall, subject to and in accordance with the terms of this Agreement, pay the Contractor the Service Fee as set out in Schedule D for performing the Work, except the Additional Services. The fee for Additional Services is subject to the Direct Plus Rates as set out in Schedule D and this Article 8.
- 8.2 The Contractor shall not undertake any Additional Services unless authorized in advance by written Work Order issued and executed by the Province or, in the case of an emergency, authorize in advance by verbal authorization of the Province's Contact Person or a Ministry Inland Ferry Manager.
- 8.3 The Contractor shall invoice the Province in accordance with the Direct Plus Rates in Schedule D within 30 days of fully completing the Additional Service with accompanying supporting documentation.
- 8.4 The Contractor acknowledges and agrees that the Province has not made any representations, warranties, covenants or agreements as to whether the Province will use the Contractor to perform any Additional Services during the Term.
- 8.5 The Province may require the Contractor to perform Additional Services by way of Work Order, or may, with written notice to the Contractor, utilize another contractor to perform Additional Services or to complete Additional Services that were commenced by the Contractor pursuant to a Work Order where the Contractor failed to carry out or perform the Additional Services to the satisfaction of the Province.

9. Risk

- 9.1 Except to the extent that the Province or the BCTFA is responsible therefor pursuant to the express provisions of this Agreement, all risks, costs and expenses in relation to the performance by the Contractor of its obligations under this Agreement, the Charter and Licence, are allocated to, and accepted by, the Contractor as its entire and exclusive responsibility. As among the parties, the Contractor shall be solely responsible for the performance of all persons for whom the Contractor is in law responsible, and for the acts, defaults, omissions,

breaches and negligence of all of its employees, contractors, subcontractors and other persons for whom the Contractor is in law responsible, as fully as if such acts, defaults, omissions, breaches and negligence were those of the Contractor.

10. Repairs and Maintenance

- 10.1 The Contractor shall, at the Contractor's cost and expense, repair and maintain the Ferry Facility and the Watercraft pursuant to the specifications in Schedule B Appendix B6 for the Ferry Facility and Schedule B Appendix B5 for the Watercraft, and in accordance with the Contractor's Completed Plans attached hereto as Schedule M.
- 10.2 The Contractor shall complete the Watercraft's dry-dock refitting before May, 2020 and quinquennially thereafter pursuant to the Refit Requirements in Schedule B Appendix B5, and the costs of delivery and refit to be solely borne by the Contractor.
- 10.3 During any period the Watercraft is in dry-dock for refit, the Contractor shall provide at its cost, an alternate watercraft with which the Contractor shall perform the Ferry Service.
- 10.4 Notwithstanding any other provision of this Agreement or any provision of the Licence, the Charter, or any other agreement between the Province and the Contractor with respect to the operation or provision of the Ferry Service, the Contractor shall repair (unless the Province elects to cause another contractor to repair), and shall be responsible for paying all costs for repairing (regardless of whether the Contractor or another contractor so repairs), any and all damage to the Ferry Facility and/or the Watercraft, where such damage is caused by, is based upon or arises out of or from any act or omission of the Contractor, or its directors, officers, agents, servants, employees, sub-contractors, permitted assigns or any other person, firm or corporation for whom the Contractor is legally responsible.

11. Changes

- 11.1 The Province shall have the right to make Changes in accordance with the change procedure set out in Schedule J attached to this Agreement.
- 11.2 The Contractor may propose Changes in accordance with the change procedure set out in Schedule J attached to this Agreement.

12. Insurance and Securities

- 12.1 The Contractor shall obtain and keep in good standing during the Term the insurance and securities set out on Schedule H (or any substitute made pursuant

to Section 12.3) and shall comply with the terms and conditions set out in Schedule H.

- 12.2 The Contractor will provide the Province with evidence of the required insurance, in the form of a completed Ministry of Transportation and Infrastructure Certificate of Insurance form H0111, and in accordance with Schedule H, submitted to the Province at the time of execution of this Agreement.
- 12.3 The Contractor may request, and the Province may at its sole discretion agree, during the Term to substitute one form of security with another form of security, provided that in the sole opinion of the Province, the Contractor maintains the security in good standing during the Term.

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16. Provincial Audits and Review

- 16.1 The Contractor shall establish and maintain at a location within British Columbia:
 - (a) accurate books of account and records (including supporting documents) to the satisfaction of the Province;
 - (b) written records pertaining to all aspects of the provision and operation of the Ferry Service and the Work;
 - (c) permit the Province and BCTFA and their respective authorized representatives to inspect, review or copy such books, records, Non-conformance Reports and other documents related to the Work at any time or times during business hours, for any purpose whatsoever, including for purposes of ensuring compliance with the terms of this Agreement, the Charter and the Licence; and
 - (d) subject to the following proviso, deliver to the Province or BCTFA, as the case may be, immediately following the expiration or sooner termination of this Agreement, all books, records and other documents related to the Work provided that the Province 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 Province of all or any part of such books, records and other documents in which event the Contractor will immediately comply with such request.
- 16.2 Without limiting Section 16.1 above, the Province shall be at liberty at any time and from time to time to audit and/or inspect any and all aspects of the Ferry Facility and Watercraft and the provision and operation of the Ferry Service by

the Contractor, including, without limitation, operations with respect to the provision and operation of the Ferry Service by the Contractor, and should the Province choose to do so, the Contractor shall cooperate with the Province and permit and provide to the Province's servants, agents and authorized representatives full and unfettered access to the Ferry Facility, Watercraft and pursuant to Section 16.1, to all of the Contractor's books of accounts, records and other documents respecting the provision and operation of the Ferry Service and the Work.

- 16.3 Upon request of the Province from time to time, a Contractor that is a corporation or partnership shall make available to the Province for inspection or copying or both, all books and records of the Contractor which, alone or with other data, in the case of a Contractor that is a corporation, identify the ownership of all of the shares and securities of the Contractor, and in the case of a Contractor that is a partnership, identify the partners of the Contractor and their respective interests in the partnership, all from the Commencement Date or the date of earlier execution of this Agreement up to the date such books and records are made available to the Province.
- 16.4 The Province will schedule and perform one audit every Contract Year pursuant to this Section 16, at its cost and expense. Should any additional audit(s) or follow up audit(s) within the same Contract Year be determined necessary by the Province in its discretion, these additional audits shall be at the Contractor's cost and expense. The Province reserves the right to set off against the Service Fee any and all audit costs for audits that are more than once every Contract Year incurred by the Province.
- 16.5 In the event an audit referred to in Section 16.4 finds that the Contractor is not in compliance with its obligations set forth in this Agreement and the Charter and the Licence, the Province may, by written notice, provide the audit results and require the Contractor to complete such work identified by the audit in order for the Contractor to cure the deficiencies and conform to its obligations and the requirements of this Agreement the Charter and the Licence. This notice will stipulate a reasonable time within which the Contractor will remedy the deficiencies. If the Contractor does not correct the deficiencies within the period of time stipulated in the Province's notice, then the Province may at its discretion and without further notice to the Contractor cure the deficiencies with another contractor performing that work. The Contractor will work in harmony and cooperation with this other contractor and permit and provide full and unrestricted access to the Watercraft and the Ferry Facility as the case may be, and the Contractor will continue to provide all other Ferry Services. The rights of the Province in this Section 16.5 are in addition to any other rights or remedies available to the Province under this Agreement, the Charter or the Licence, or at law or in equity.

16.6 If any review, approval, inspection, examination, audit, testing, determination, acceptance, certificate, certification, permission, consent, comment or objection is provided, performed or made by or on behalf of the Province or the BCTFA, to the Contractor pursuant to, or in respect of, this Agreement, the Charter or the Licence, or if no comment or objection is made by the Province, or the BCTFA:

- (a) such review, approval, inspection, examination, audit, testing, determination, acceptance, certificate, certification, permission, consent, comment or objection, or lack of comment or objection, shall be for assessment by the Province or the BCTFA for general compliance by the Contractor with its obligations under this Agreement (including the SMS), the Charter and the Licence; and
- (b) notwithstanding any other provisions of this Agreement (including the SMS), the Charter or the Licence, no such review, approval, inspection, examination, audit, testing, determination, acceptance, certificate, certification, permission, consent, comment or objection, or lack of comment or objection, now or in the future, and whether or not involving any negligent act or negligent omission or error on the part of the Province or the BCTFA or any person for whom the Province is in Law responsible, arising from or in connection with the reporting obligations, Contractor's completed plans, audits, independent enquiry or otherwise:
 - (i) shall relieve or exempt or be deemed to relieve or exempt the Contractor or any other person for whom the Contractor is in Law responsible from any of its obligations and liabilities under this Agreement, the Charter or the Licence, or at law or in equity;
 - (ii) shall constitute a waiver or release or be deemed to be a waiver or release by the Province or the BCTFA of any duty or liability owed by the Contractor or any other person to the Province or the BCTFA, or of any indemnity given by the Contractor to the Province under this Agreement, the Charter or the Licence;
 - (iii) shall create or impose or be deemed to create or impose any requirement, liability, covenant, agreement or obligation on the Province or the BCTFA, as a consequence of the review, approval, inspection, examination, audit, testing, determination, acceptance, certificate, certification, permission, consent, comment or objection, or lack of comment or objection; or
 - (iv) shall entitle or be deemed to entitle the Contractor to make any Claim against the Province or the BCTFA for, or to recover from the Province or the BCTFA, any Losses.

16.7 In the event the Province hires another contractor pursuant to Section 16.5, the Province may set off from the Service Fee payment the direct cost of the other contractor, the cost of any experts and advisors hired by the Province to

complete the work identified by the audit, plus a 15% mark-up for the Province's own administrative and overhead costs.

- 16.8 The Contractor will not do, permit or suffer anything to be done or omitted to be done that will prejudice the warranty in respect of the work completed by another contractor hired pursuant to Section 16.5.

17. Non-Conformance Reports

- 17.1 The Province will issue and deliver to the Contractor a Non-Conformance Report when the Province determines that the Contractor is failing to comply with the requirements of this Agreement.
- 17.2 The Contractor will remedy all non-conformances set out in the Non-Conformance Reports within the time specified in the Non-Conformance Report or any audit report and will confirm the rectification in writing to the Province.

18. Dispute Resolution

- 18.1 Upon a Dispute arising out of or in connection with any provision of this Agreement, the Charter or the Licence, either party may invoke the Dispute Resolution Protocol in Schedule G by written notice to the other in order to resolve the Dispute.
- 18.2 The parties shall forthwith after entering into this Agreement, enter into a contract with a Referee in the form set out in Schedule I.
- 18.3 If a Dispute arises which the parties cannot resolve by agreement, then it shall be resolved by the Referee.
- 18.4 If the parties are unable to agree on a Referee with whom to contract, then a Referee shall be chosen by an arbitrator pursuant to the Commercial Arbitration Act, RSBC 1996, c 55.
- 18.5 Subject to, and without prejudice to, the Province's rights of termination set forth in this Agreement, the Charter and the Licence, pending final resolution of any Dispute, the Contractor shall continue to fulfill its obligations under this Agreement (including for certainty and without limitation under the SMS), the Charter and the Licence.

19. Indemnity

- 19.1 The Contractor shall indemnify and save harmless the Province and the BCTFA and their respective servants, directors, officers, employees, deputies, delegates, representatives, and agents from and against all claims, liabilities, demands, losses, damages, costs and expenses (including legal costs on a solicitor and

own client basis), fines, penalties, assessments and levies made against or incurred, suffered or sustained by any 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 arise directly or indirectly out of, in the course of, or in connection with, or as a result of the Work, or any component of the Work, or any use or occupation of, or event, loss or occurrence on or to the Ferry Facility, the Watercraft or any part thereof during the Term or an obligation or any acts or omissions of the Contractor, the contractor's agents, employees, officers, directors or its subcontractors pursuant to this Agreement including any claim against the Province or the BCTFA for failure to supervise or inspect the Work which is performed by the Contractor pursuant to this Agreement, which indemnity shall survive the expiration or sooner termination of this Agreement.

20. Default And Remedies

20.1 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 (including without limitation and for certainty the SMS), the Charter or the Licence, on the part of the Contractor to be observed, performed or complied with;
- (b) the Contractor's failure to remedy a non-conformance set out in a Non-Conformance Report within the time specified in the Non-Conformance Report or any audit report;
- (c) any representation or warranty made by the Contractor in this Agreement is materially untrue or incorrect;
- (d) any information, statement, document, certificate or report furnished or submitted by or on behalf of the Contractor to the Province pursuant to this Agreement is materially untrue or incorrect;
- (e) the Contractor fails to give written notice to the Province that there has occurred or is continuing a default under this Agreement, the Charter or the Licence and which specifies the particulars of the default;
- (f) there is any bona fide action or proceeding, pending or threatened against the Contractor, which would, in the reasonable opinion of the Province, have a material adverse effect upon the ability of the Contractor to fulfill its obligations under this Agreement, the Charter or the Licence;
- (g) an order is made, a resolution is passed or a petition is filed, for the liquidation or winding up of the Contractor;
- (h) a change occurs with respect to any of the properties, assets, conditions (financial or otherwise), business or operations of the Contractor which, in the reasonable opinion of the Province, materially adversely affects the

ability of the Contractor to fulfill any of its obligations under this Agreement;

- (i) a floating charge granted by the Contractor crystallizes or becomes enforceable or any other action is taken to enforce any charge granted by the Contractor;
- (j) the Contractor becomes insolvent, commits an act of bankruptcy, makes an assignment for the benefit of its creditors or otherwise acknowledges its insolvency;
- (k) a bankruptcy petition is filed or presented against, or a proposal under the Bankruptcy and Insolvency Act (Canada) is made by, the Contractor;
- (l) a compromise or arrangement is proposed in respect of the Contractor under the Companies' Creditors Arrangement Act (Canada);
- (m) a receiver or receiver-manager of any property of the Contractor is appointed;
- (n) 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;
- (o) the Contractor ceases, in the reasonable opinion of the Province, to carry on business as a going concern;
- (p) the Contractor, without the prior written approval of the Province, assigns, sells or in any manner disposes of or encumbers all or any of its interest in, or rights acquired under, this Agreement;
- (q) without the prior written consent of the Province, the direct or indirect legal or beneficial ownership and effective control of the Contractor changes from that represented in Schedule K;
- (r) any action is taken to enforce any security interest, charge or encumbrance granted, created or issued by the Contractor;
- (s) the failure of the Contractor to comply with the Insurance requirements of Section 12;
- (t) the failure of the Contractor to comply with all applicable safety laws, which in the Province's sole discretion is considered a material risk to person(s) and/or property; or if the Contractor's use or occupation of the Watercraft represents a potential or actual hazard (in the Province's sole discretion);
- (u) any part of the Ferry Facility and/or Watercraft is seized or confiscated under legal process or otherwise or is attached or becomes subject to any encumbrance, charge, claim or lien except as may arise through the acts of the Province or the BCTFA or other occupier of part of the Ferry Facility and/or Watercraft for whom the Contractor is not legally responsible and the same is not discharged or satisfied by the Contractor in a timely fashion as the Province in its sole discretion may determine;

- (v) any part of the Ferry Facility and/or Watercraft is abandoned, sold, transferred or encumbered by the Contractor;
 - (w) there is an Event of Watercraft Loss as defined in the Charter;
 - (x) there is an event of default as described in the Charter or in the Licence; or
 - (y) after an Event of Force Majeure, the failure of the Contractor to recommence Work within three days following a determination from the Province or other Governmental Authority (or such other time period provided in that determination) that the Work, in whole or in part, is an essential service.
- 20.2 On the happening of an Event of Default, or at any time thereafter, the Province or the BCTFA 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 the Province or the BCTFA at law or in equity including any remedy available to it under the security;
 - (b) retain a holdback to recover any overpayment to the Contractor or to recover any other sums which are due and payable to the Province by the Contractor, including:
 - (i) if the Event of Default is a failure to perform a Change in accordance with this Agreement, twice the value for the particular items involved in carrying out such a Change, or
 - (ii) if the Event of Default is a failure to perform the Ferry Service or Work in accordance with this Agreement and Contract Documents, an amount equal to twice the value of the Ferry Service not performed, such value to be determined by the Province in the Province'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 20.2 (b);
 - (d) require the Contractor to cure the Event of Default within a time period specified by the Province;
 - (e) if the Event of Default is pursuant to Section 20.1 (u), then the Province without any liability whatsoever, and in addition to any other remedy to which the Province is entitled, may remove the same at the expense of the

Contractor and may suspend the Charter and/or suspend the Licence for any period at the discretion of the Province;

- (f) Demand that the Contractor, and the contractor shall upon such demand, at the expense of the contractor deliver up to the Province and the BCTFA possession of the Ferry Facility and all of the assets comprising the same including the Watercraft and any other vessels;
- (g) Enter upon the lands, areas and buildings constituting the Ferry Facility and upon the Watercraft and any other vessel and take immediate possession, and the Contractor hereby releases the Province and the BCTFA from any claim whatsoever and covenants to reimburse the Province and the BCTFA in respect of any claim whatsoever arising from any and all damages to lands, buildings, or structures occasioned by such taking of possession;
- (h) make one or more drawings for the full amount or for part payments under any irrevocable letter of credit and make any claim or pursue any remedy under any bond or other form of security including any performance security;
- (i) if an Event of Default with respect to which an amount has been retained as a holdback under Section 20.2 (b):
 - (i) has been cured by the Contractor to the satisfaction of the Province within a time period specified by the Province, then the Province may pay the holdback amount retained to the Contractor; or
 - (ii) is not curable or has not been cured by the Contractor to the satisfaction of the Province within a time period specified by the Province and the holdback resulted from an Event of Default identified in Section 20.2 (b)(i) or (ii), then the Province may keep the amount retained as a reduction of fees otherwise payable to the Contractor under Section 20.2 (b)(i) or (ii) and the Contractor and the Province agree that an amount equal to twice the value of the work not supplied, determined according to Section 20.2 (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 Ferry Service, the delays in the performance of the Ferry Service and the costs associated with traffic closures or delays, if any, which resulted from the Event of Default.
- (j) waive the Event of Default; and
- (k) terminate this Agreement, subject to and if applicable, the expiration of any time period specified by a notice delivered pursuant to Section 20.2 (d).

- 20.3 The rights, powers and remedies conferred on the Province and the BCTFA under this Agreement, the Charter and the Licence 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 and the BCTFA under this Agreement, the Charter and the Licence or any other agreement, at law or in equity and the exercise by the Province and the BCTFA of any right, power or remedy will not preclude the simultaneous or later exercise by the Province of any other right, power or remedy.
- 20.4 No failure or delay on the part of any party to complain of an act or failure of another 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.
- 20.5 No interest will be payable by the Province or the BCTFA on any amount retained as a holdback in accordance with Section 20.2.

21. Contractor's Documentation and Records

- 21.1 At the expiry or earlier termination of this Agreement, the Contractor shall supply the Province with all relevant plans, records, manuals, logs and other documentation created or produced in regard to the provision of the Ferry Service including the return of all such documents provided to the Contractor by the Province. A document, for the purpose of this Section 21.1, may have been created by mechanical, electronic, or other means and shall include all such forms.

22. Transition Services

- 22.1 Transition services shall be supplied by the Contractor in accordance with Schedule B Appendix B7 and such services are part of the Ferry Service and consideration for which is part of the Service Fee.

23. Force Majeure

- 23.1 If an Event of Force Majeure occurs or is likely to occur, and always subject to Section 20.1(y),
- 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
 - 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 sailings of the Watercraft attributable, as determined by the Province, to the period during which the Event of Force Majeure is continuing, and or
 - (ii) during the time period while the Event of Force Majeure continues the Province will pay monthly fees to the Contractor for performing Change Order items that are in the nature of additional work items.
- (c) if either party is aware or is made aware, through its dealings with the insurance industry or the transportation services industry, that an Event of Force Majeure is likely to occur, then that party will notify the other parties and the 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;
 - (d) if either party is aware or is made aware, through its dealings with the insurance industry or the transportation services industry, that an Event of Force Majeure has occurred, then that party will notify the others immediately;
 - (e) if the party giving notice under Section 23 is the Contractor, then the Province will as soon as reasonably practicable, notify the Contractor whether or not the Province is satisfied, in the Province's sole discretion, that the matter described in the notice constitutes an Event of Force Majeure described herein, and the Province's notice will be final and binding; and
 - (f) if the party giving notice under this Section 23 is the Province or the BCTFA, or if the Province has notified the Contractor under this Section 23 that the matter described in the Contractor's notice constitutes an Event of Force Majeure, 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 notwithstanding any other provisions in this Agreement, 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.

24. Notice

- 24.1 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 and the BCTFA:

Ministry of Transportation and Infrastructure
P.O. Box 9850, Stn. Prov. Gov't
940 Blanshard Street
Victoria, B.C. V8W 9T5
Attention: Ministry Inland Ferry Manager, Marine Branch

or such other Contact Person or address as the Province may notify the Contractor from time to time;

(b) and if to the Contractor:

@@

Attention: @@

or such other Contact Person and address as may be notified in writing by the Contractor to the Province from time to time;

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.

24.2 Any notice, document, report, statement or demand desired or required to be given or made under this Agreement may be transmitted by facsimile or SharePoint at <https://marinebranch.sp.th.gov.bc.ca/barnstonisland/> from either party to the other 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: (@) @

(b) If to the Province and the BCTFA: (250) 356-0897

or such other facsimile number as may be notified in writing by either party to the other from time to time during the Term.

25. Miscellaneous

25.1 Any public announcement relating to this Agreement will be arranged by the Province in consultation with the Contractor.

25.2 Any property provided by or on behalf of the Province or the BCTFA to the Contractor as a result of this Agreement will be the exclusive property of the

Province or the BCTFA (as the case may be) and will, subject to the following provision, be delivered by the Contractor to the Province immediately following the expiration or sooner termination of this Agreement, provided that the Province 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 Province of all or any part of such property in which event the Contractor will immediately comply with such request.

- 25.3 The Contractor will treat as confidential and will not, without the prior written consent of the Province, publish, release, or disclose, or permit to be published, released or disclosed either before or after the expiration or sooner termination of this Agreement the Licence and the Charter, any information, supplied to, obtained by, or which comes to the knowledge of the Contractor as a result of this Agreement the Licence and the Charter, 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.
- 25.4 The Contractor shall direct all such media inquiries to the Province.
- 25.5 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 Province, 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.
- 25.6 This Agreement, the Licence and the Charter 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 cancelled.
- 25.7 Each party 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.
- 25.8 Public disclosure of this Agreement 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.

- 25.9 Time will be of the essence of this Agreement.
- 25.10 All provisions of this Agreement in favour of the Province and the BCTFA and all rights and remedies of the Province and the BCTFA, either at law or in equity, will survive the expiration or sooner termination of this Agreement.
- 25.11 This Agreement will enure to the benefit of and be binding upon the Province, the BCTFA and their assigns and Contractor and its successors and permitted assigns.
- 25.12 The Contractor will not assign its rights and obligations under this Agreement without the prior written consent of the Province which the Province may grant or refuse at its sole discretion acting reasonably or unreasonably. The following events will be deemed to be an assignment of the Contractor's rights and obligations under this Agreement:
 - (a) if the Contractor is a corporation but none of its shares are traded on any public stock exchange or in any public stock market, any transaction, amalgamation, arrangement, reorganization, joint venture, trust or other agreement which will result in a direct or indirect change of control of such corporation or direct or indirect change of ownership of the business during the Term; or
 - (b) if the Contractor is a partnership, the cessation, other than through death, at any time during the Term by any person who at the time of the execution of this Agreement owns a partner's interest, or such ownership, or a material change in the ownership, in the opinion of the Province, of such partner's interest.
- 25.13 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.
- 25.14 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.

25.15 This Agreement may only be amended by a further written agreement executed by both parties.

25.16 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.

25.17 Nothing in this Agreement, the Charter or the Licence fetters or otherwise interferes with or limits, or shall be construed to fetter or otherwise interfere with or limit, the rights powers and authority of the Province or the BCTFA or the executive council.

26. Interpretation

26.1 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 therefore 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.

26.2 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 including the Contractor prepared and Province accepted SMS and revisions and updates thereto from time to time and any reference in this Agreement to any section, subsection or paragraph by number is a reference to the appropriate section, subsection or paragraph in this Agreement.

26.3 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.

26.4 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.

26.5 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.

- 26.6 For the purposes of this Agreement, the "Contract Documents" will consist of the following documents:
- (a) the Agreement and its schedules, the Charter and the Licence; and
 - (b) the particular provisions of any manuals, drawings and publications referred to in the Agreement (the "Relevant Provisions of the Manuals and Drawings").
- 26.7 Conflicts among provisions to this Agreement will be resolved as follows:
- (a) a provision in the body of this Agreement will prevail over any conflicting provision in, attached to or incorporated by reference into a schedule, unless that conflicting provision expressly states otherwise;
 - (b) a provision in a schedule will prevail over any conflicting provision in an appendix, another document attached to, or incorporated by reference into a schedule, unless the schedule expressly states otherwise;
 - (c) a provision found elsewhere in this Agreement will prevail over the Relevant Provisions of the Manuals and Drawings; and
 - (d) a provision in the Province's Safety Management System Specification will prevail over any conflicting provision in, attached to or incorporated by reference into the Contractor's Completed Safety Management System, unless that conflicting provision expressly states otherwise.
- 26.8 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.
- 26.9 All dollar amounts expressed in this Agreement refer to lawful currency of Canada, exclusive of applicable taxes.
- 26.10 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 proceedings between the Province and the Contractor arising out of this Agreement.
- 26.11 The schedules, that will form an integral part of this Agreement and are attached hereto, are as follows:

Schedule A Definitions

Schedule B Description of Work

Appendix B1 – Ferry Service Specifications

Appendix B2 – Specimen Barnston Island Safety Management System
Appendix B3 – Communications Specifications
Appendix B4 – Reporting Specifications
 Schedule 1 – Annual Report Specimen
 Schedule 2 – Monthly Report Specimen
Appendix B5 – Watercraft Maintenance Specifications
Appendix B6 – Ferry Facility Maintenance Specifications
Appendix B7 – Transition Services Specifications
Schedule C List of Assets
Schedule D Payment Schedule
 Appendix D1 - Insurance Premium Adjustment Form
Schedule E Charter
Schedule F Licence of Ferry Facility
 Appendix 1 – Site Plan of Port Kells and Barnston Island Ferry Terminals
Schedule G Dispute Resolution Protocol
Schedule H Insurance and Securities
 Appendix 1– Certificate of Insurance H0111
Schedule I Referee Agreement
Schedule J Changes
Schedule K Corporate Information
Schedule L Contractor's Proposal to the Barnston Island Ferry Service RFP
Schedule M Contractor's Completed Plans
 Contractor's Completed Safety Management System
 Organization and Management Plan
 Training Implementation Plan
 Business Continuity Plan
 Risk Management Plan
 Communications Plan
 Watercraft Maintenance Plan
 Watercraft Maintenance Refit Plan (due only in 2019)
 Ferry Facility Maintenance Plan
 Transition Services Plan

27. Contractor's Representations and Warranties and Other Covenants

- 27.1 The Contractor represents and warrants to the Province and the BCTFA on the execution of this Agreement, the Charter and the Licence and at all times thereafter during the Term, with the knowledge that the Province and the BCTFA shall rely upon these warranties and representations in entering into this Agreement and completing their obligations under this Agreement, that,
- (a) if the Contractor is

- (i) a corporation, then it is duly organized and validly existing under the laws of British Columbia, or under the laws of any other province or state in which case it is registered extra-provincially in British Columbia, or
 - (ii) a partnership or joint venture, all of the partners or joint venturers that are corporations are duly organized and validly existing under the laws of British Columbia, and the partnership or joint venture agreement is duly organized and validly existing under the laws of British Columbia;
- (b) the Contractor has full power, capacity and legal right to enter into and perform its obligations under this Agreement and any agreements and other instruments referred to herein or delivered in connection with this Agreement;
- (c) this Agreement, the Charter and the Licence have been duly authorized, executed and delivered and constitute valid and binding obligations of the Contractor enforceable in accordance with its terms;
- (d) the Contractor 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;
- (e) all information, statements, documents and reports furnished or submitted by the Contractor to the Province in connection with this Agreement, the Charter and the Licence are true;
- (f) the observance and performance of the terms and conditions of this Agreement, or any other agreement referred to herein, will not constitute a breach by it of or a default by it under:
- (i) applicable Laws;
 - (ii) its constating documents; or
 - (iii) any contract or agreement to which it is a party;
- (g) the authorized capital of the Contractor, if applicable, is as disclosed in Schedule K;
- (h) 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 K;
- (i) 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 K;
- (j) 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 K;

- (k) the Contractor is not party to, or threatened with, any litigation and has no knowledge or any claims against it that would materially affect its undertaking or financial condition;
- (l) there are no liabilities of the Contractor, contingent or otherwise, that are not disclosed or reflected in Schedule K herein except those incurred in the ordinary course of its business;
- (m) if the Contractor is a partnership or joint venture, then the identification of all of the partners of the partnership or all of the joint venturers and their respective interests in the partnership or joint venture are as disclosed in Schedule K;
- (n) if the Contractor is a partnership or joint venture and if any of the partners of the partnership or the joint venturers are corporate entities, then the information required by Sections 27.1(g), (h) and (i) with respect to each corporate partner or corporate joint venturer is as disclosed in Schedule K;
- (o) 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;
- (p) the Contractor is not in breach of any Laws applicable to the Contractor or its operations;
- (q) 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;
- (r) the making of this Agreement, the Charter and the Licence, 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, licence, 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;
- (s) 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, the Charter or the Licence;

- (t) it has sufficient trained staff, facilities, materials, appropriate equipment and approved subcontractual agreements in place and available to enable it to fully perform the Ferry Service; and
 - (u) it has independently reviewed all labour relations issues related to the performance of the Contractor's obligations under this Agreement.
- 27.2 All representations, warranties, covenants and agreements made in this Agreement, the Charter and the Licence, and all certificates and other documents delivered by or on behalf of the Contractor are material and shall conclusively be deemed to have been relied upon by the Province and the BCTFA, despite any prior or subsequent investigation by the Province or the BCTFA.
- 27.3 All statements contained in any certificate or other document delivered by or on behalf of the Contractor to the Province or the BCTFA under this Agreement, the Charter or the Licence or in connection with any of the transactions contemplated by this Agreement, the Charter or the Licence will be deemed to be representations and warranties of the Contractor under this Agreement.
- 27.4 The provisions of Sections 27.1, 27.2 and 27.3 shall continue in full force and effect despite the fulfillment by the Contractor of any or all of its obligations under this Agreement, the Charter or the Licence 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, the Charter or the Licence.
- 27.5 The Contractor shall:
- (a) observe, abide by and comply with all Laws that apply to the operation and provision of the Ferry Service and the use and occupation of the Ferry Facility and Watercraft;
 - (b) ensure that the representations and warranties set forth herein 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 Province from time to time;
 - (c) maintain its corporate existence if applicable and in any event 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 or international financing reporting standards (whichever is applicable to the Contractor) applied on a consistent basis;
 - (d) punctually pay as they become due all accounts and expenses, including wages, salaries, taxes, levies, rates, fees, contributions and assessments required to be paid by it on any of its undertaking;

- (e) provide and maintain all financial management and technical expertise necessary for the Contractor to carry out its obligations under this Agreement the Charter and the Licence;
 - (f) perform its obligations in this Agreement and in any agreement referred to herein in a good and workmanlike manner, free of defects or deficiencies and to the satisfaction of the Province;
 - (g) provide its own personnel for the operation and provision of the Ferry Service and ensure that its personnel is properly trained and qualified;
 - (h) observe and comply with all applicable Laws of any competent government authority or branch or agency thereof relating to the environment and to occupational health and safety, including without limitation the Workers Compensation Act (British Columbia) and the Occupational Health and Safety Regulation thereunder, directly or indirectly applicable to the Contractor or this Agreement, the Charter or the Licence, including by ensuring that the provision of and operation of the Ferry Service, complies with all such laws, by-laws, orders, directions, rules and regulations; and
 - (i) discharge the responsibilities of the Prime Contractor under the Workers Compensation Act (British Columbia) and the Occupational Health and Safety Regulation thereunder, in connection with the Ferry Service and this Agreement.
- 27.6 The Contractor will not, in any manner whatsoever, commit or purport to commit the Province or the BCTFA to the payment of any money to any person.
- 27.7 The Province may, from time to time, give such instructions to the Contractor as the Province considers necessary in connection with the operation and provision of the Ferry Service, which instructions the Contractor will comply with, but the Contractor will not be subject to the control of the Province with respect to the manner in which such instructions are carried out.
- 27.8 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.

28. Authorized Representative and Regulations

- 28.1 The Contractor represents and warrants to the Province and the BCTFA that it has familiarized itself with the requirements of all Laws applicable to the Work and the Contractor shall for the purposes of this Agreement (including for certainty and without limitation, the SMS and Contractor's Completed Plans), the Charter and the Licence and as between the Contractor and the Province and the Contractor and the BCTFA assume the entire responsibility for ensuring the observance and performance of all obligations of the Authorized Representative in connection with the Watercraft and performance of the Work which arise during the Term pursuant to all Laws.

- 28.2 The Contractor shall forthwith provide the Province with a copy of any notices, requests for information, instructions, requirements and all other correspondence received by or written to the Contractor from or to any Government Authority in connection with the performance of the Work.

29. Business Opportunities

- 29.1 In the event the Contractor is desirous of utilizing the Ferry Facility and/or the Watercraft for purposes other than those contained herein, it shall so notify the Province, detailing the proposed additional usages. The Province, at its sole discretion, shall consider the proposal and may or may not accede to the request of the Contractor, with or without conditions, or may reject the proposal. The Province shall be at liberty to arbitrarily and unreasonably withhold its consent to any proposal made by the Contractor as aforesaid.

30. BC Transportation Financing Authority

- 30.1 The BCTFA is named as a party to this Agreement as its authority is required with respect to the granting of the Licence of the Ferry Facility and the Charter of the Watercraft referred to in Section 4.1
- 30.2 The BCTFA hereby grants to the Province the full right and authority to act on its behalf in respect of any and all matters affecting the Licence and the Ferry Facility and the Charter and the Watercraft in relation to this Agreement, and generally the provision and operation of the Ferry Service by the Contractor which full right and authority includes, without limitation, the full right and authority to do any thing, take any step, sign any document, enter upon, use and occupy the Ferry Facility and any improvements thereon and the Watercraft, enforce any right and pursue any remedy, or to refrain from doing any such thing or things as the case may be, without the Province having to seek or obtain from the BCTFA any further approval or direction in respect of the foregoing.

31. Delivery & Ownership of Materials

- 31.1 Where this Agreement requires the delivery of Materials, including the SMS and Contractor's Completed Plans, to the Province, the regular installment or final payment for Work under this Agreement will not be made until such Material has been delivered.
- 31.2 The Material produced, received or acquired by, or provided to the Province or the BCTFA or both by the Contractor as a result of this Agreement will be the exclusive property of the Province, including copyright, and will, subject to the following proviso, be delivered by the Contractor to the Province in accordance with the terms of this Agreement and delivery requirements set forth herein, provided that the Province 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 Province of all or any part of the documents in which event the Contractor will forthwith comply with such request. This provision will survive the expiration or earlier termination of this Agreement, the Licence and the Charter.

32. Early Termination

- 32.1 This Agreement shall automatically terminate upon the early termination of the Charter and/or License.
- 32.2 The Term of this Agreement may be terminated by the Province at its sole discretion and for any reason upon twelve (12) months' written notice to the Contractor. Notwithstanding the foregoing, the Province at its sole discretion and for any reason may terminate this Agreement upon six (6) months prior to the Renewal Term by written notice to the Contractor. In the event the Province terminates this Agreement, the Province shall in no event be liable to the Contractor for any compensation whatsoever in respect of the termination, including, without limitation damages.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first stated above:

SIGNED on behalf of HER MAJESTY THE
QUEEN IN RIGHT OF THE PROVINCE OF
BRITISH COLUMBIA as represented by the
Minister of Transportation and
Infrastructure

Deborah Bowman
Assistant Deputy Minister,
Transportation Policy and Programs

BC Transportation Financing Authority
Per:

Nancy Bain
Executive Financial Officer and
Corporate Secretary

@
Per:

@
@

Schedule A**Glossary**

In this Agreement, the following capitalized words and phrases have the following meanings:

“Additional Services” has the same meaning set forth in Section 8.5 and as described in Schedule B, Section 2;

“Anniversary Date” means April 1, 2019 and each April 1st thereafter for the remainder of the Term;

“Bonds” means the means the performance bond and labour and material payment bond as set out in Subsection 2(a) of Schedule H and includes any additional or replacement bond and any agreement extending any bond as referenced in Subsection 2(b) of Schedule H and each issued by a surety company acceptable to the Province

“Business Day” means a day in which the Province’s offices are open, and excludes statutory holidays in British Columbia;

“Business Opportunities” means the business initiatives carried out by the Contractor which use the Watercraft and Ferry Facility but which are only incidental to the Ferry Service;

“Change” means a written order by the Province requiring the Contractor to perform a change to the Services pursuant to Section 11;

“Change Request” has the same meaning set forth in Schedule J Section 3;

“Charter” means the bare boat charter in Schedule E;

“Commencement Date” means April 1, 2018;

“Contact Person” means the contact person set out for the Province and for the Contractor in Section 24 herein;

“Contract Documents” has the meaning ascribed in Section 26.6 and 26.11;

“Contract Year” means a period of 12 consecutive months during the Term, commencing on the Commencement Date and thereafter on the Anniversary Date;

“Dispute” means any disagreement or difference of opinion between the Province and the Contractor regarding the interpretation of, or compliance or non-compliance (including determinations of Events of Default) with the terms of this Agreement;

"Dispute Resolution Protocol" means the protocol in Schedule G by which the parties will resolve a Dispute;

"Event of Default" means an event of default as described in Section 20;

"Event of Force Majeure" means:

- (a) acts of God, wars (declared or undeclared), revolutions, riots, insurrections or strikes (including illegal work stoppages), 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
- (b) for the purposes of Section 23 the failure by the Contractor to obtain or maintain in force comprehensive general liability insurance as described in Section 8, provided that:
 - (i) the Contractor has used its best efforts to obtain the insurance;
 - (ii) 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 Schedule H;
 - (iii) 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
 - (iv) 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.

"Expiry Date" means March 31, 2028;

"Ferry Agreement" and **"this Agreement"** means this instrument, all of the Schedules attached to it and all documents, manuals or publications referenced in the Schedules, any and all Work Orders issued by the Province under this Agreement, 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;

“Ferry Facility” means the Barnston Island ferry facility which is utilized to operate and provide the Ferry Service, including the lands, areas and infrastructure pursuant to the Licence in Schedule F;

“Ferry Service” means all services and obligations to be performed by the Contractor in relation to the operation of the Watercraft as a transportation service including the operation of the Watercraft for passengers and vehicles, all repair and maintenance obligations in respect of the Watercraft and Ferry Facility, Transition Services, reporting, communication and notification obligations of the Contractor, and all other obligations and services to be performed by the Contractor and set forth in this Agreement including Schedule B and its appendices, the Charter and the Licence, but excluding Additional Services;

“Fuel Cost Adjustment” has the same meaning set forth in Schedule D;

“Government Authority” means a federal, provincial, regional, municipal or local government or subdivision thereof, including an entity or person exercising executive, legislative, regulatory or administrative functions of, or pertaining to, any such government or subdivision having jurisdiction in any way over or in respect of any aspect of the performance of this Agreement, the Charter and the Licence.

“GST” means Goods and Services Tax as defined in the Excise Tax Act, R.S.C., 1985, c. E-15;

“Initial Term” has the same meaning set forth in Section 7.1;

“Inland Ferry Traffic System” or “IFTS” means a Microsoft Access 2003 application used by the Province for tracking ferry traffic information and ferry downtime information for its inland ferry routes;

“ISM Code” means the International Safety Management Code, by the International Maritime Organization that provides an international standard for the safe management and operation of ships and for pollution protection;

“Laws” means all applicable federal, provincial, regional, municipal or local laws, statutes, ordinances, rules, regulations, by-laws and enforceable orders, decisions or directives including any permits or authorizations required under any of the foregoing;

“Licence” means the licence attached in Schedule F;

“Marine Manager” means the Contractor’s appointed individual who performs the responsibilities set out in Schedule B;

“Material” means working documents, findings, data, records, operational manuals, contractor’s plans, specifications, drawings, reports, Contractor amendments to provincial materials, VDR files and CCTV recordings (and codes and passwords

thereto) and other materials whether in hard copy or electronic formats, whether complete or not, that, as a result of this Agreement, are produced or provided by the Contractor or a subcontractor and includes the SMS and its operational documents;

"Ministry Inland Ferry Manager" means any Ministry Manager, Marine Branch, Ministry of Transportation and Infrastructure of which there are currently three as of the Commencement Date, which may increase or decrease from time to time without notice to the Contractor;

"Non-Conformance Reports" means those reports issued in writing by either the Province or the Contractor which document the Contractor's failure to comply with the Contractor's covenants in this Agreement, the Charter or the Licence;

"OEM" means original equipment manufacturer;

"Plans" means the Contractor's plans that are listed and attached in Schedule M to this Agreement;

"Referee" means the individual chosen by the parties hereto for the purpose of resolving disputes arising from this Agreement pursuant to Schedule I;

"Renewal Term" has the same meaning set forth in Section 7.1;

"RFP" means that certain Request for Proposal pursuant to which the Contractor submitted the preferred proposal and has successfully negotiated with the Province the right to operate and provide the Ferry Service as herein provided;

"Service Fee" means the fee which the Province shall pay to the Contractor to operate and provide the Ferry Service and when expressed in a dollar amount herein, it will be exclusive of GST and inclusive of all other applicable taxes, duties and other charges;

"SMS" means the Safety Management System (including all its operational documents incorporated by reference) prepared by the Contractor and accepted by the Province in accordance with Schedule B;

"Stakeholders" has the same meaning as in Schedule B Appendix B3;

"Term" means the period of time during which this Agreement is in effect as set out in Section 7;

"Watercraft" means that certain barge as further described in Schedule C and chartered pursuant to Schedule E, used in the provision of the Ferry Service, owned by the BCTFA and chartered to the Contractor, bearing official number 0198100 and the name Barnston Island No. 3.;

“Weighted Average Per Litre Fuel Cost” means the total actual cost of fuel excluding GST divided by the total volume purchased;

“Work” means Ferry Service and Additional Services and the Contractor’s performance obligations pursuant to the Charter and the Licence.

Schedule B**Description of Work****1. FERRY SERVICE**

- 1.1 The Contractor shall operate and provide the Ferry Service traversing Parsons Channel in the Fraser River, providing uninterrupted year-round daily ferry service from Barnston Island to the mainland at Port Kells in the City of Surrey, BC in accordance with all the specifications attached hereto as Appendices B1 – B7, the Contractor's Completed Plans in Schedule M, and the terms and conditions of this Agreement.

2. ADDITIONAL WORK

- 2.1 Additional services means any services which are not included in the Ferry Service, and are not described as a Change, and includes without limitation and for greater certainty, repair and maintenance to the Watercraft and Ferry Facility not otherwise described in the Ferry Service. From time to time, the Province may require the Contractor to carry out Additional Services in accordance with this Agreement.

- 2.2 For clarity, the Additional Services are not included in the Service Fee.

3. APPENDICES

- 3.1 The appendices that will form an integral part of this Schedule and are attached hereto, are as follows:

Appendix B1 – Ferry Service Specifications

Appendix B2 – Province's Safety Management System Specifications

Appendix B3 – Communications Specifications

Appendix B4 – Reporting Specifications

Appendix B5 – Watercraft Maintenance Specifications

Appendix B6 – Ferry Facility Maintenance Specifications

Appendix B7 – Transition Services Specifications

Appendix B1

Ferry Service Specification

1. GENERAL REQUIREMENTS

The Contractor shall deliver safe, reliable, efficient inland ferry transportation, and support the continuous improvement of the personnel, assets and operations.

All capitalized words and phrases in this specification shall have the same meaning as in the Agreement.

2. SCOPE OF FERRY SERVICE

The Contractor shall deliver year-round daily Ferry Service across Parsons Channel in the Fraser River, from Barnston Island to the mainland at Port Kells in the City of Surrey, BC.

Utilizing the Watercraft and the Contractor's tug that has been preapproved by the Province for the propulsion of the Watercraft, until such time that the Province provides a tug or alternate watercraft to the Contractor pursuant to Section 5 of this Agreement, the Contractor shall provide ferry sailings on a continuous demand-basis approximately 18 hours per day in accordance with the following schedule at no cost to the users thereof:

- Monday, Tuesday, Wednesday, Thursday 6:15 am to 11:55 pm
- Friday, Saturday, Sunday 6:15 am to 12:55 am

In addition, the Contractor shall be available 24 hours a day 365 days per year to deliver immediate, on-call emergency ferry service within 30 minutes. Emergency services include fire, police and ambulance. The British Columbia Ambulance Service and the RCMP are able to request emergency ferry service via two designated emergency ferry operator contacts.

The Contractor shall perform their obligations in accordance with a Safety Management System (SMS) and other Contractor Completed Plans attached to this Agreement as Schedule M.

Without limitation to the provisions in this Agreement by which the Contractor is obligated to observe, abide by and comply with all Laws, the Contractor will perform all inspections and obtain and carry all certifications mandated by the *Canada Shipping Act 2001* and its regulations.

The Contractor is responsible for all management, labour, materials, supplies, consumables, provisions, tools, machinery, equipment, utilities and any other thing required for the performance of the Ferry Service.

The Contractor is responsible for the determination of all means, methods, techniques, sequences and procedures employed to provide the Ferry Service unless such means, methods, techniques, sequences or procedures are specifically set out in this Agreement.

2.1. Utilities

The Contractor is responsible for all utilities in accordance with the Licence, as well as internet services, consumables and other supplies, and services required to provide the Ferry Service.

The Contractor is to ensure that the Ferry Facility and the Watercraft have continuous access to such utilities, water and supplies. Any interruptions to the supply shall be rectified as soon as possible.

3. SAFETY MANAGEMENT SYSTEM

The structure and content of the SMS shall comply with the specimen in Schedule B Appendix B2, meet the requirements of the ISM Code and this Agreement including its delivery pursuant to Section 2.2 of this Agreement.

The SMS, with its appended operational documents, shall serve as the single, comprehensive and definitive source of all the Contractor's current policies, procedures, instructions, responsibilities and authorities, checklists, descriptions, lines of communication between ship and shore, records, logs, notes, memos, and audit systems associated with the Ferry Service.

The actual approach to Ferry Service and the approach as it is described in the SMS and its operational documents shall be the same.

The master version of the SMS shall be digital. All electronic files, folders and operational documents that constitute the master version of the SMS shall be hosted and accessed on the Province's SharePoint site at the following address:

- <https://marinebranch.sp.th.gov.bc.ca/BarnstonIslandFerrySMS/>

The Contractor shall follow instructions of the Province regarding SharePoint file structure, and the use of SharePoint to access, view, upload, download, edit, check-in, check-out, share, archive, and delete files and folders.

3.1. Province's Contributions to SMS

The Province is responsible for:

- 1) upon Contract Award, providing the specimen SMS and its operational documents, in an electronic format, which will be substantially similar to the specimen SMS included in Schedule B Appendix B2 Specimen Barnston Island Ferry Safety Management System;
- 2) reviewing of the Contractor's completed SMS and its operational documents for feedback and acceptance or recommendations for changes;
- 3) cooperating with the Contractor in ongoing revisions and updates of the SMS and its operational documents; and
- 4) undertaking inspections, audits, and reviews to ensure the Contractor's compliance with the SMS and its operational documents.

3.2. Contractor's Completed SMS

When completing the SMS pursuant to Section 2.2 of this Agreement, the Contractor shall afford the Province no less than three (3) weeks before the Commencement Date to review the Contractor's submitted SMS for feedback and acceptance or recommendations for changes.

The SMS shall be completed in accordance with instructions provided within the specimen SMS in Schedule B Appendix B2 Barnston Island Ferry Safety Management System. All operational documents appended to the SMS shall be specific to the Ferry Service, and consistent with all core policies and commitments from the specimen SMS. Written procedures, instructions or plans shall be kept simple and unambiguous. The Contractor's completed SMS and its operational documents shall be to the Province's satisfaction.

Upon acceptance by the Province of the Contractor's completed SMS and its operational documents, the Contractor shall upload the completed SMS and its operational documents to the SharePoint site and the parties will attach same to Schedule M of this Agreement.

3.3. Revision and Continuous Improvement of the Contractor's Completed Safety Management System (herein, the "SMS")

Throughout the Term, the Contractor shall maintain care and control of the SMS and its operational documents. The Contractor shall undertake inspections, audits, and reviews to ensure the SMS and its operational documents remain specific to the Ferry Service and shall continuously monitor the SMS and its operational documents for relevance, consistency with actual practice, compliance with rules, regulations, and standards.

From time to time during the Term, the Contractor shall propose to the Province improvements, updates and revisions to the SMS and its operational documents, including addressing discovered gaps in the SMS by developing and documenting the means, methods, techniques, sequences or procedures, operating conditions and organizational learning. The Province will review proposed revisions to ensure they are

consistent with all core policies and commitments from the Province's specimen SMS and the ISM Code.

Upon mutual agreement between the parties, all improvements, updates and revisions will be uploaded by the Contractor to the SharePoint site.

Only one version of the SMS and one version of its operational documents shall be posted on the Province's SharePoint site, throughout the Term, and the version that is posted shall be considered as the master version.

3.4. Distribution of SMS

The Marine Manager shall make a current version of the Contractor's Completed Safety Management System and its operational documents available to all personnel involved with Ferry Service including its crew and management team, the Province, and if required Government Authorities. The Marine Manager shall ensure crew have a current version of the SMS and its operational documents on board and that they have read and are familiar with the SMS and its operational documents.

Any distribution copies of the SMS, by the Contractor's Marine Manager, shall be controlled and described within the SMS and its operational documents.

4. ORGANIZATION AND MANAGEMENT PLAN

At least two weeks before the Commencement Date, the Contractor shall complete the Organization and Management Plan (the "Plan" for the purposes of this Section) for the Ferry Service, and submit same for the Province's feedback and acceptance or recommendations for changes. This Plan shall:

- (a) describe the organizational structure and level of authority:
 - (1) include an organization chart of the individuals and their respective positions within the organization;
 - (2) identify the Marine Manager appointed by the Contractor (in accordance with the individual identified in the Contractor's proposal), and describe their specific role and responsibilities and reporting relationships within and outside the organization;
 - (3) identify other key personnel (including subcontractors), and describe their specific role and responsibilities, and their reporting relationships;
 - (4) provide each individual's primary work location;
 - (5) provide the number of hours per year each individual will spend onsite at the Ferry Service;

- (6) specify whether any individual is expected to retire or leave the organization prior to the end of the Term, and succession plans therefor; and
- (b) confirm the Marine Manager will be the Contractor's representative for all aspects of the Work with full authority to supervise the Work, to communicate with the Province, to act on behalf of and legally bind the Contractor in connection with the Work and this Agreement including exchanging Notices with the Province, and will be available at all times to the Province;
- (c) describe the approach and strategies for attraction, retention, succession planning, and training of management and crew;
- (d) describe measures to ensure that a cooperative working relationship is developed and maintained between the Province and the Contractor during the Term of the Agreement;
- (e) describe management and key personnel experience:
 - (1) include a resume or curriculum vitae (CV) for the Marine Manager, other key personnel (including, for clarity, management individuals and subcontractors), and each Master, describing their relevant education, professional designations and/or technical standing, current marine certifications and training and work experience including recent and current relevant work that clearly demonstrates their skills and abilities; and
 - (2) for the Marine Manager, add a description of their relevant experience managing marine operations, resources (financial and human), and safety management systems for similar sized marine operations.

The Plan shall be to the Province's satisfaction.

Upon acceptance by the Province of the Plan, the Contractor shall upload the Plan to the SharePoint site and the parties will attach same to Schedule M of this Agreement.

The Plan may be amended upon mutual agreement from time to time and reviewed no less than annually by the Contractor for updating as changes necessitate in order to ensure the completed plan remains current.

4.1. Changes to Management and Key Personnel

There shall be no substitutions or replacements of the Contractor's Marine Manager and key personnel, unless such change is approved by the Province.

If for any reason a change occurs or the Contractor has knowledge that such a change is likely to occur, the Contractor must promptly deliver a written request to the Inland Ferry Manager for the Province's consent to the change.

The Contractor will include in such written request a comprehensive description of the change, the reason(s) for the change and sufficient information and documentation, including as to suitability, knowledge, skills, resources, experience, qualifications and abilities of the individuals involved in the change to enable the Province to consider, in its sole discretion, whether the change, if expressly consented to in writing by the Province, will result in the Contractor and its Marine Manager and key personnel, considered separately and as a whole, meeting or exceeding the suitability, knowledge, skills, resources, experience, qualifications and abilities of the Contractor and its key personnel, considered separately and as a whole, before the change.

The Contractor will provide such further information and documentation as the Province may request for the purpose of considering any such request for consent to a change, and any such request for consent to a change and any additional information and documentation so provided may, in the sole discretion of the Province, be considered and taken into account in the evaluation of a proposal.

5. TRAINING IMPLEMENTATION PLAN

At least two weeks before the Commencement Date, the Contractor shall complete the Training Implementation Plan (the "Plan" for the purpose of this Section) for the Ferry Service, and submit same for the Province's feedback and acceptance or recommendations for changes. The Plan shall fulfill the obligations of the SMS training guide (reference number BI-SOP-003) as attached in Appendix B Schedule B2, and will specify which personnel are to be trained, when and by whom.

Upon acceptance by the Province of the Plan, the Contractor shall upload the completed plan to the SharePoint site, and the parties will attach same to Schedule M of this Agreement.

The Plan may be amended upon mutual agreement from time to time and reviewed no less than annually by the Contractor for updating as changes necessitate in order to ensure the completed plan remains current.

6. BUSINESS CONTINUITY PLAN

At least two weeks before the Commencement Date, the Contractor shall complete the Business Continuity Plan (the "Plan" for the purpose of this Section) for the Ferry Service, and submit same for the Province's feedback and acceptance or recommendations for changes. The Plan shall describe how the organization is able to continue to perform the Ferry Service in accordance with this Agreement in event of the following:

- Retirement of a management team member;
- Departure of a management team member;
- Disability of a management team member; or
- Death of a management team member.

For each situation, the Contractor shall describe the expected changes to the management team, decision-making authorities of the team members, the organization, and corporate structures.

Upon acceptance by the Province of the Plan, the Contractor shall upload the Plan to the SharePoint site, and the parties will attach same to Schedule M of this Agreement.

The Plan may be amended upon mutual agreement from time to time and reviewed no less than annually by the Contractor for updating as changes necessitate in order to ensure the completed plan remains current.

7. RISK MANAGEMENT PLAN

Risk management shall be a priority of the Contractor, and the Contractor shall perform the Ferry Services in a manner that minimizes risk to the crew, ferry users, Stakeholders, health and safety, the environment, the Contractor and the Province.

At least two weeks before the Commencement Date, the Contractor shall submit a Risk Management Plan (the “Plan” for the purpose of this Section) for the Province’s feedback and acceptance or recommendations for changes. This Plan shall identify major risks that could cause disruption or interruption to the Ferry Service (whether or not it’s within the Contractor’s control) or materially affect the Contractor’s ability to provide the Ferry Service, and its plan for mitigating these risks, which include but are not necessarily limited to:

1. Political
 - a. Regulatory changes
 - b. Terrorism
 - c. Protests/ blockade
2. Economic
 - a. Disruptions in supply chains
 - b. Significant fluctuations to inflation rates
 - c. Significant fluctuations to interest rates
3. Societal/ Personnel
 - a. Union drives/ strikes/ lock-outs
 - b. Illness/ disease/ epidemics/ injury of employees
 - c. Quarrels/ disputes/ and hostilities
4. Technological/ Environmental
 - a. Catastrophic damage to Watercraft/ Ferry Facility
 - b. Floods/ fires/ natural disasters
 - c. Nearby environmental incidents

The Plan shall identify the process of risk identification and the processes envisioned to assess, mitigate, document, and monitor risks.

The Plan shall be to the Province's satisfaction.

Upon acceptance by the Province of the Plan, the Contractor shall upload the Plan to the SharePoint site and the parties will attach same to Schedule M of this Agreement.

The Plan may be amended upon mutual agreement from time to time and reviewed no less than annually by the Contractor for updating as changes necessitate in order to ensure the completed plan remains current.

Appendix B2

Specimen Barnston Island Safety Management System

The specimen safety management system, and its operational documents, is available to Proponents as a reference document to the RFP. Follow instructions in Appendix B of the RFP to view the documents on the Province's SharePoint.

INSTRUCTIONS ON COMPLETING THIS SMS

The Ministry has developed a specimen SMS that requires the attention and input of the Contractor to fulfill various RFP and contract obligations. The specimen SMS is divided into two types of documents:

1. the main SMS document (filename “BarnstonIslandFerrySMS.docx”), and
2. a series of operational documents that are incorporated by reference (with filenames like “BI-EMG-001 (SOPEP).docx”, “BI-EMG-002 (Emergency Procedures).docx”, “BI-ORG-010 (Confidentiality and Communications).docx”, and the like).

The instructions on completing these documents are described below.

Instruction on completing the main SMS document

The main SMS document requires **limited** input from the Contractor. The areas that require input from the Contractor are highlighted and contained in square brackets [**like this**]. There are 33 places where the Contractor is required to make an edit to the main SMS document, and on most of these occasions, the Contractor is directed to replace [**Contractor Name**] with their name. For example, if the Contractor's name is “Maple Leaf Ferries”, then text from page 1 of the specimen SMS document shall be modified as follows:

Extract from Specimen SMS:

The BC Ministry of Transportation and Infrastructure and [**Contractor Name**] are committed to operate the Barnston Island Ferry Service in a manner that is safe, reliable, and efficient.

Extract from SMS after input from Contractor:

The BC Ministry of Transportation and Infrastructure and Maple Leaf Ferries are committed to operate the Barnston Island Ferry Service in a manner that is safe, reliable, and efficient.

The edited text shall be formatted so that it is consistent in font, size, and colour with the text that surrounds it. Outside of the highlighted text, the Contractor shall not make any other edits to the main SMS document.

Instruction on completing the operational documents

The operational documents require **significant** input from the Contractor. Each operational document that contains highlighted text in square brackets [**like this**] describes instructions,

notes, or guidance that the Contractor shall follow in order to satisfactorily complete the SMS. Within the operational documents, the Contractor shall replace the highlighted instructions with the content described by the instructions. For example, the specimen operational document called “CONTACT INFORMATION” (BI-ORG-003) shall be modified as follows:

Extract from Specimen Operational Document “CONTACT INFORMATION”:

Non-Emergency Contact Info

[Contractor to provide a table identifying titles, names, office telephone numbers, mobile telephone numbers, email addresses, and normal hours of availability for all key personnel including:

- the President;
- the Marine Manager;
- Any other member of the management team; and
- Masters.

Contractor to provide the telephone number used to contact the ferry].

Extract from Operational Document “CONTACT INFORMATION” after input from Contractor:

Non-Emergency Contact Info

Title	Name	Contact info	Availability
President	Jane Doe	Office: 555-555-5551 Cell: 555-555-5552 Email: jane@mapleleaf.ca	9 am – 5 pm, weekdays
Marine Manager	Sarah Adams	Office: 555-555-5551 Cell: 555-555-5553 Email: sarah@mapleleaf.ca	7 am – 3 pm, weekdays
Master A	Richard Roe	Cell: 555-555-5554 Email: richard@mapleleaf.ca	5 am – 1 pm, weekdays
Master B	John Smith	Cell: 555-555-5555 Email: john@mapleleaf.ca	12 pm – 8 pm, weekdays
Master C	Lisa Lin	Cell: 555-555-5556 Email: lisa@mapleleaf.ca	4pm – 12 am, weekdays
Barnston Island Ferry		555-555-5557	All operational hours

The edited text shall be formatted so that it is consistent in font, size, and colour with the text that surrounds it.

Appendix B3**Communication Specifications****1 COMMUNICATION REQUIREMENTS**

The Contractor will communicate appropriately, professionally, effectively and in a timely manner with the Stakeholders, Government Authorities and Province as detailed herein.

At least two weeks before the Commencement Date, the Contractor shall submit the Communications Plan for the Province's feedback and acceptance or recommendations for changes.

The Communications Plan shall outline the Contractor's standards and practices, in accordance with requirements provided below, for communications related to:

- 1) reportable occurrences, as defined by the *Transportation Safety Board Regulations*, SOR/2014-37, Section 3.1 and pollution and safety incidents;
- 2) Ferry Service disruptions, interruptions or closures, including unplanned and planned events;
- 3) Government Authorities; and
- 4) Stakeholders.

The plan shall be to the Province's satisfaction.

Upon acceptance by the Province of the Contractor's completed Communications Plan, the Contractor shall upload the completed Communications Plan to the SharePoint site and the parties will attach same to Schedule M of this Agreement.

The completed Communications Plan may be amended upon mutual agreement from time to time and reviewed no less than annually for updating as changes necessitate in order to ensure the completed plan remains current.

2 DEFINITIONS

For this Specification, the following capitalized words and phrases shall have the following meanings:

- 1) "Communications Platform" means the medium in which the Contractor communicates with Stakeholders including, but not limited to email, community websites, radio, newspapers, phone, social media on-line forums, overhead signs, portable message signs, traveller information systems.
- 2) "Highway User" means any person or persons, regardless of form of transportation, that use any lands or facilities within the jurisdiction of the Province.
- 3) "Ferry User" means any person or persons, regardless of form of transportation, that uses the subject ferry owned by the BCTFA.

- 4) “Sign” mean a lettered board, message or other display which includes all regulatory, warning, guide or informational, advisory, and all special or other messages/displays under the Provincial jurisdiction as defined by the Province, but excluding electronically controlled messages/displays; a sign includes the Sign Face Overlay.
- 5) “Social Media Platform” means a form of electronic communication, including, but not limited to websites for social networking and microblogging, through which users create online communities to share information, ideas, personal messages, and other content.
- 6) “Stakeholder” means a party that may be affected by the Contractor’s actions including, but not limited to Highway Users, Ferry Users, local governments, school districts, police authorities, emergency response providers, transportation organizations, tourism industry and businesses.

3 GENERAL STANDARDS

The Contractor shall:

- 1) Ensure communications with the public, Stakeholders and Province are clear, appropriate, timely, accurate, informative, concise;
- 2) Proactively communicate across various Communications Platforms;
- 3) Provide an automated acknowledgement on Communications Platforms, where technically feasible;
- 4) Provide emergency responders with contact information as directed by Ministry;
- 5) Inform Ministry Inland Ferry Managers of any messages before they are posted;
- 6) Coordinate with the highway maintenance contractor for use of some Communications Platforms including, but not limited to, overhead signs, portable message signs.
- 7) Maintain Ferry Facility Signs at all times (with all changes to Signs being pre-approved by the Ministry) and replace Signs, from time to time, as directed by the Ministry; and
- 8) Maintain records of all communications activities.

4 COMMUNICATIONS FOR REPORTABLE OCCURRENCES, POLLUTION AND SAFETY INCIDENTS

Whenever a significant ferry service event occurs as described below, the Contractor shall immediately notify the Province and take action as follows:

Event	Action
a) Any "reportable occurrence" as defined by <i>Transportation Safety Board Regulations, SOR/2014-37, Section 3.1.</i>	Immediately: 1. Make personal contact with Ministry Inland Ferry Manager*; and 2. Proceed with SMS procedures
b) Any damage to the Watercraft or Ferry Facility, which is not covered by (a) above	Immediately: 1. Make personal contact with Ministry Inland Ferry Manager*; and 2. Proceed with SMS procedures
c) Any pollution incident (including discharge of oil, garbage, black water, grey water or emission outside of Transport Canada allowable limits) or potential environmental hazard	Immediately: 1. Make personal contact with Ministry Inland Ferry Manager*; and 2. Proceed with SMS procedures
d) Any threat to the health, safety or security of the public, the crew, the Watercraft, or the Ferry Facility	Immediately: 1. Make personal contact with Ministry Inland Ferry Manager*; and 2. Proceed with SMS procedures
e) Any breach of Laws, including the Canada Shipping Act and the Workers' Compensation Act, or a citation issued by a Government Authority	Immediately: 1. Make personal contact with Ministry Inland Ferry Manager*; and 2. Proceed with SMS procedures

*If the Contractor is not able to make personal contact with Ministry Inland Ferry Manager then the Contractor shall make personal contact with Ministry Inland Ferry Executive Director.

The Contractor's notification to the Ministry Inland Ferry Manager (or Ministry Inland Ferry Executive Director) should include the following information:

- 1) Detailed event description, including but not limited to, the following:
 - a. the date and time of the occurrence
 - b. the name of the operator or master of the Watercraft
 - c. if the Watercraft is equipped with a voyage data recorder or a simplified voyage data recorder, any action taken or planned to save the data on the recorder
 - d. the last point of departure, including the date and time of departure
 - e. the number of crew members, passengers and other persons on board at the time of the occurrence
 - f. the number of crew members, passengers and other persons involved in the occurrence who were killed or sustained serious injuries as a result of the occurrence
 - g. the local weather, water and, if applicable, ice conditions at the time of the occurrence
 - h. the location of the occurrence by reference to an easily defined geographical point, or by latitude and longitude
 - i. a description of the occurrence and the extent of any resulting damage to the Watercraft and Ferry Facility, the environment and other property
 - j. a list of any dangerous goods released on board or from the Watercraft

- k. a description of any action taken or planned to protect persons, the environment, the Watercraft and Ferry Facility, and other property
- 2) Province personnel involved
- 3) Incident responders such as police, fire, ambulance and others
- 4) Highway maintenance contractors onsite
- 5) Traffic management requirements
- 6) Copies of all reports and communications with any Government Authority

5 COMMUNICATIONS FOR FERRY SAILING DISRUPTIONS, INTERRUPTIONS OR CLOSURES

In the event of ferry sailing disruptions, interruptions or closures, Contractor shall follow the Provincial Incident Response and Travel Advisory Messaging Protocol (revised October 2015), which is to be supplied by the Province and may be updated from time to time. The current sample messaging for inland ferries, from Appendix A of the protocol document, is set out in Schedule 1 of this Specification.

Upon execution of this Agreement or sooner, the Province will provide the Contractor with the current Provincial Incident Response and Travel Advisory Messaging Protocol document.

It is anticipated that the DriveBC system may be updated within the first Contract Year, or thereabouts, and the proposed new inland ferries portion of the Provincial Incident Response and Travel Advisory Messaging Protocol will come into effect. The proposed sample of new inland ferries messaging protocols are described in Schedule 2 to this Appendix. The Contractor will use the new Provincial Incident Response and Travel Advisory Messaging Protocol document upon notification by the Province.

5.1 Unplanned Ferry Service Events

Whenever ferry service is impacted, including events described in section 1.2 which result in a ferry service impact (such as disruption, interruption or closure), the Contractor shall immediately notify the Province and take action as follows:

Barnston Island Ferry Agreement**Schedule B – Appendix B3**

Event	Action
f) Any event that impacts the contractor's ability to continue ferry service according to contract requirements that causes a service suspension of more than 20 minutes, including weather events, system failure, structural failure, equipment failure, vehicle accidents, medical emergencies, labour action, or security issues.	Immediately: <ol style="list-style-type: none">Notify the Ministry Inland Ferry Manager by phone, or email; and thenUpdate DriveBC in accordance with the Provincial Incident Response and Travel Advisory Messaging Protocol, and then when conditions change, and every hour until the event is resolved, and thenCommunicate across various Communications Platforms during and after the event
g) Sailing waits increase or decrease	Immediately: <ol style="list-style-type: none">Notify the Ministry Inland Ferry Manager by phone, or email; and thenUpdate DriveBC in accordance with the Provincial Incident Response and Travel Advisory Messaging Protocol, and then when conditions change, and every hour until no further sailing waits, and thenCommunicate across various Communications Platforms during and after the event

5.2 Planned, Expected or Proposed Ferry Service Events

When a ferry service impact is planned, expected or proposed, the Contractor shall take action as follows:

Event	Action
h) All planned maintenance, refits, cable changes, inspections, and drills, that will impact service	At least two weeks in advance: 1. Inform Ministry Inland Ferry Manager of proposed messaging, and then 2. Proactively communicate across various Communications Platforms in advance, during and after the event, and then 3. Update DriveBC in accordance with the Provincial Incident Response and Travel Advisory Messaging Protocol for planned events
i) Time periods when seasonal environmental conditions, historical traffic demands, or other factors have potential to cause sailing waits, to interrupt travellers or to impose temporary restrictions on ferry use	At least two weeks in advance: 1. Inform Ministry Inland Ferry Manager of proposed messaging, and then 2. Proactively communicate across various Communications Platforms in advance, during and after the event, and then 3. Update DriveBC in accordance with the Provincial Incident Response and Travel Advisory Messaging Protocol for planned events
j) Proposed ferry service impacts that are, or may be reasonably expected to be disruptive/controversial	At least two weeks in advance: 1. Inform Ministry Inland Ferry Manager of proposed messaging, and then 2. Proactively communicate across various Communications Platforms (as defined in Section 2) 3. Monitor and receive feedback regarding the delivery of service and adjust when possible, and then 4. Update DriveBC in accordance with the Provincial Incident Response and Travel Advisory Messaging Protocol for planned events

5.3 Unplanned and Planned Additional Services

If ferry service hours are extended as directed by the Province, the Contractor shall take actions as follows:

Event	Action
k) Additional services, such as temporary extension of scheduled service hours	Immediately: 1. Inform Ministry Inland Ferry Manager of proposed messaging, and then 2. Proactively communicate across various Communications Platforms in advance, during and after the event, and then 3. Update DriveBC in accordance with the Provincial Incident Response and Travel Advisory Messaging Protocol for planned events

6 COMMUNICATIONS WITH GOVERNMENT AUTHORITIES

The Contractor shall maintain positive, professional relationships with all provincial and federal Government Authorities, including but not limited to Transport Canada, WorkSafeBC, Department of Fisheries and Oceans, and Environment Canada. The Contractor will engage in proactive and regular communication with the Ministry and provincial and federal regulators regarding regulatory matters, and will keep a record of all such communications.

The Contractor shall communicate with Government Authorities as follows:

Event*	Action
l) Scheduling inspections	Email communication and copy Ministry Inland Ferry Manager
m) Requesting clarifications about regulations	Email communication and copy Ministry Inland Ferry Manager
n) Correcting deficiencies	Email communication and copy Ministry Inland Ferry Manager

*Sample events; event types not limited to these.

7 COMMUNICATIONS WITH STAKEHOLDERS**7.1 Telephone Service**

The Contractor shall establish and continuously maintain telephone service for contact with the Stakeholders.

The Contractor's telephone number shall be listed and advertised in local directories and media and posted prominently on the Watercraft and at the Ferry Facility.

The Contractor's telephone service shall be staffed, as a minimum, during the hours of 8:00 a.m. to 5:00 p.m. daily (except Christmas and New Year's days) and shall be available for inquiries during those hours. The telephone service shall be available outside of these hours for the public to obtain recorded information regarding the Ferry Service, and to leave a voice message if required.

7.2 Responses to Stakeholder Questions, Comments and Complaints

When requested, the Contractor shall be responsive to Stakeholders as follows:

Event	Action
o) Phone calls, emails, and texts from Ministry Inland Ferry Manager, or Ministry District office	Respond within 4 hours
p) Written communication from the Province	Respond within 10 days
q) Incoming complaints, comments and requests received through various Communications Platforms or in person	Monitor, receive, and respond, and document the result of those communications in a timely manner. Response times are as follows: <ul style="list-style-type: none">• phone calls (within 24 hours)• emails (within 48 hours)• regular post (within 10 days)• social media (within 24 hours)
r) Incoming media inquiries	Defer to Ministry, and immediately report to Marine Branch by phone, or email

Appendix B3 - Schedule 1

Sample Inland Ferries Section for “Provincial Incident Response and Travel Advisory Messaging Protocol”

Type of Messaging	Highway '#' Direction(s) of Impact	Message Example
INLAND FERRIES		
Unplanned Incident – Closures (Ferry Out of Service)	Kootenay Lake Ferry Both Directions	Ferry Out of Service at Kootenay Lake. <i>Estimated Time of Opening between 3 p.m. – 6 p.m. Next update 2 p.m.</i> <i>Alternate Route from Castlegar to Creston via Hwy 3. Alternate Route from Balfour to Creston via Hwy 3A, Hwy 6, Hwy 3.</i> Updated on Wed Dec 7 at 1:15 p.m. (ID# 116870)
Unplanned Incident – Delays (Ferry Service Interruption)	Arrow Park Ferry Both Directions	Ferry Service Interruption at Junction of Upper and Lower Arrow Lakes, <i>due to high traffic volume. Expect 1 sailing wait. until 5:00 pm. Next update 4:00 p.m.</i> Updated on Wed Dec 7 at 2:31 p.m. (ID# 116871)
Ferry-related Highway Message	Highway 3A between Castlegar and Creston Both Directions	Closed in both directions from Balfour Ferry Landing, in Balfour to Kootenay Bay Ferry Landing, in Kootenay Bay (8.4 km) because of Ferry Out of Service. <i>Estimated Time of Opening between 3:00 p.m. – 6:00 p.m. Next update 2:00 p.m. Alternate Route from Castlegar to Creston via Hwy 3. Alternate Route from Balfour to Creston via Hwy 3A, Hwy 6, Hwy 3.</i> Updated on Wed Dec 7 at 4:02 p.m. (ID# 116872)
PLANNED EVENTS – closures (ferry out of service) or delays (ferry service interruption)		
Proactive – Ferry Out of Service	McClure Ferry Both Directions	Ferry Out of Service at north Thompson River starting Sun Jan 1 at 8:00 a.m. through Wed Feb 29 at 5:00 p.m., <i>due to ice on river. Alternate route via Westside Road. Next update February 15.</i> Updated on Thu Jan 5 at 2:55 p.m. (ID# 30635)
Proactive – Ferry Service Interruptions	Kootenay Lake Ferry Both Directions	Ferry Service Interruption at Kootenay Lake starting Fri Jan 6 at 8:00 a.m. through Fri Jan 13 at 5:00 p.m. <i>Osprey 2000 receiving maintenance, MV Balfour running regular schedule. Expect 1 sailing delay.</i> Updated on Thu Jan 5 at 2:45 p.m. (ID# 30634)
Current – Ferry Out of Service	McClure Ferry Both Directions	Ferry Out of Service at north Thompson River through Wed Feb 29 at 5:00 p.m., <i>due to ice on river. Alternate route via Westside Road. Next update February 15.</i> Updated on Thu Jan 5 at 2:57 p.m. (ID# 30635)
Current – Ferry Service Interruptions	Kootenay Lake Ferry Both Directions	Ferry Service Interruption at Kootenay Lake through Fri Jan 13 at 5:00 p.m. <i>Osprey 2000 receiving maintenance, MV Balfour running regular schedule. Expect 1 sailing wait.</i> Updated on Thu Jan 5 at 2:45 p.m. (ID# 30634)

Appendix B3 - Schedule 2

Proposed Sample of New Inland Ferries Section for “Provincial Incident Response and Travel Advisory Messaging Protocol”

Type of Messaging	Impacted Ferry Service/ Direction	Message Example	
INLAND FERRIES - UNPLANNED EVENTS			
Sailing waits* *applies to high traffic volume, replacement of MV Osprey by smaller capacity MV Balfour.	Francois Lake Ferry, southbound	Syntax: [Ferry name] has a [#] sailing wait for [direction of impacted traffic] due to [reason]. Expect delays up to [#] hours. Next update [time]. Example: Francois Lake Ferry has a 2 sailing wait for southbound traffic due to high traffic volume. Expect delays up to 2 hours. Next update at 3pm PDT.	
Delayed departure* *applies to operational delays, medical emergencies, maintenance, safety inspections, safety drills, and environmental conditions	Upper Arrow Lake Ferry, both directions	Syntax: [Ferry name] is operating [#] mins behind schedule due to [reason]. Next update [time]. Example: Upper Arrow Lake Ferry is operating 30 mins behind schedule due to a medical emergency. Next update at 2pm PDT.	
Unplanned service interruption	Adams Lake Cable Ferry, both directions	Syntax: [Ferry name] is currently out of service. Next update in one hour. Example: Adams Lake Cable Ferry is currently out of service. Next update in one hour.	
Unplanned additional service *such as temporary extension of scheduled service hours	Kootenay Lake Ferry, both directions	Syntax: [Ferry name] will run [scope of additional service and reason]. Normal schedule resumes [time]. Example: Kootenay Lake Ferry will run 24 hours a day throughout the weekend due to Highway 3 closure. Normal schedule resumes Monday.	

Barnston Island Ferry Agreement**Schedule B – Appendix B3**

INLAND FERRIES - PLANNED EVENTS			
Planned service interruption* *applies to maintenance safety drills, safety inspections, and seasonal shutdowns	Adams Lake Cable Ferry, both directions	Syntax: [Ferry name] will be out of service between [start time] and [finish time] due to [reason]. Example: Adams Lake Cable Ferry will be out of service between 11 pm Jun 1 and 1 am Jun 2 due to maintenance.	
Possible service interruptions * *applies to high river current, debris in water, and safety inspections	Lytton Ferry, both directions	Syntax: Service on [Ferry name] may be interrupted between [start time] and [finish time] due to [reason]. Example: Service on Lytton Ferry may be interrupted between Mar 15 and Mar 20 due to freshet.	
Planned additional service *such as temporary extension of scheduled service hours	Kootenay Lake Ferry, both directions	Syntax: [Ferry name] will run [scope of additional service and reason]. Normal schedule resumes [time]. Example: Kootenay Lake Ferry will run 24 hours a day throughout the weekend due to Highway 3 closure. Normal schedule resumes Monday.	

Appendix B4**Reporting Specifications****1 GENERAL REQUIREMENTS**

The purpose of the Reporting Specifications is to provide detailed requirements for the Contractor to report appropriately, professionally, effectively and in a timely manner to the Province.

The Province in its discretion may change reporting specifications and/or provide new or updated forms for use by the Contractor from time to time. The Contractor shall thereafter use the stipulated form in its reports to the Province.

All forms, reports, files and documents are to be submitted to the Province electronically on the Province's SharePoint website at the following address:

<https://marinebranch.sp.th.gov.bc.ca/barnstonisland/>

2 REPORTABLE OCCURRENCES, POLLUTION AND SAFETY INCIDENTS**2.1 Immediate Incident Reporting**

Reportable occurrences, pollution and safety incidents, and requirements for immediate notification are listed in Schedule B Appendix B3 Communications Specifications Section 4 Communications for Reportable Occurrences, Pollution and Safety Incidents.

2.2 Initial Incident Report

Within 24 hours of the reportable occurrence, pollution or safety incident, the Contractor shall prepare and submit to the Province, in writing, an initial report containing all of the information requested in Section 2.1 above and the following details:

- 1) Immediate and possible long-term results of the incident (including passenger or crew injury and damage to the Watercraft or Ferry Facility.);
- 2) Immediate steps taken to rectify the situation; and
- 3) A summary of any communication with or notification provided to any Government Authority.

2.3 Subsequent Incident Report

If requested by the Province, within 5 days of the reportable occurrence, pollution or safety incident, the Contractor shall prepare and submit to the Province, in writing, a subsequent incident report. The Province may, at its discretion, require the Contractor to provide further reports, for an ongoing or concluded incident, at any time. All subsequent incident reporting should include, at a minimum the following information:

- 1) Any new outcomes or after-effects of the incident (including passenger or crew injury and damage to Watercraft or Ferry Facility.);
- 2) On-going steps taken to rectify the situation;
- 3) Copies of all communications with all regulatory agencies from the incident onset to when the incident is concluded, and comments with respect to all reports sent to any Government Authority;
- 4) An analysis of the incident, including root causes; and
- 5) Long-term corrective and/or preventive actions planned to minimize or prevent such an incident(s) or after-effects from recurring.

2.4 Notification to the Province of On-going Safety or Environmental Risk

Where circumstances arise that present an ongoing safety or environmental risk, the Contractor shall forthwith notify the Province, all Governmental Authorities as required by Law and any personnel or Governmental Authority who would be affected if the risk became an incident including:

- 1) Ferry Service users;
- 2) Police and/or emergency services;
- 3) Municipal or district authorities;
- 4) Media; and
- 5) Adjacent property owners or residents.

3 ANNUAL REPORTING

3.1 Annual Report

The Contractor shall prepare and submit to the Province within one month of the end of each Contract Year, an Annual Report that is certified by the Contractor's owner, or financial officer or accountant to be true and correct with respect to all of the expenses incurred in the operation of the Ferry Service during the Contract Year (the "Inland Ferry Annual Report"). The Inland Ferry Annual Report shall be prepared using the form provided in this Appendix as Schedule 1, and shall include, but not be limited to:

- 1) The cost and volume of fuel consumed;
- 1) The aggregate hours of crew time, the total remuneration paid to the crew and total remuneration paid to management;
- 2) Maintenance and repair expenses (excluding the Contractor's own labour costs), which are to be separated between Watercraft and Ferry Facility and further broken down by category (e.g. Watercraft – Refit (Quinquennial), Watercraft – General Repair and Maintenance, Watercraft – Other (Specify), Docks – General Repair and Maintenance, Ferry Facility – Other (Specify));
- 3) The cost of all utilities including, without restriction, water, hydro, telephone, propane, waste disposal, and sewage; and
- 4) Such further information with respect to the expenses and operations of the Ferry Service as the Province may reasonably request.

4 MONTHLY REPORTING**4.1 Monthly Report**

During the Term of the Contract, the Contractor shall prepare and submit a monthly report to the Province before the 10th day of the month for the immediately preceding month (the "Inland Ferry Monthly Report"). The Inland Ferry Monthly Report will include information and statistics about safety, reliability, efficiency and continuous improvement. The Contractor shall use the Inland Ferry Monthly Report form provided in this Appendix as Schedule 2.

4.2 Inland Ferry Traffic System

During the Term of the this Agreement, the Contractor shall prepare and submit the traffic reports before the 20th day of the month for the immediately preceding month. The Contractor shall use the Province's Inland Ferry Traffic System (IFTS), which is to be supplied by the Province, to collect and record traffic information. The traffic reports will include the following information:

- 1) Number of vehicles by vehicle type for each sailing;
- 2) Number of passengers, both foot and vehicle for each sailing;
- 3) Number and types of vehicles left behind for each sailing;
- 4) Number of trips, including emergency trips; and
- 5) Amount of downtime for vehicle-carrying Watercraft, and the reason in each case.

4.3 Inland Ferry Reporting Network

It is anticipated that the IFTS electronic reporting system in section 4.3 above may be, during the Term, replaced by the Province and may be expanded to include additional Contractor reporting functionality, increase communication between crew and supervisors, access to manuals, policies and guides, and real time monitoring of the Watercraft.

If requested by the Province, the Contractor shall employ the Province's digital systems, platforms, applications and tools for collecting and sharing various operational and trip information between crew, management, and/or the Province.

The Province will determine requirements and pay for all hardware, software, and Contractor training.

5 REFIT REPORTING

The Contractor shall prepare and submit a 'pre-refit report' and a 'post-refit report' whenever the Watercraft undergoes a refit by the Contractor.

5.1 Pre-refit Report

The pre-refit report shall be submitted to the Province no later than 6 months prior to commencement of the refit on the Watercraft. The pre-refit report shall detail:

- 1) The scope of the work proposed by the Contractor;

- 2) Summary of all preparation discussions with Transport Canada and other agencies regarding the proposed work, schedules, and related regulatory concerns;
- 3) Where and when the work is going to be done;
- 4) How and when the Watercraft is transported to and from the refit facility;
- 5) The naval architect who shall oversee the work; and
- 6) Complete details of the replacement vessel and its suitability for the route along with proof of Transport Canada approval and proof of certification (once inspected) for the replacement vessel.

5.2 Post-refit Report

The post-refit report shall be submitted to the Province no later than twenty (20) Business Days after the Watercraft returns to active service. The post refit report shall:

- 1) Detail the complete scope of work, materials and processes involved in the refit;
- 2) Provide the date the Watercraft was removed from service (haul out date) and the date the Watercraft returned to service (return date);
- 3) Provide a digital photo record showing the before and after work as completed on the Watercraft;
- 4) Provide copies of all documentation, certificates and any refit related comments written or verbal made by Transport Canada (as may be directed by the BCTFA or the Province during the life of the Agreement); and
- 5) Provide a copy of the complete last thickness test report of all of the vessel's plating.

6 ON-DEMAND REPORTING

The Contractor shall upon request of the Province from time to time, fully inform the Province of work identified, scheduled and completed by the Contractor in connection with the provision and operation of the Ferry Service, and any Additional Services.

Barnston Island Ferry Agreement**Schedule B – Appendix B4 - Schedule 1****Barnston Island - Annual Report Specimen**

	Contract Year 1	Contract Year 2	Contract Year 3	Contract Year 4	Contract Year 5
Operational Information					
Number of Employees - Full Time					
Number of Employees - Auxiliary					
Shift Pattern In Use (deckhands) (eg. 4 on 2 off)					
Shift Pattern In Use (captains) (e.g. 6 on 3 off)					
Number of Emergency situations <u>within</u> regular operating hours					
Number of Emergency situations <u>outside</u> regular operating hours thus requiring a crew call out					
Number of <u>incidents</u> resulting in downtime					
Total number of <u>hours</u> of downtime					
Number of hours in operation under Ministry contract					
Number of hours in operation for <u>non-ministry</u> purposes					
Labour and Fuel Costs					
Total Labour Cost for Crew	\$ -	\$ -	\$ -	\$ -	\$ -
Total Labour Cost for Management & Administration	\$ -	\$ -	\$ -	\$ -	\$ -
Total Fuel Costs	\$ -	\$ -	\$ -	\$ -	\$ -
Total Litres Consumed					
Repair and Maintenance Costs					
Watercraft - Refit (Quinquennial)	\$ -	\$ -	\$ -	\$ -	\$ -
Watercraft - General Repair & Maintenance	\$ -	\$ -	\$ -	\$ -	\$ -
Watercraft - Other (specify)	\$ -	\$ -	\$ -	\$ -	\$ -
<i>Subtotal - Watercraft</i>	\$ -	\$ -	\$ -	\$ -	\$ -
Docks - General Repair & Maintenance	\$ -	\$ -	\$ -	\$ -	\$ -
Ferry Facility - Other (specify)	\$ -	\$ -	\$ -	\$ -	\$ -
<i>Subtotal - Ferry Facility</i>	\$ -	\$ -	\$ -	\$ -	\$ -
TOTAL - Repair and Maintenance Costs	\$ -	\$ -	\$ -	\$ -	\$ -
Utility Costs (as applicable)					
Hydro, Telephone, etc.	\$ -	\$ -	\$ -	\$ -	\$ -
Total Utility Costs	\$ -	\$ -	\$ -	\$ -	\$ -

**BARNSTON ISLAND NO. 3****REPORT FOR MONTH OF:****SAFETY**

	INDICATE # OF EVENTS	PROVIDE DETAILS
What safety incidents have occurred this month?	<input type="checkbox"/> Passengers/ Crew <input type="checkbox"/> Traffic accidents <input type="checkbox"/> TSB incidents <input type="checkbox"/> Rescues <input type="checkbox"/> Other	Has the Ministry been notified of all incidents? <input type="checkbox"/> Y / <input type="checkbox"/> N
What pollution incidents have occurred this month?	<input type="checkbox"/> Oil <input type="checkbox"/> Air <input type="checkbox"/> Sewage <input type="checkbox"/> Other	Has the Ministry been notified of all incidents? <input type="checkbox"/> Y / <input type="checkbox"/> N
What security incidents have occurred this month?	<input type="checkbox"/> Threats to people <input type="checkbox"/> Vandalism <input type="checkbox"/> Other	Has the Ministry been notified of all incidents? <input type="checkbox"/> Y / <input type="checkbox"/> N
What drills have occurred this month?	<input type="checkbox"/> MOB <input type="checkbox"/> Fire <input type="checkbox"/> Evacuation <input type="checkbox"/> Other	
What site inspections by regulators have occurred this month?	<input type="checkbox"/> Transport Canada <input type="checkbox"/> Class Society <input type="checkbox"/> WorkSafe <input type="checkbox"/> Other	
What regulatory deficiencies or orders remain open at the end of the month?	<input type="checkbox"/> Transport Canada <input type="checkbox"/> Class Society <input type="checkbox"/> WorkSafe <input type="checkbox"/> Other	

RELIABILITY

	CHECK	INSP	MAINT	DESCRIBE FINDINGS & WORK DONE
What inspections and what maintenance have been undertaken on the watercraft this month?	<input type="checkbox"/> Hull, deck & apron <input type="checkbox"/> Lighting & electric <input type="checkbox"/> Hydraulic <input type="checkbox"/> Lines, tackle, anchor <input type="checkbox"/> Painting & coatings <input type="checkbox"/> Watertight integrity <input type="checkbox"/> Housekeeping <input type="checkbox"/> Other			
What inspections and what maintenance have been undertaken on the ferry facilities this month?	<input type="checkbox"/> Timber decks <input type="checkbox"/> Guards & bullrails <input type="checkbox"/> Steel grating <input type="checkbox"/> Operator gangway <input type="checkbox"/> Steel pontoon <input type="checkbox"/> Timber fender float <input type="checkbox"/> Housekeeping <input type="checkbox"/> Other			
What 3 rd party re-certifications have been received?	<input type="checkbox"/> Lifesaving Equip. <input type="checkbox"/> Firefighting Equip. <input type="checkbox"/> Other			



BARNSTON ISLAND NO. 3

REPORT FOR MONTH OF:

EFFICIENCY

	CHECK AS APPROPRIATE	DESCRIBE
What is the total ferry downtime during scheduled hours in the month?	<input type="checkbox"/> No downtime <input type="checkbox"/> Less than 2 hours <input type="checkbox"/> Between 2 and 5 hours <input type="checkbox"/> Over 5 hours	Has the Ministry been notified of all downtime? Y / N
What new initiatives have been undertaken towards improving efficiency this month?	<input type="checkbox"/> Improving traffic flow <input type="checkbox"/> Reducing wasted trips <input type="checkbox"/> Minimizing wait times <input type="checkbox"/> Reducing garbage <input type="checkbox"/> Reducing fuel	
What quantity of fuel has been bunkered this month?		

CONTINUOUS IMPROVEMENT

	INDICATE # OF EVENTS BY TYPE	DESCRIBE RESULTS
What internal audits have been undertaken this month?	<input type="checkbox"/> Shipboard operations <input type="checkbox"/> Terminal operations <input type="checkbox"/> Office operations <input type="checkbox"/> Other	
What updates have been undertaken to plans, policies, and procedures this month?	<input type="checkbox"/> SMS <input type="checkbox"/> Operational documents <input type="checkbox"/> Org. & mgmt. plan <input type="checkbox"/> Training plan <input type="checkbox"/> Communications plan <input type="checkbox"/> Watercraft maint. plan <input type="checkbox"/> Ferry facility maint. plan <input type="checkbox"/> Other	
What training have crew received this month? Also indicate total number of hours.	<input type="checkbox"/> Vessel familiarization <input type="checkbox"/> Emergency drill training <input type="checkbox"/> Passenger Safety Mgmt <input type="checkbox"/> Confined Space Entry <input type="checkbox"/> TDG <input type="checkbox"/> WHMIS <input type="checkbox"/> Basic oil spill prevention <input type="checkbox"/> Other	
What feedback has been received on ferry operations this month?	<input type="checkbox"/> Ministry's district staff <input type="checkbox"/> Media <input type="checkbox"/> Ferry users <input type="checkbox"/> Community members <input type="checkbox"/> Other	

FORM COMPLETED BY

(TYPE NAME)

DATE

Appendix B5

Watercraft Maintenance Specifications

1. GENERAL REQUIREMENTS

The purpose of the Watercraft Maintenance Specifications is to provide detailed requirements of the repair and maintenance services for the Watercraft listed in Schedule C.

The matters addressed in this Section 1 apply to all aspects of the maintenance.

All capitalized words and phrases shall have the same meaning as in this Agreement.

1.1 Objective

To provide a safe environment for crew and users of the Ferry Service and to maximize the functional life of the Watercraft in keeping the Watercraft seaworthy and shipshape by way of regular and efficient inspection, cleaning, and maintenance and repairs work.

1.2 Minimum Requirements

In addition to the maintenance requirements stipulated in the Charter, the Contractor is required to meet or exceed the maintenance stipulated in the Watercraft Maintenance Specifications, the SMS, and this Agreement, while always providing safe, reliable, efficient, and courteous service to the users of the Ferry Service in the course of its maintenance activities.

1.3 Scope of Watercraft Maintenance

Always in accordance with the terms of the Charter, the Contractor shall be responsible for overseeing and supplying all management, labour, materials, supplies, provisions, tools, machinery, equipment and any other thing required for the maintenance of the Watercraft.

The Contractor shall be responsible for the determination of all means, methods, techniques, sequences and procedures employed to repair and maintain the Watercraft unless such means, methods, techniques, sequences or procedures are specifically set out in this Agreement.

1.4 Standard of Work

All such maintenance work is to be completed in accordance with:

- 1) the original design specification for that component or system;
- 2) standards set out in Article 9 of the Charter;
- 3) manufacturers' specifications and requirements; and
- 4) recognized industry standards,

whichever is the highest applicable standard.

1.5 Materials and Parts

The Contractor shall use only new materials that are aesthetically pleasing and meet or exceed applicable standards as set out in section 1.4 above. Materials without standards, or alternative materials that do not meet the standards, must be approved by the Province prior to use.

All part replacements, alterations, modifications, additions must be done in accordance with Section 10 of the Charter.

Transportation, handling and storage of materials used in conjunction with the specifications must adhere to all Laws.

1.6 Engineer's Approval

Where required by the Province, by notice in writing to the Contractor, Laws, manufacturer's specifications and requirements, recognized industry standards, whichever is the highest applicable standard, the maintenance and repair work pursuant to Section 9 and 10 of the Charter shall be approved by a qualified professional engineer.

1.7 Utilities & Supplies

The Contractor is responsible for obtaining and paying for all utilities, consumables and other supplies and services required in order to repair and maintain the Watercraft.

2 WATERCRAFT MAINTENANCE PLAN

At least two weeks before the Commencement Date, the Contractor shall submit the Watercraft Maintenance Plan for the Province's feedback and acceptance or recommendations. The Plan shall be to the Province's satisfaction.

By the Commencement Date, and upon acceptance by the Province of the Contractor's completed plan, the Contractor shall upload the completed plan to the SharePoint site.

Upon acceptance by the Province of the Contractor's completed plan, the Contractor shall upload the completed plan to the SharePoint site and the parties will attach same to Schedule M of this Agreement.

The plan shall be updated by the Contractor whenever changes occur, with review and updates occurring at least annually.

All repair and maintenance must be completed in accordance with these Watercraft Maintenance Specifications, sections 9 and 10 of the Charter and the Agreement. In doing so, the Contractor's Plan shall include, but not be limited to:

- 1) procedures for assessing, repairing, and maintaining the Watercraft;
- 2) procedures for ensuring that the Watercraft is clean and tidy;
- 3) schedules of tasks and procedures for ensuring that work is completed on schedule and adheres to maximum response times; and
- 4) a continuous survey program, in conjunction with an inspection program as required by Transport Canada.

The Contractor is solely responsible for providing, at its own cost, all equipment, facilities, subcontractors and personnel required to repair and maintain the Watercraft.

2.1 Annual Work Plan

At least two weeks before the Commencement Date, the Contractor shall submit to the Province an annual maintenance work plan, specific to the Ferry Service, broken down by month outlining repair and maintenance key activities and initiatives that are to take place during the year and provide a timeline for those activities on a monthly basis.

By the Commencement Date, and upon acceptance by the Province of the Contractor's completed plan, the Contractor shall upload the completed plan to the SharePoint site.

Once accepted by the Province, the Contractor's completed plan will be attached in Schedule M to the Agreement and will thereby become part of the Agreement.

The Contractor shall submit an annual work plan for each upcoming Contract Year no later than twenty (20) business days after the end of the immediately preceding Contract Year.

The Plan shall be to the Province's satisfaction.

2.2 Monthly Inspection

The Contractor shall conduct and document a monthly inspection of the Watercraft to assess and identify:

- 1) whether repair and maintenance work has been completed in accordance with the annual work plan;
- 2) any new damage, missing parts or areas requiring repair and maintenance work; and
- 3) if there is a change in the condition or rate of deterioration.

The Contractor shall retain documentation to demonstrate completion of the inspections and actions taken for periodic audit review by the Province.

2.3 Monthly Reporting

All reporting requirements identified throughout this Appendix are to be addressed and submitted in the Inland Ferry Monthly Report that is described and provided in Schedule B Appendix B4 Reporting Specifications of the Agreement.

3 MAXIMUM RESPONSE TIMES

The maximum response times specified in these specifications for undertaking specific activities are maximum time periods permitted when conditions do not normally pose a threat to passengers, crew, the public and/or the environment.

The response times provided herein are maximum time limits that are not intended by the Province to provide to the Contractor a definition of or parameter for reasonable performance when there is a risk to public safety; the Contractor will respond within a reasonable timeframe in such events where public safety is a factor, taking into account the severity and the likelihood of harm to the public in determining a shorter response time.

Notwithstanding any requirements set out in these specifications, the Contractor shall not put the health or safety of passengers, crew or the public at risk.

3.1 Navigation and Emergency Lighting

Navigation and emergency lighting must be repaired or replaced within 24 hours.

3.2 Decks

All damage to deck surfaces affecting the functionality or safety of the surface shall be:

- 1) immediately made safe or cordoned off until permanent repairs are made;
- 2) temporarily repaired:
 - a. immediately in hazardous situations; and
 - b. within 8 hours in non-hazardous situations; and
- 3) shall be fully repaired to original condition or better within 48 hours.

3.3 Graffiti

- 1) Graffiti which is visible to passengers shall be removed or covered within 24 hours of discovery.
- 2) Surfaces covered with graffiti shall be returned to as close to original condition as possible within one week.

3.4 Lifesaving and Fire Safety Equipment

Spill kits, fire safety and life saving equipment which are damaged or have missing or broken components must be repaired within 24 hours.

3.5 Closures and Drainage System

Each scupper, grate, drain and pipe shall be not less than 50% functional and shall be cleared or repaired within 48 hours of discovery of diminished flow capacity.

3.6 Seepage

Seepage of the Watercraft shall be repaired within 48 hours of discovery.

4 HOUSEKEEPING AND CLEANLINESS

The contractor shall keep the Watercraft in a clean and tidy state pursuant to the Charter Section 9.2 (b) (iii).

The Watercraft is to be kept clean and free of litter prior to the next crossing.

Local accumulation and spills shall be cleaned as they occur and no later than after the last crossing of the day.

Refuse and recycling containers shall be placed throughout the Watercraft and shall be lined with plastic garbage bags, plastic garbage bags shall not be reused and shall be emptied before reaching 75% full and shall be replaced after each use.

5 WASTE MANAGEMENT

The management and disposal of surplus or waste materials is the responsibility of the Contractor and must be handled in accordance with all Laws. Surplus or waste materials may not be stored on the Watercraft or the Contractor's tug.

The Contractor is responsible for managing and disposing of waste from the Watercraft in a manner that minimizes impact on the environment, safety and health.

5.1 Waste from Operations

Day-to-day operations will produce waste consisting of liquids, solids and recyclables. All such wastes shall be disposed of in conformance with all Laws, utilizing qualified personnel or subcontractors.

5.2 Oily Bilge Water

Watercraft liquid wastes consisting of oily bilge water shall not exceed 85% capacity of the holding tanks.

5.3 Waste Material on Deck

Materials spilled, collecting, or remaining on the vehicle decks shall not be discharged in the marine environment and shall be contained and disposed of according to all Laws.

5.4 Hazardous Substances

Dangerous goods and hazardous materials shall not be stored on the Watercraft. No hazardous substance may be discharged into the environment.

6 REPAIR AND MAINTENANCE

The Contractor must comply with the requirements of section 9.2 in the Charter.

Maximum response times as set out in section 3 in these specifications applies to all applicable repair and maintenance activities.

The Watercraft shall be regularly inspected to ensure that it is in good condition, functionally suitable and properly maintained.

Until damaged or unsafe items have been repaired or removed, notices shall be displayed in the affected area immediately on discovery advising passengers of any safety hazards.

6.1 Hull, Deck Surface and Apron Assembly

The Contractor must inspect, report and repair damage or replace missing or loose components of the hull, deck surface and apron assembly within a 30-day period.

6.2 Signage

The Contractor shall not permit advertising or announcements on the Watercraft prior written consent pursuant to section 9.2 (g) in the Charter.

Contractors must ensure that all signage on the Watercraft is clean and clearly visible to passengers. The Contractor must inspect, report and repair damage or replace missing or broken signs by month end or sooner if circumstances dictate.

6.3 Anchor and Assembly

The Contractor must inspect, report and repair damage or replace missing or broken parts of the anchor and assembly by month end or sooner if circumstances dictate.

6.4 Electrical System

The Contractor must inspect, report and repair damage or replace missing or broken parts of the electrical system by month end or sooner if circumstances dictate.

6.5 Lines, Cables and Tackle

The Contractor must inspect, report and repair damage or replace missing or broken lines, cables and tackle by month end or sooner if circumstances dictate.

6.6 Navigation, Emergency and Other Lighting

The Contractor must inspect, report and repair damage or replace missing or broken navigation or emergency lighting within 24 hours.

The Contractor must inspect, report and repair damage or replace missing or broken flashlights or non-emergency/non-navigational lighting by month end.

6.7 Hydraulic System

The Contractor must inspect, report and repair damage or replace missing or broken hydraulic system components.

6.8 Spill Kits

The Contractor must inspect and report all changes to the spill kits, including change in location, corrective action, or replacement or addition of new components.

6.9 Fire Safety Equipment

The fire safety equipment is to be maintained at all times in accordance with section 9.2(h) of the Charter. The Contractor must inspect, or have an inspection performed by a qualified third party, and report all changes to the fire safety equipment, including change in location, corrective action, or replacement or addition of new components.

6.10 Life Saving Equipment

The fire safety equipment is to be maintained at all times in accordance with section 9.2(h) of the Charter. The Contractor must inspect, or have an inspection performed by a qualified third party, and report all changes to the life saving equipment, including change in location, corrective action, or replacement or addition of new components.

7 WATERTIGHT INTEGRITY

It is the Contractor's responsibility to ensure that the Watercraft watertight integrity is maintained at all times and that ventilation to internal tanks and spaces is available at all times.

Where watertight integrity of the Watercraft is or may be affected, repairs shall be carried out forthwith.

7.1 Inspection

The Contractor shall establish and deploy a program to inspect all components affecting the watertight integrity of Watercraft on a regular basis.

This program shall at a minimum provide for the inspection of gaskets, compression plates, and closing and securing mechanisms of all hatches through which water may enter the interior of the Watercraft.

7.2 Closures and Drainage System

Rubbish and waste materials shall be kept clear of closures and drainage systems to facilitate the free flow of drainage.

7.3 Voids

Voids shall be clean and dry. There shall be no more than one (1) inch of standing water over the floor area of any individual framed area.

8 PAINTING AND COATINGS

Pursuant to section 9.2 (c) in the Charter, the Contractor is responsible for ensuring that:

- 1) the integrity of the Watercraft's coatings is maintained;
- 2) the appearance of the Watercraft is maintained;
- 3) the materials used to paint and coat the Watercraft are protected and the life of these materials is optimized;
- 4) full coatings are applied to maintain appearance;
- 5) full coatings are applied in accordance with manufacturer's specification; and
- 6) coatings are inspected at times of survey and repaired/recoated as necessary.

8.1 Coating After Repairs

Where the Watercraft structure has been repaired, it shall be prepared for coating and coated immediately. All coating layers shall be applied within 72 hours of repairs.

8.2 Misapplied Coatings

Any coating inadvertently applied to adjacent areas, windows, port glasses, light covers, gaskets, etc. shall be removed within 48 hours of application.

8.3 Coating Damage or Deterioration

Coating defects include visible rust, streaks, discolouration, cracking, chipping, fading, or peeling. Coatings shall be generally in good appearance.

Whenever the coating has deteriorated or been damaged, exposing the previous layer over more than 10% of a component surface area, coatings shall be touched up within 2 weeks.

Where a coating defect is discovered between November 1 and April 15, remediation shall be carried out on or before May 15.

Where a coating defect is discovered between April 16 and October 31, remediation shall be carried out within 4 weeks of discovery of the defect.

8.4 Coating Frequency

Full coatings on vehicle decks shall be not more than 1 year old.

Full coatings on all other surfaces shall be not more than 5 years old.

8.5 Voids & Internal Spaces

Surfaces in voids and internal spaces requiring coatings shall be coated in accordance with the original construction specifications for the Watercraft.

Coatings shall be inspected at times of survey and repaired/recoated as necessary.

8.6 Underwater Hull

The underwater hull shall be cleaned and inspected at each occasion when the Watercraft is in dry dock. Coatings shall be touched up or fully coated as noted during the survey.

9 ICE AND SNOW REMOVAL

Always in accordance with Section 9.2 (b) (iii) of the Charter, the Contractor is responsible for ensuring that the Watercraft are at all times safe to access, safe to operate, and that the safety of passengers and crew is not compromised as a result of ice and snow build-up.

The vehicle deck and all passenger entry points shall be kept clear of ice and snow to facilitate safe access and reduce slipping hazards before every loading.

Areas where passengers may be required to muster or access life saving appliances or access to, and the required mechanisms to operate, fire fighting and safety equipment shall be kept clear of ice and snow.

Ice and snow shall be removed from areas that may interfere with the operation of wharves and ramps prior to each departure.

All air vents, filling manifolds, sounding pipes and appliances and equipment controls shall be kept clear of ice and snow accumulations so that normal operations can be maintained.

Snow and ice removed from the Watercraft shall be disposed of in accordance with all Laws.

SCHEDULE 1 TO APPENDIX B5**REFIT REQUIREMENTS****1. Refit**

The Contractor's obligations with regard to the preservation of the Watercraft as set out in the Ferry Agreement shall also include the quinquennial refit of the Watercraft which is to be completed prior to May 2020 and quinquennially thereafter.

All costs associated with the refit of the Watercraft shall be borne solely by the Contractor.

1.1 Dry-dock Requirement

The Watercraft shall be placed in dry-dock for refit by the Contractor prior to May 2020 and quinquennially thereafter.

1.2 Scope of Work

Work in relation to the refit shall include, without limitation, ensuring the Watercraft is inspected both internally and externally for plating condition and wear; ultra-sonic hull plating thickness testing and visual structural frame inspection; inspection and repair, as required, of hatch seals, covers, interior wastage, ramp pins and hinges, hydraulics and valves; and complete corrosion treatment (including grinding, priming and painting) of the Watercraft.

The Contractor should review the "Barnston Island No 3 Condition Survey" dated October 2017 (by 3GA Marine Ltd.) and consider that certain works within the report remain incomplete and are deferred to the 2020 vessel refit. The Contractor must include this work.

1.3 Regulatory Compliance

The Contractor shall ensure that, at the conclusion of the refit, the Watercraft is in full compliance with the requirements of the Agreement, the Charter, and all requirements of Government Authorities having jurisdiction, including Transport Canada.

Appendix B6

Ferry Facility Maintenance Specifications

1 GENERAL REQUIREMENTS

The purpose of the Ferry Facility Maintenance Specifications is to provide detailed requirements for repair and maintenance of the Ferry Facility listed in Schedule C.

The matters addressed in this Ferry Service Specification Section 1 apply to all aspects of the Ferry Service.

All capitalized words and phrases shall have the same meaning as the Ferry Agreement.

1.1 Objective

To provide a safe environment for crew and users of the Ferry Service and to maximize the functional life of the Ferry Facility by way of regular and efficient inspection, maintenance, repair, cleaning and replacement.

1.2 Minimum Requirements

In addition to the maintenance requirements stipulated in the Licence, the Contractor is required to meet or exceed the maintenance stipulated in the Ferry Facility Maintenance Specifications and this Agreement, while always providing a safe, reliable, functionally sound and efficient Ferry Facility.

At end of Term or earlier expiry of the Agreement, the Contractor must return the Ferry Facility in the condition as required by the Licence.

1.3 Scope of Ferry Facility Maintenance

Always in accordance with the terms of the Licence, the Contractor shall be responsible for overseeing and supplying all management, labour, materials, supplies, provisions, tools, machinery, equipment and any other thing required for the repair and maintenance of the Ferry Facility except for the following components of the docks: pilings, stringers and cross-ties.

The Contractor shall be responsible for the determination of all means, methods, techniques, sequences and procedures employed to repair and maintain the Ferry Facility unless such means, methods, techniques, sequences or procedures are specifically set out in the Agreement.

1.4 Standard of Work

All such maintenance work is to be completed in accordance with:

- 1) the original design specification for that component or system;
- 2) standards set out in Article 4 of the Licence;
- 3) manufacturers' or materials' specifications and requirements; and
- 4) recognized industry standards,

whichever is the higher standard.

1.5 Engineer's Approval

Where required by the Province, Laws, manufacturer's specifications and requirements, recognized industry standards, or good engineering practice, whichever is the highest applicable standard, the maintenance and repair work described in these specifications shall be approved by a qualified professional engineer.

1.6 Utilities and Supplies

Pursuant to Section 4.1 of the Licence, the Contractor is responsible for paying for all charges for electricity, gas, water and other utilities supplied to the Land, and the Contractor is responsible for paying for consumables and other supplies as well as any costs of repair and maintenance services, whether by subcontract or its own forces.

2 MATERIALS

The Contractor shall use only new materials that meet or exceed applicable quality and aesthetic standards as specified herein. Materials without standards, or alternative materials that do not meet the standards, must be approved by the Province prior to use.

Transportation, handling and storage of materials used in conjunction with maintenance of the Ferry Facility must adhere to all Laws.

2.1 Deck Materials & Cross-ties

- 1) Laminated decking material must be preservative-treated;
- 2) Re-decking planks must be of number 1 grade and Wane free, SIS2E, Heart-Side surfaced, 100 mm X 250 mm (4 inch by 10 inch) Douglas Fir, in minimum 4.9 metre (16 foot) lengths laid Heart-Side down; and
- 3) Cross-ties must be number 1 or better grade, S2S Douglas Fir, cross-ties must be a minimum of 150 mm X 150 mm (6 inch by 6 inch) by the full width the Dock. Size tolerance is plus or minus 3 mm and maximum Wane allowed must be 10 mm on any surface and cross-ties must be preservative-treated.

2.2 Ekki Wood

Ekki Wood, where specified for use by the Province, is normally ordered by actual dimensions and must be in accordance with the following requirements:

- 1) minimum modulus of rupture in static bending must be 150 MPa;
- 2) minimum crushing strength will be 70 MPa;
- 3) timbers must be free of Heartwood, Sapwood, and Wane except members larger than 350 mm by 350 mm which may contain Boxed Heartwood;
- 4) sound, tight and well-spaced knots not larger than 50 mm are permitted at a maximum of one knot per linear metre of board length;
- 5) maximum Crook must be 25 mm. Surface checks and Splits must have a maximum length of 150 mm. Slope of Grain will be 1:10 maximum;
- 6) size tolerance must be plus or minus 3 mm; and
- 7) Galvanized lag bolts must be used on Ekki Wood Decking.

2.3 Fasteners

All fasteners must be hot-dip Galvanized.

3 FERRY FACILITY MAINTENANCE PLAN

At least two weeks before the Commencement Date, the Contractor shall submit the Ferry Facility Maintenance Plan for the Province's feedback and acceptance or recommendations for changes. The Plan shall be prepared to the Province's satisfaction.

Upon acceptance by the Province of the Contractor's completed plan, the Contractor shall upload the completed plan to the SharePoint site and the parties will attach same to Schedule M of this Agreement.

The plan shall be updated by the Contractor whenever changes occur, with review and updates occurring at least annually, all to the Province's satisfaction.

The Ferry Facility Maintenance Plan should reflect the Contractor's procedures, plans, schedules and instructions for repairing and maintaining the Ferry Facility, including:

- 1) Repair and Maintenance Tasks and Schedules;
- 2) Inspection;
- 3) Reporting;
- 4) Documentation Plan; and
- 5) Internal Audit and Review Plan.

All written procedures, instructions, schedules or plans should be kept simple and unambiguous. Checklists may be of considerable help in ensuring that all routines are covered.

The Contractor is solely responsible for providing, at its own cost, all equipment, facilities, subcontractors and personnel required to repair and maintain the Ferry Facility.

3.1 Annual Work Plan

At least two weeks before the Commencement Date, the Contractor shall submit to the Province an annual maintenance work plan, broken down by month outlining repair and maintenance key activities and initiatives that are to take place during the year and provide a timeline for those activities on a monthly basis.

Upon acceptance by the Province of the Contractor's completed plan, the Contractor shall upload the completed plan to the SharePoint site and the parties will attach same to Schedule M of this Agreement.

The Contractor shall submit an annual work plan for each upcoming Contract Year no later than twenty (20) business days after the end of the immediately preceding Contract Year.

The Plan shall be to the Province's satisfaction.

3.2 Monthly Inspection

The Contractor shall have comprehensive knowledge of the condition of the Ferry Facility including all docks and associated components, to identify deficiencies that require maintenance, and to identify any other conditions that could affect the safety or functionality of the Ferry Facility.

Deficiencies and changes to the integrity of structures and their components shall be monitored and the Province notified of any hazardous or deficient conditions or potentially hazardous conditions that are not covered by the Agreement, the Licence, or this specification.

The Contractor shall conduct and document a monthly inspection of the Ferry Facility to assess and identify:

- 1) whether repair and maintenance work has been completed in accordance with the annual work plan;
- 2) any new damage, missing parts or areas requiring repair and maintenance work; and
- 3) if there is a change in the condition or rate of deterioration.

The Contractor shall retain documentation to demonstrate completion of the inspections and actions taken for periodic audit review by the Province.

3.3 Monthly Reporting

All reporting requirements identified throughout this Appendix are to be addressed and submitted in the Inland Ferry Monthly Report that is described and provided in Schedule B Appendix B4 Reporting Specifications of the Agreement.

4 MAXIMUM RESPONSE TIMES

The maximum response times specified in these specifications for undertaking specific activities are maximum time periods permitted when conditions do not normally pose a threat to passengers, crew, the public and/or the environment.

The response times provided herein are maximum time limits that are not intended by the Province to provide to the Contractor a definition of or parameter for reasonable performance when there is a risk to public safety; the Contractor will respond within a reasonable timeframe in such events where public safety is a factor, taking into account the severity and the likelihood of harm to the public in determining a shorter response time.

Notwithstanding any requirements set out in these specifications, the Contractor shall not put the health or safety of passengers, crew or the public at risk.

4.1 Debris Accumulation

Structures must be immediately cleaned when conditions are of an urgent nature such as debris accumulation from storms and/or crashes.

4.2 Impaired Drainage

Clean and remove foreign objects from any surfaces where free drainage of the surface is impaired or where they cause moisture retention on surfaces, within 14 days.

4.3 Danger Trees

Remove danger trees within the Ferry Facility that pose a safety threat to people or the Ferry Facility within 7 days.

4.4 Damaged Regulatory or Warning Signs

Regulatory and warning signs must be cleaned, reset, repaired, and/or relocated within 24 hours.

4.5 Electrical

- 1) The Contractor must have a Certified Electrical Contractor onsite within 1 hour where the electrical equipment or power distribution system:

- a. Poses an existing or potential safety hazard;
 - b. Has been damaged; or
 - c. Where parts are broken, loose or missing.
- 2) Immediately report acts of vandalism to police and the Province; and
 - 3) For all other electrical equipment or power distribution repairs, coordinate required maintenance and repair services within 5 days.

4.6 Loose, broken or rotted timber deck planks:

- 1) in the travelled lane must be repaired or replaced within 24 hours; and
- 2) outside the travelled lane must be repaired within 5 days.

4.7 Safety or Structural Deficiency

Where there is a safety or structural deficiency on any part of the Ferry Facility, immediately inspect the affected portion of the Ferry Facility and report to the Province. Continue inspections as required to ensure safety.

5 HOUSEKEEPING AND CLEANLINESS

Always in accordance with Section 4.1 (d) of the Licence, the Contractor is responsible to keep the Ferry Facility clean to maximize the functional life of the docks and structures; to dispose of litter, and to remove dirt, debris, and deleterious materials, and to clean up spills that are potentially hazardous for users of the Ferry Facility.

All horizontal and vertical surfaces and components on the Ferry Facility are to be cleaned in the spring of each year when reasonable assessment indicates no further winter abrasives or chemicals will be applied and within the earliest allowable environmental window, as specified by the appropriate environmental authorities, or by June 30th of each year, whichever comes first.

Railings and truss members are to be cleaned to a minimum height of 3m above the dock surface.

The Contractor must not perform docks and structures cleaning when air temperatures are 0 degrees Celsius or less, or when such air temperatures are anticipated within 24 hours.

6 WASTE MANAGEMENT

The Contractor is responsible for managing and disposing of all waste from the Ferry Facility, including:

- 1) Surplus and waste materials;
- 2) Dangerous goods; and
- 3) Hazardous materials;

in a manner that minimizes impact on the environment, safety and health.

All such wastes shall be disposed of in conformance with all Laws, utilizing qualified personnel or subcontractors. The Contractor shall not store any such wastes on the Ferry Facility.

7 DOCKS

The Contractor is to provide safe, uniform, smooth, stable and durable surfaces on all docks and to maximize the functional life.

7.1 Scope of Work

The Contractor is responsible to maintain the dock systems, including the docks, operator's gangway and access float, timber fender log and float, and steel pontoon. The Contractor must perform repairs to deteriorated timber dock systems, including but not limited to replacement of timber planks and/or portions of timber decks, guardrails and bullrails, and steel grating. The Contractor is not required to maintain pilings, stringers, cross-ties, and breasting dolphins.

7.2 Standard of Work

The Contractor must ensure that the dock systems meet the following condition requirements:

- 1) smooth and safe wearing surface;
- 2) repaired area is not to be restricted to visibly deteriorated area;
- 3) timber deck repair is to be structurally sound, tight-fitting and securely fastened;
- 4) timber planks replaced when wear or deterioration exceeds 25% of cross-section;
- 5) guardrails and bullrails replaced when wear or deterioration exceeds 25% of cross-section;
- 6) steel grating replaced when wear or deterioration exceeds 25% of cross-section; and
- 7) dock systems are to be securely fastened or bonded to the support structure.

8 PAINTING AND COATINGS

The Contractor must inspect and maintain previously coated surfaces or apply newly coated surfaces to the Ferry Facility. Whenever the coating has deteriorated or been damaged, exposing the previous layer over more than 10% of a component surface area, coatings shall be touched up within 2 weeks.

Where the Watercraft structure has been repaired, it shall be prepared for coating and coated immediately. All coating layers shall be applied within 72 hours of repairs.

The Contractor must use the same type and quality of material as on the existing structure or an alternate material as proposed by the Contractor and acceptable to the Province.

The Contractor is responsible for preventing corrosion in steel components of docks, preventing rot in wooden components, painting wooden safety railing, posts and wheelguards, and to present a neat and tidy appearance by maintaining previously coated surfaces or applying new coated surfaces to docks and associated components.

9 ELECTRICAL SYSTEM

The Contractor is to ensure a continuous supply of electrical power from BC Hydro and to ensure that all electrical equipment and lighting on the Ferry Facility is operating in a safe and efficient manner.

The Contractor is responsible for taking appropriate action of a prudent owner or retaining the services of a qualified electrical contractor to perform to assess the implications of any electrical incident and respond accordingly to ensure service is safe and reliable

The Contractor will inspect, maintain, and replace all electrical equipment in accordance with Electrical Maintenance Specifications for BC Highways as updated or replaced from time to time (<https://www2.gov.bc.ca/gov/content/transportation/transportation-infrastructure/contracting-to-transportation/highway-bridge-maintenance/electrical-maintenance/agreement/specifications>)

The Province will provide signage to the Contractor.

The Contractor is to ensure that the signage system is in good working order, clean and visible, unambiguous and complete, and safely installed.

9.1 Requirements

The requirements for signage are specified in the Maintenance Standards for BC Highways as updated or replaced from time to time.

9.2 Scope of Services

- 1) install new or updated signage that is provided by the Province;
- 2) clean and repair existing signage;
- 3) reset signs that are accidentally knocked or blown down;
- 4) relocate signage and pickets that need to be removed and re-installed due to seasonal requirements or due to changing needs or conditions; and
- 5) replace reflectors and pickets.

10 VEGETATION CONTROL

The Contractor is responsible for inspecting and controlling vegetation at the Ferry Facility, including trees, brush, weeds and grass:

- 1) vegetation shall not obscure the visibility of signs, delineators, other roadside features or for users of the Ferry Service;
- 2) vegetation within a five (5) meter perimeter of docks shall be cleared;
- 3) grass shall be cut before it reaches six (6) inches high;
- 4) noxious weeds spreading shall be controlled;
- 5) vegetation shall not impede drainage; and
- 6) all actions reducing possible fire hazards shall be performed.

All work must be done to the Province's satisfaction.

11 LITTER COLLECTION AND GRAFFITI REMOVAL

The Contractor is to keep the Ferry Facility clean and tidy by the safe and efficient collection and disposal of litter, both loose and in receptacles, and the treating of graffiti.

11.1 Litter

Refuse and recycling receptacles shall be placed throughout the Ferry Facility and shall be lined with plastic garbage bags. Plastic garbage bags shall not be reused and shall be replaced after each use.

Receptacles at the Ferry Facility shall be emptied every three days or when they become 75% full, whichever occurs first; and the Contractor shall pick up and remove all litter in and around the areas at the same time as litter receptacles are emptied. Abandoned vehicles or equipment are to be reported to the police.

11.2 Graffiti

Graffiti shall be removed or covered within 15 days to return the marked surface to the original condition, if possible.

If the graffiti material cannot be removed, apply covering paint of an appropriate colour in a manner to minimize the aesthetic impacts of the repair and in accordance with the paint manufacturer's specifications.

12 ICE AND SNOW REMOVAL

The Contractor is responsible for ensuring the Ferry Facility is at all times safe to access, that traffic moves safely and efficiently, and that the safety of Ferry Facility users, including passengers and crew, is not compromised as a result of ice and snow build-up.

The Contractor shall remove snow, slush, compact snow and ice, and minimize the development of slippery surface conditions on the Ferry Facility and facilitate the removal of snow, slush and compact snow and ice by application of winter abrasives and/or chemicals, always in accordance with environmental Laws.

Snow, slush and compact snow, and ice accumulation shall not exceed 5cm (2 inches) on travelled portions of the Ferry Facility.

The Contractor shall anticipate and respond in advance of a snowfall. When snowfall is forecast, the Contractor shall proactively increase monitoring and reviewing of current weather station information, deploy resources which are sufficient to respond to anticipated snowfall, and communicate internally and externally of actions to be taken.

Appendix B7**Transition Services Specifications****1 GENERAL REQUIREMENTS**

The purpose of the Transition Services Specifications is to provide detailed requirements for provision of the Transition Services prior to the Commencement Date (“Beginning of Term Transition Services”), and prior to the Expiry Date (“End of Term Transition Services”).

All capitalized words and phrases shall have the same meaning as in the Ferry Agreement.

2 CONTRACTOR’S TRANSITION SERVICES PLAN

Not later than five (5) days after Contract Award, the Contractor shall complete the Transition Services Plan (the Plan for the purposes of this Appendix), specific to the Ferry Service, and submit for the Province’s feedback and acceptance. The plan shall describe the Contractor’s transition service tasks, methodology and approach, including the schedule and use of third parties or subcontractors. The plan shall include the names, titles and contact information for each of the Contractor’s transition team members as well as roles and responsibilities. The plan must demonstrate that there will be a seamless transition of services.

The Plan shall be to the Province’s satisfaction.

Upon acceptance by the Province of the Plan, the Contractor shall upload the Plan to the SharePoint site.

Once accepted by the Province, the Plan will be attached in Schedule M to the Agreement and will thereby become part of the Agreement.

3 BEGINNING OF TERM TRANSITION SERVICES

All Beginning of Term Transition Services outlined in this section must be completed by the earlier of the Commencement Date or the times specified below.

3.1 Inspection, Review & Signoff

The Contractor shall arrange with the Province to inspect and review the following:

- 1) Watercraft;
- 2) Ferry Facility;
- 3) Inventory;
- 4) Contractor’s tug;
- 5) Documents and records.

3.2 Administrative Tasks**3.2.1 Emergency Contact Names**

The Contractor shall provide the names and contact information for a minimum of two 24-hour Emergency Contacts in the Transition Service Plan and directly to the Province and to emergency service responders including police, fire and ambulance services.

3.2.2 Consumables & Utilities

The Contractor is responsible for ensuring that all necessary goods and services are available as at the Commencement Date. Responsibilities include the following:

- 1) Negotiate acquisition of consumables (e.g. lumber for Ferry Facility, uniforms, etc.) with out-going contractor.
- 2) Establish new accounts for BC Hydro and other utilities, as required.

3.3 Documentation and Sign-off

The Contractor must ensure that all documentation, insurance, securities, registrations and sign-offs are completed prior to the Commencement Date, including:

3.3.1 SMS and Plans

The Contractor shall submit the following plans:

- 1) A completed SMS, and its operational documents, for review by the Province no less than three (3) weeks before the Commencement Date.
- 2) All other completed Plans for review by the Province at least two (2) weeks before the Commencement Date.

3.3.2 Insurance, Securities and Registration

The Contractor must provide the Province with security documents, certificates of insurance and confirmation or registration with WorkSafeBC, the Canada Revenue Agency and any other applicable Government Authority.

3.3.3 Asset Condition and Environmental Review Sign-off

The Contractor must provide the Province with written acknowledgement that it has reviewed all Ferry Service documentation regarding the condition of all assets including the Ferry Facility, and the Watercraft.

3.4 Handover of Watercraft, Ferry Facility, Inventory and Documentation

The Contractor must provide written acknowledgement that it has completed the handover and assumes control of all of the Watercraft, Ferry Facility, inventory, records and documentation.

4 END OF TERM TRANSITION SERVICES

The Contractor shall use its best efforts to co-operate with the Province and any other parties, as requested by the Province, to effect a reasonable seamless transition in performance of the Ferry Service as a result of the expiration or termination of this Agreement, and this obligation will survive such expiration or termination.

All End of Term Transition Services outlined in this section must be completed by the earlier of the Expiry Date or the date specified below.

4.1 Transition Team

The Contractor shall provide the names, titles and contact information for each of the Contractor's transition team members as well as roles and responsibilities.

4.2 Condition and Housekeeping Surveys

At least 5 months and not earlier than 9 months prior to the Expiry Date, the Contractor shall participate and facilitate the conduct of:

- 1) Condition surveys of the Watercraft conducted by independent qualified marine surveyors, appointed by the Province;
- 2) Condition surveys of the Ferry Facility, including marine structures, by
- 3) Environmental housekeeping survey of the Ferry Facility by independent qualified surveyors, appointed by the Province;
- 4) Any operational or other surveys by independent qualified professionals, appointed by the Province; and
- 5) Inventory of materials.

4.3 Remediation

4.3.1 Remediation Plan

Within 3 weeks of receipt of the condition surveys and environmental housekeeping survey referred to in 4.2 above, the Contractor shall submit remediation plans for the Watercraft and Ferry Facility.

4.3.2 Remediation Work

The Contractor shall complete its remediation work and remedy all other deficiencies in the Watercraft (per Section 15.2 of the Charter), Ferry Facility, housekeeping, inventory, records and documentation no later than 30 days prior to the Expiry Date.

4.4 Inspection, Review & Signoff

The Contractor must fully cooperate with all inspections to be carried out by the new contractor, including inspection of the Ferry Facility, Watercraft, and all records.

The Contractor must arrange for the Province to inspect and review the:

- 1) Remediation plan;
- 2) Completion of the remediation work;
- 3) Watercraft and Ferry Facility condition;
- 4) Inventory; and
- 5) Records and documentation.

4.5 Administrative Tasks**4.5.1 Consumables & Utilities**

The Contractor is responsible for ensuring that all necessary goods and services are available as at the Expiry Date. Responsibilities include the following:

- 1) Negotiate purchase or transfer of consumables or uniforms with incoming contractor.
- 2) Transfer accounts for BC Hydro and other utilities.

4.6 Handover Sign-off

Within 3 Business Days prior to the Expiry Date, the Contractor and the Province shall meet at the Ferry Facility and the Contractor shall sign-off and agree to handover to the Province upon the Expiry Date, the following:

- 1) Watercraft and Ferry Facility;
- 2) Inventory; and
- 3) Records and documentation.

Schedule C**List of Assets****WATERCRAFT**

Name of Vessel	"Barnston Island No. 3"
Route	Barnston Island
Route Location	Across Parsons Channel on the south side of the Fraser River between Barnston Island (north bank of channel) and Port Kells (south bank of channel). Port Kells is in the northeast corner of Surrey at the bottom of 104th Avenue.
Type of Vessel	Barge
Propulsion	None
Method of Propulsion	None
Official Number	198100
Builder	John Manley Ltd.
Year Built	1954
Construction Material	Steel
Length (meters)	17.95
Breadth (meters)	8.5
Depth (meters)	1.24
Tonnage (Gross)	37.84
Tonnage (Net)	37.84
Vehicle Capacity (AEQ)	5
Passenger Capacity	52 (50 passengers+2 crew)
Crew	1 Deckhand + 1 Master (on tug)
Crossing Distance	1/4 (one quarter) nm
Crossing Time	5 minutes
Serves	Residential and agricultural traffic
Owner	BCTFA
Current Care & Control	Western Pacific Marine Ltd. (Barnston Island)
CSA 2001 Voyage Classification	Sheltered Waters
Transport Canada Inspection	May 25, 2017 (performed annually)
Certificate of Registry Expires	July 2018
Last Major Refit	April 2015
Last Third Party Condition Assessment	October 2017

POTENTIAL PROVINCIAL TUG

Name of Vessel	To Be Confirmed (TBC)
Route	Barnston Island
Route Location	Across Parsons Channel on the south side of the Fraser River between Barnston Island (north bank of channel) and Port Kells (south bank of channel). Port Kells is in the northeast corner of Surrey at the bottom of 104th Avenue.
Type of Vessel	Tug
Propulsion	Single/Twin
Method of Propulsion	TBC
Official Number	TBC
Builder	TBC
Year Built	TBC
Construction Material	Steel/Aluminum
Length (meters)	<9 (Approximately 6-8)
Breadth (meters)	TBC
Depth (meters)	TBC
Tonnage (Gross)	<5GT
Tonnage (Net)	TBC
Engine	TBC
Vehicle Capacity (AEQ)	N/A
Passenger Capacity	N/A
Crew	1 Master
Last Major Refit	TBC
Last Third Party Condition Assessment	TBC
Crossing Distance	1/4 (one quarter) nm
Crossing Time	5 minutes
Serves	Residential and agricultural traffic
Owner	BCTFA
Current Care & Control	TBC
CSA 2001 Voyage Classification	Sheltered Waters/Near Coastal Class 1
Transport Canada Inspection	TBC
Certificate of Registry Expires	TBC
Last Major Refit	TBC
Last Third Party Condition Assessment	TBC

Additional Details:

Operational Season	Year round
Design Temperatures	Air: Winter 7°C Summer 25°C, 57% Relative Humidity Water: 0°C to 25°C
Towing Equipment	Towing bit on deck fore and aft. Bollards fitted port and starboard on the aft deck
Power	Sufficient value to produce the desired Bollard pull (see below)
Bollard Pull	Approx. 8000 lbs./3628 kg
Hydraulic Pump	Suitably sized to run the ramps on the ferry barge

FERRY FACILITY

	PORT KELLS	BARNSTON ISLAND
Location:	End of 104 th Avenue, Surrey	North side of Parsons Channel
Site Plan:	See Schedule A of License of Occupation (Schedule F of Ferry Agreement)	See Schedule A of License of Occupation (Schedule F of Ferry Agreement)
Dock(s):	One	One
Docks' components:	Timber Ramp Berthing Dolphins Turning Dolphin Shear Boom & Dolphin	Timber Ramp Berthing Dolphins, Turning Dolphin Shear Boom & Dolphin
Parking:	None	None
Waiting Area:	None	Yes
Washrooms:	None	None
Other structures or installations On the ferry facility:	None	Water well
Last Major Rehabilitation Work	March 2012	
Last Third Party Condition Survey	October 2017	



Port Kells



Barnston Island

Schedule D**Payment****SERVICE FEE**

1. In consideration of the Ferry Service being performed by the Contractor, in strict conformity herewith and to the satisfaction of the Province, the Province shall pay to the Contractor the Service Fee (excluding Additional Services) at the end of the month for the services performed during that month of a Contract Year:

(a) 1/12th of the Service Fee; and

(b) any outstanding payment adjustments as authorized by this Agreement minus:

(i) any amounts previously paid, or deemed to be paid, to the Contractor in accordance with this Agreement; and

(ii) any amount the Province is entitled to set-off or deduct in accordance with this Agreement. Any amount(s) owing or payable to the Province by the Contractor arising from the failure by the Contractor to duly perform all of its obligations pursuant to this Agreement, the Licence or the Charter or any other agreement between the Province and the Contractor with respect to the operation or provision of the Work; and

2. The amount of the Service Fee for each Contract Year shall be:

first Contract Year: \$@;

second Contract Year: \$@;

third Contract Year: \$@;

fourth Contract Year: \$@; and

fifth Contract Year: \$@;

with all amounts being inclusive of all applicable taxes but exclusive of GST.

3. The Contractor agrees to accept the Service Fee as full payment including for labour materials, equipment and overhead to perform the Ferry Service (excluding Additional Services). For greater clarity, payment for Additional Services shall not form part of the Service Fee and shall be subject to a Work Order issued and executed by the Province in accordance with Section 8 of this Agreement and to the payment provisions of this Schedule.

4. The Contractor will prepare and submit to the Province, not more than monthly and in respect of each month, in arrears, a payment application setting out 1/12th of the Service Fee which is due and owing for the applicable month.

5. The Province will, within 30 Business Days of the receipt of the Contractor's payment application, make a payment equal to the sum of:

- (a) 1/12th of the Service Fee; and
- (b) any outstanding payment adjustments as authorized by this Agreement minus:
 - (i) any amounts previously paid, or deemed to be paid, to the Contractor in accordance with this Agreement; and
 - (ii) any amount the Province is entitled to set-off or deduct in accordance with this Agreement.

6. End of Term Withholding

- (a) The Province shall pay to the Contractor the final monthly instalment of the Service Fee of the Term within 60 days of the Contractor providing to the Province all information specified in Schedule B, Appendix B7, ("Transition Services Specifications") and Schedule B, Appendix B4 ("Reporting Specifications") of this Agreement and such information that the Province may require to determine the adjustments described in this Schedule, which the Contractor shall deliver to the Province no later than 60 days after the last day of the Term, provided that the Province may withhold and setoff from such final instalment any amount owing or otherwise payable to the Province by the Contractor, or any amount for which the Contractor is liable to the Province, pursuant to this Agreement or otherwise, including, without limiting the generality of the foregoing:
 - (i) any amount(s) owing or payable to the Province by the Contractor on account of the Fuel Cost Adjustments and/or Insurance Cost Adjustments for the final year of the Term
 - (ii) any amount(s) owing or payable to the Province by the Contractor arising from the failure by the Contractor to duly perform all of its obligations pursuant to this Agreement, the Licence, Charter or any other agreement between the Province and the Contractor with respect to the operation or provision of the Work; and
 - (iii) any amount(s) equal to costs incurred or reasonably estimated by the Province to be incurred to restore the Watercraft and the Ferry Facility to the same condition it was in at the commencement of the Term, reasonable wear and tear excepted.
- (b) If the amount to be setoff is insufficient to satisfy in full the amount due by the Contractor to the Province as herein provided, the Contractor shall pay to the

Province the amount representing the shortfall within 60 days from the date the Contractor provides the Province with the information as described above.

7. In the event that the Contractor fails to discharge or satisfy any security interest, encumbrance, charge, claim or lien under this Agreement, the Charter or the Licence in a timely fashion as the Province in its sole discretion may determine, then the Province may (but shall not be obliged to), in addition to any other remedy to which it is entitled, pay the amount required to obtain a discharge of any such security interest, encumbrance, charge, claim or lien, in the name of the Contractor, and any amount so paid together with all disbursements and legal costs in respect of such process on a solicitor and own client basis, shall forthwith be due and payable by the Contractor to the Province and may, at the discretion of the Province be set off from the Service Fee payable under this Schedule.

8. 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 *Financial Administration Act*, 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 *Financial Administration Act*, not having controlled or limited, under the *Financial Administration Act*, expenditure under any Appropriation referred to in sub-section (a) of this Section.

ADJUSTMENTS

9. Fuel Cost Adjustment

- (a) The annual budgeted fuel volume is 70,000 litres;
- (b) The budgeted average fuel cost per litre is \$1.05 per litre;
- (c) At renewal pursuant to Section 7 of the Agreement, the Province will provide notice of the budgeted fuel volume and the budgeted average fuel cost per litre to the Contractor with the notice of renewal;
- (d) The Contractor shall calculate in arrears and remit to the Province, a Fuel Cost Adjustment calculation accompanied by copies of all invoices from fuel suppliers, within 60 days of the end of the immediately preceding Contract Year (the "Deadline" for the purposes of this Section 5), which shall be calculated as follows:
 - (i) calculate Contractor's Weighted Average Per Litre Fuel Cost for the immediately preceding Contract Year;
 - (ii) subtract \$ 1.05; and

- (iii) multiply that amount by the volume of litres shown above;
- (e) Upon review and verification of the Fuel Cost Adjustment calculation in subsection 9 (d) above by the Province,
- (i) In the event the result is positive, a positive fuel cost adjustment shall be paid by the Province to the Contractor in accordance with the payment process in Section 1 of this Schedule,
 - (ii) in the event the result is negative, a negative fuel cost adjustment shall be paid by the Contractor to the Province, or the Province shall have the right to set off such amount against any payment to the Contractor, and
 - (iii) payment shall be made by the Province or the Contractor (as the case may be) no later than 60 days from remittance by the Contractor of the Fuel Cost Adjustment calculation and accompanying invoices described in (d) above;
- (f) The Contractor's failure to remit the Fuel Cost Adjustment calculation and the accompanying invoices to the Province by the Deadline, will result in forfeiture of the Contractor's right to any Fuel Cost Adjustment payment for that immediately preceding Contract Year; and
- (g) In the event the Contractor fails to remit the Fuel Cost Adjustment calculation and the accompanying invoices to the Province by the Deadline, the Province may, when it believes a negative Fuel Cost Adjustment could be the result and a payment or setoff in favour of the Province pursuant to Subsection (e) may be due and owing, in its discretion, audit the records, accounts and documentation of the Contractor pursuant to Section 16 of this Agreement in order to perform its own Fuel Cost Adjustment calculation. In the event that a negative Fuel Cost Adjustment is the result, the Contractor shall make the required payment within 60 days of the Province notifying the Contractor of the amount due or the Province shall have the right to set off such amount against any payment to the Contractor. For certainty, in the event that a positive amount is the result, Subsection (f) above will apply.

10. Insurance Cost Adjustment

- (a) Regarding insurance, the actual cost of insurance, as evidenced by the premium quote or quotes obtained by the Contractor from an insurer or insurers, and signed by a duly authorized representative of such insurer or insurers, to provide the insurance coverage required under this Agreement for the first Contract Year (the "Base Amount") shall be borne by the Contractor. This Base Amount is \$_____. Thereafter, in the ensuing Contract Years, the Province shall be responsible for reimbursing the Contractor for 80% of the cost of any increase over the Base Amount with the Contractor being responsible for the remaining 20% of any increase. In the event the cost of insurance in any year is less than the Base

Amount the Contractor shall pay the Province an amount equal to 80% of such reduction. Provided always, however:

- (i) the Contractor shall bear the responsibility for all of any increased premiums of insurance resulting from any claims made in previous years occasioned by the acts or omissions of the Contractor or its servants, agents or employees or anyone else for whom the Contractor is legally responsible;
- (ii) this adjustment is subject to the Province determining the following to its satisfaction:
 - (A) that any such increase reflects a general increase in the annual premiums for such insurance based on the availability or otherwise of alternative quotes that may be obtained on a competitive basis for the renewal or replacement of such insurance; and
 - (B) that the initial amount of the Base Amount or any subsequent annual premium amounts was not based solely or in part on an agreement or arrangement, written or otherwise, by any person to artificially adjust such amounts;
- (iii) the Province will be entitled to request whatever documents or information it may deem fit, including but not limited to statutory declarations in a form determined by the Province, from the Contractor and insurer(s) involved, as part of the above determinations; and
- (iv) the Contractor shall provide to the Province on or before each annual anniversary date of this Agreement, written verification, issued by the Contractor's insurer using the specimen form Appendix D1 attached, of the total amount payable as the annual premium for the renewal or replacement of all insurance to be obtained and kept in good standing by the Contractor as required in this Agreement. The Contractor's failure to provide this written verification by the deadline imposed in this subsection (iv) will forfeit the Contractor's right to an insurance adjustment for the immediately preceding Contract Year.

11. Missed Sailing Adjustment

- (a) The Contractor will operate the Ferry Service (whether by the Watercraft or by the Province's tug or alternative watercraft, pursuant to Section 5 of this Agreement as the case may be) during the scheduled hours in Schedule B Appendix B1 and in the event that the Ferry Service is not available for a period of time exceeding five hours during the scheduled hours in any calendar month, for any reason, the Province may withhold or deduct from the Service Fee the amount of \$200, as a reasonable estimation of the Province's costs resulting, for each hour that the Ferry Service is unavailable in excess of five hours that calendar month,

provided that:

- (b) no disruption in sailings shall be counted for these purposes when the cause of the disruption was beyond the control of the Contractor, however the parties agree that mechanical difficulties shall not be considered to be a cause beyond the Contractor's control;
- (c) the withholding or deduction of any amount described herein, is in addition to any other remedy to which the Province is entitled; and

ADDITIONAL FEE

12. The Province shall, on the basis of the issuance of a Work Order and subject to the terms of this Agreement, pay to the Contractor an Additional Fee for the provision of Additional Services on the basis of Direct Plus Rates set out in Sections 17 to 20 below as full and final payment.

13. The Province may, from time to time, in the sole discretion of the Province, modify or replace this Schedule as it pertains to the Additional Fee or any part thereof.

14. The payment of any Additional Fee under this Section is conditional on the Contractor providing to the Province written statements of account in respect of any and all fees claimed, including evidence satisfactory to the Province, of recordmaryseed time and hourly rates of pay for labour and supervision, as the case may be.

15. The Contractor will prepare and submit to the Province, no more than monthly and in respect of each month, in arrears, a payment application setting out any Additional Fee claimed under this Section which is due and owing for the applicable month.

16. The Province will, within 30 Business Days of the receipt of the Contractor's payment application, make a payment for amounts deemed due and owing to the Contractor.

DIRECT PLUS RATES

17. Labour

- (a) Fees for labour will, subject to the terms of this Agreement, be an amount equal to the total of:
 - (i) the actual wages and salaries, including benefits, paid or incurred directly by the Contractor in respect of the Contractor's labour and supervisory personnel who are actively and necessarily engaged on the particular item of work performed by the Contractor, if supported by written statements of account establishing to the satisfaction of the Province, recorded time, hourly rates of pay and benefits for that labour and supervision;
 - (ii) plus 20% of the total costs calculated under Subsection (i) above to cover the Contractor's profit, and any and all other costs of the Contractor, including

without limitation, the Contractor's overhead, supervision, insurance and bonding costs and expenses.

- (b) The fees for labour will not include:

- (i) any payment or costs incurred by the Contractor for operators of hired equipment;
- (ii) labour costs incurred by the Contractor in connection with or under subcontracts; or
- (iii) costs incurred by the Contractor for general supervision, administration, or management time spent on the item of work

18. Equipment

- (a) Fees for equipment will, subject to the terms of this Agreement, be an amount equal to the total of the following items, plus 15%:
- (i) fees for equipment owned or leased by the Contractor will be an amount equal to the applicable "All found Less Operator" rate set out in the "Equipment Rental Rate Guide" published by the B.C. Road Builders & Heavy Construction Association and authorized by the Province, in effect at the time that the item of work is performed, or, if the Equipment Rental Rate Guide is silent as to the applicable rate, the rate will be the rate that is agreed upon by the Province and the Contractor prior to use of the equipment in the performance of the applicable item of work, being full payment and reimbursement for all fuel, oil, lubrication, repairs, maintenance, and other costs incidental to owning and operating the equipment; and
 - (ii) fees for hired equipment will be an amount equal to the applicable "All Found" rate set out in the Equipment Rental Rate Guide, referenced in (i) above, in effect at the time that the applicable item of work is performed, or, if the Equipment Rental Rate Guide is silent as to the applicable rate, the rate will be the rate that is agreed upon by the Province and the Contractor prior to use of the equipment in the performance of the applicable item of work performed, being full payment and reimbursement for the operator, and for all fuel, oil, lubrication, repairs, maintenance, and other costs incidental to owning and operating the equipment.

19. Materials

- (a) Fees for materials will, subject to the terms of this Agreement, be an amount equal to the actual costs incurred by the Contractor for materials supplied in the performance of the applicable item of work at invoice costs (which includes all freight and express charges, all taxes, and all other costs incurred by the Contractor to supply the materials delivered and used to perform the applicable item of work at the site), plus 10%.

20. Subcontracts

- (a) Fees for subcontracts will be an amount equal to the costs incurred by the Contractor for subcontracts with subcontractors in the performance of the applicable item of work at invoice costs, plus 10%.

Schedule D - APPENDIX D1
Insurance Premium Adjustment Form
(to be completed by an authorized representative of the insurer)

Contractor:	Name of Authorized Representative of Insurer		
Name of Insurance Broker (if different)			
Contract #:	Adjustment Year:		
		From yy/mm/dd	
Contract Term:	To yy/mm/dd		
		From yy/mm/dd	
		To yy/mm/dd	
		Contract Year (____) to Year (____)	

General Liability Coverage

Required Limit of Liability \$ _____

Insurer	Last Term Premium	Adjustment Term Premium	Total Term Premium
Primary			
Excess			
TOTAL			

Marine Liability Coverage

Required Limit of Liability \$ _____

Insurer	Last Term Premium	Adjustment Term Premium	Total Term Premium
Primary			
TOTAL			

Total Coverage General Liability and Marine Liability

Last Term Premium	Adjustment Term Premium	Total Term Premium

Signature of Authorized Representative of Insurer

Company Name

Name of Authorized Representative of Insurer (printed)

Date yy/mm/dd

Schedule E

Bare Boat Charter

This Charter is dated for reference this 1st day of April, 2018.

BETWEEN

BC TRANSPORTATION FINANCING AUTHORITY,
a company continued under the *Transportation Act*,
with the following address:
c/o The Ministry of Transportation and Infrastructure
Marine Branch
940 Blanshard Street
Victoria, British Columbia V8W 9T5

(the “BCTFA”)

AND:

@@@

(the “Contractor”)

WHEREAS:

- A. The BCTFA is the owner of the Watercraft; and
- B. The Contractor has entered into the Ferry Agreement and as a condition of same has agreed to be bound by the terms of this Charter; and
- C. Pursuant to and in accordance with the Ferry Agreement, the BCTFA has granted authority to the Province to act on BCTFA's behalf.

NOW THEREFORE WITNESSETH that in consideration of the premises and the good and valuable consideration, the receipt and sufficiency of which the parties hereto acknowledge, the parties agree as follows, that is to say:

Definitions

In Charter, the following definitions shall apply:

“Additional Part(s)” has the meaning set out in section 10.2 of this Charter;

“Charter” means this bare boat charter;

“Contact Person” means the contact person set out in section 16.1 of this Charter;

“Event of Watercraft Loss” has the meaning set out in section 12 of this Charter;

“Ferry Agreement” means that certain agreement entered into between the parties hereto and Her Majesty the Queen in right of the Province of British Columbia, as represented by the Minister of Transportation and Infrastructure (the “Province”) of even date with respect to the operation of the Ferry Service;

“Ferry Facility” has the same meaning ascribed to it in the Ferry Agreement;

“Ferry Service” has the same meaning ascribed to it in the Ferry Agreement;

“Government Authority” has the same meaning ascribed to it in the Ferry Agreement;

“Replacement Part(s)” has the meaning set out in section 10.1 of this Charter;

“Replacement Watercraft” has the meaning set out in section 12.3 of this Charter;

“Term” has the same meaning ascribed to it in the Ferry Agreement;

“Watercraft” means that certain barge, owned by the BCTFA, bearing official number 0198100 and the name Barnston Island No. 3;

“Work” has the same meaning ascribed to it in the Ferry Agreement.

1. GRANT

- 1.1 The BCTFA hereby grants to the Contractor and the Contractor hereby accepts from the BCTFA a charter of the Watercraft, including all equipment, machinery, accessories and appurtenances, but without supply of master and crew.
- 1.2 The Contractor shall have quiet enjoyment of the Watercraft, subject to the rights of the BCTFA hereunder.

2. CHARTER PERIOD

- 2.1 This charter shall be for the Term and shall, notwithstanding any other provision herein, automatically terminate upon the early termination or expiry of the Ferry Agreement.

3. USE OF THE WATERCRAFT

- 3.1 The Watercraft shall be used only for the provision of the Work
- 3.2 The Watercraft shall be used for no other purpose except as required in an emergency or as otherwise specifically authorized in writing by the Contact Person.

4. CHARTER FEE AND OTHER PAYMENT

- 4.1 Upon and subject to the terms and conditions set out herein, the Contractor shall pay to the BCTFA, in advance, as consideration for the charter of the Watercraft as herein provided, the sum of \$5.00 (inclusive of all applicable taxes but exclusive of GST) for the Term and like amount for any renewal thereof.
- 4.2 The Contractor shall be responsible for all other payments associated with the operation and possession of the Watercraft, including but not limited to the master and crew remuneration, licensing fees, fuel, maintenance, alterations, taxes, dues, insurance, assessments, fines, service and supply contracts, and replacement or repair of equipment, machinery, accessories and improvements associated with the Watercraft.
- 4.3 The Contractor acknowledges that charter of the Watercraft as herein provided shall be absolutely fiscally carefree to the BCTFA.

5. TITLE TO THE WATERCRAFT

- 5.1 The Watercraft shall at all times remain the property of the BCTFA and shall continue to be registered in the name of the BCTFA throughout the Term and any renewal thereof.
- 5.2 The Contractor shall at all times protect and defend, at its own cost and expense, the title of the BCTFA from and against all encumbrances, charges, claims and liens, except as may arise through the acts of the BCTFA, and the Contractor shall keep the Watercraft and this Charter free and clear from all such encumbrances, charges, claims and liens.
- 5.3 The Contractor shall forthwith give the Contact Person notice of any alleged security interest, encumbrance, charge, claim or lien regarding the Watercraft or this Charter of which the Contractor may become aware and of the Contractor's intended course of action with respect thereto.
- 5.4 In the event that the Contractor fails to discharge or satisfy any such security interest, encumbrance, charge, claim or lien in a timely fashion, as the BCTFA in its sole discretion may determine, then the BCTFA may (but shall not be obliged to), in addition to any other remedy to which it is entitled, pay the amount required to obtain a discharge of any such security interest, encumbrance, charge, claim or lien, in the name of the Contractor, and any amount so paid together with all disbursements and legal costs in respect of such process on a solicitor and own client basis, shall forthwith be due and payable by the Contractor to the BCTFA and may, at the direction of the BCTFA be deducted from a payment or payments of the Service Fee under the Ferry Agreement.

6. DELIVERY

- 6.1 Delivery of the Watercraft under this Charter shall be deemed to have been made and this Charter shall commence on the first day of the Term.
- 6.2 The Contractor accepts the Watercraft on an “as is” basis and acknowledges that neither the BCTFA nor the Province have made representations or warranties with respect to the condition of the Watercraft; and, in particular, but not so as to limit the foregoing, no representations or warranties as to the Watercraft’s seaworthiness, type, design, operation, merchantability, fitness for purpose, or suitability for use.

7. OPERATION

- 7.1 The Contractor shall have full use and control of the Watercraft for the purpose of operating the Ferry Service according to the terms of this Charter and the Ferry Agreement.
- 7.2 The Contractor shall operate the Watercraft in a safe and efficient manner and in accordance with all applicable laws.
- 7.3 The Watercraft is in all respects solely the responsibility of the Contractor and the Contractor assumes the entire risk of loss of or damage to the Watercraft from any cause whatsoever, including loss of or damage to the hull, machinery, spare parts, equipment, accessories, supplies and additions and accessories incorporated therein or affixed thereto.

8. ASSIGNMENT

- 8.1 The Contractor shall not assign or mortgage, pledge or otherwise charge this Charter or sublet, licence or lend all or any part of the Watercraft without the prior written consent of the BCTFA, which consent may be unreasonably or arbitrarily withheld by the BCTFA.
- 8.2 Each of the following shall be deemed to be an assignment of this Charter requiring the BCTFA’s prior written consent which may be unreasonably or arbitrarily withheld by the Province:
 - (a) If the Contractor is a corporation but none of its shares are traded on any public stock exchange or in any public stock market, any change of control of such corporation during the Term, by operation of law or by the sale, bequest, or other disposition of its shares or securities; and

- (b) If the Contractor is a partnership, the cessation at any time during the Term by any person who at the time of the execution of this Charter owns a partner's interest (other than through death) to own such partner's interest, or a material change in the ownership, in the opinion of the BCTFA, of such partner's interest.
- 8.3 Upon request of the BCTFA from time to time, a Contractor that is a corporation or partnership shall make available to the BCTFA for inspection or copying or both, all books and records of the Contractor which, alone or with other data, in the case of the Contractor that is a corporation, identify the ownership of all of the shares and securities of the partners of the Contractor and their respective interests in the partnership, all from the commencement of the Term or the date of earlier execution of this Charter up to the date such books and records are made available to the BCTFA.

9. MAINTENANCE

- 9.1 During the term, the Contractor shall, at the Contractor's sole expense, at all times maintain and preserve, or cause to be maintained or preserved, the Watercraft in good running order and repair in accordance with the specifications in Schedule B Appendix B5, so that the Watercraft shall be, insofar as due diligence can ensue, tight, staunch, strong and well and sufficiently tackled, appareled, furnished, equipped and in every respect seaworthy and in good operating condition; and will keep or cause to be kept, the Watercraft and its machinery, appurtenances and spare parts, in shipshape condition.
- 9.2 Without limiting the generality of the foregoing, the Contractor shall:
- (a) comply with any and all laws, bylaws, orders, regulations, standards, and rules applicable to the use, maintenance and operation of the Watercraft, and if such laws, bylaws, orders, regulations, standards, and rules, require alteration to the Watercraft, the Contractor shall, promptly, upon becoming aware of any such required alteration, give written notice to the BCTFA of any such required alteration and the applicable law, bylaw, order, regulation, standard or rule, or any of them as the case may be;
- (b) operate, service, repair, alter, modify and maintain the Watercraft so as to keep the Watercraft;
- (i) in all respects seaworthy, and in a condition and state of operation, service, and maintenance that complies at all times with all laws, including the *Canada Shipping Act*, and bylaws, orders, regulations, standards, and rules of any competent governmental authority applicable to the Watercraft, to the Ferry Service and to this Charter;

- (ii) in the operating condition in which it was delivered as at the date of this Charter, ordinary wear and tear excepted; and
 - (iii) in a clean and tidy state;
- (c) paint or cause all presently painted surfaces of the Watercraft above the waterline to be painted, in the same colors in which the Watercraft was delivered by the BCTFA to the Contractor;
- (d) obtain, acquire, keep and maintain all records, log-books and any other documentation required by the *Canada Shipping Act* and by any other laws, bylaws, orders, regulations, standards, and rules of any competent governmental authority, in respect of the Watercraft;
- (e) upon written request from the BCTFA, deliver to the BCTFA copies of any and all marine surveys, and inspection certificates related to the Watercraft, and any or all records (including supporting documents), log-books and other documentation referred to in sub-section 9.2(f);
- (f) permit the BCTFA at all reasonable times to inspect, examine, review, and copy any and all records, log-books and any other documentation that has been kept, produced, prepared, received or acquired by the Contractor in connection with the Watercraft and pursuant to the *Canada Shipping Act* or any other laws, bylaws, orders, regulations, standards, and rules of any competent governmental authority;
- (g) not permit advertising, announcements or signage of any kind whatsoever to be displayed from, affixed to or painted on the Watercraft without the prior written consent of the BCTFA; and
- (h) ensure that all safety devices and equipment, including life saving devices and equipment, and fire fighting equipment, life rings, inflatable life rafts, life jackets and life jacket lockers are provided and maintained at all times on and in connection with the Watercraft as required by the laws, including the *Canada Shipping Act*, bylaws, orders, regulations, standards, and rules of any competent governmental authority.
- 9.3 Despite any other provisions in this Article or elsewhere in this Charter, the Watercraft shall be placed in dry-dock for re-fit by the Contractor in accordance with Schedule B Appendix B5 of the Ferry Agreement.

10. PARTS REPLACEMENT, ALTERATIONS, MODIFICATIONS, ADDITIONS

- 10.1 If any part, instrument, appurtenance, accessory, machinery or other equipment of whatever nature which is or may from time to time be incorporated or installed in or attached to the Watercraft and which may from time to time become worn out, lost, stolen, destroyed, damaged beyond repair or permanently rendered

unfit for use for any reason whatsoever (hereafter call the "Replaced Part" or the "Parts") then the Contractor at its own cost and expense shall promptly provide and install replacement parts (hereinafter called the "Replacement Part or the "Replacement Parts").

- 10.2 The Replacement Parts shall be free and clear of any security interests, liens or other encumbrances and shall be in as good operating condition as, and shall have a value, utility, quality and specifications at least equal or similar to, the Replaced Parts, and the Replacement Parts shall be deemed to be in the condition, maintenance and repair required by the terms hereof.
- 10.3 Replacement Parts and service shall first be sourced from the original equipment manufacturer ("OEM"). In the event the Contractor seeks to utilize non-OEM parts and service and OEM parts and service is/are available, the Contractor must seek the Province's consent in writing, and provide information and demonstrate who the fit, finish safety, reliability, durability and longevity of the part, equipment and vessel will not be compromised, all to the Province's satisfaction. If the Province consents to non-OEM parts or services, any cost savings shall be equally divided between the Contractor and the Province. In the event the Contractor seeks to utilize non-OEM parts and service because OEM parts and service is/are not available, the Contractor shall so notify the Province, and upon the Province's request, the Contractor shall demonstrate how the fit, finish, safety, reliability, durability and longevity of the part, equipment and vessel will not be compromised.
- 10.3 All Replaced Parts at any time removed from the Watercraft shall remain the property of the BCTFA no matter where located.
- 10.4 Immediately upon the installation of the Replacement Part in or on the Watercraft as above provided:
 - (a) title to such Replacement Part shall vest in the BCTFA;
 - (b) such Replacement Part shall be deemed to be part of the Watercraft, and become subject to this Charter; and
 - (c) the Contractor shall perform a thorough test to ensure fit, finish, safety, reliability, durability and longevity and provide the results of such test to the Province.
- 10.5 In addition to its obligations to install Replacement Parts in or on the Watercraft, the Contractor may, at its own cost and expense, from time to time make such alterations and modifications in and additions to the Watercraft (hereinafter such additional parts are called the "Additional Part" or the "Additional Parts") as the Contractor may deem desirable in the proper conduct of its business, or whether required in order to meet the requirements or standards of any applicable laws,

ordinances, regulations, requirements, standards and rules applicable to the use, maintenance and operation of the Watercraft, provided that:

- (a) no such alteration, modification or addition diminishes the value, utility or condition of the Watercraft below the value, utility or condition of the Watercraft immediately prior to such alteration, modification or addition;
 - (b) the Watercraft then has the seaworthiness, utility and condition required to be maintained by the terms of this Charter;
 - (c) any and all such alterations, modifications or additions shall be at the sole cost of the Contractor; and
 - (d) the BCTFA has given it prior written approval, which approval shall not be unreasonably withheld.
- 10.6 Title to any and all Additional Parts shall vest in the BCTFA if the same is or are a component of the Watercraft, free and clear of any security interest, lien or other encumbrance, and any and all such Additional Parts become subject to this Charter and be deemed part of the Watercraft.
- 10.7 The Contractor shall, on the earlier of the date 60 days prior to the expiration of the Term and a date within 10 days following the termination of this Charter for any reason whatsoever, notify the Province and BCTFA in writing of any alteration, modification or addition to the Watercraft or of any property damage or loss not constituting an Event of Watercraft Loss which would, in the Contractor's reasonable opinion, impair or negatively impact upon the value, utility or condition of the Watercraft. If, in the BCTFA's opinion, any such modification, alteration, or addition has impaired or negatively impacted upon the value, utility or condition of the Watercraft, the Watercraft shall be restored by the Contractor at the Contractor's expense to a condition in which, in the opinion of the Province, the Watercraft shall have the value, utility or condition which it would have had if such alteration, modification, addition, property damage or loss had not occurred. Restoration shall be carried out by the Contractor at the sole expense of the Contractor prior to the return of the Watercraft to the BCTFA.

11. INSURANCE

- 11.1 The Contractor shall obtain and keep in good standing insurance on the Watercraft with loss payable to the Province as described in Section 8 and Schedule H to the Ferry Agreement and will comply with any obligations on the Contractor with respect to insurance as set out in such Schedule.

12. EVENT OF WATERCRAFT LOSS

- 12.1 If the Watercraft is lost, stolen, destroyed, damaged beyond economic repair or to an extent resulting in an insurance settlement with respect thereto on the basis of a total or constructive total loss, or expropriated or confiscated in circumstances beyond the reasonable control of the Contractor by any authority for any reason, or is rendered unfit for normal use for any reason other than because the Watercraft has become, or is deemed by the Contractor to have become, obsolete (hereinafter individually referred to as an "Event of Watercraft Loss"), the Contractor shall notify the BCTFA and the Contractor's insurers in writing of the Event of Watercraft Loss as soon as is practicable but not later than 5 days after the date of the Event of Watercraft Loss (that date being hereinafter called the "Event of Watercraft Loss Date") or such shorter time as may be required pursuant to the applicable policy insurance.
- 12.2 If an Event of Watercraft Loss occurs, the Contractor shall pay to the BCTFA the full insurable value of the Watercraft.
- 12.3 Upon payment of the full insurable value of the Watercraft as hereinbefore provided, this Charter shall terminate with respect to the Watercraft and the BCTFA may, at its sole discretion, replace the Watercraft by delivering to the Contractor another Watercraft (the "Replacement Watercraft") for the purpose of the performance of the Ferry Service, and upon delivery of the Replacement Watercraft by the BCTFA to the Contractor, the term "Watercraft" in this Charter shall include the Replacement Watercraft unless the context otherwise requires, and with respect to the Replacement Watercraft, the BCTFA and the Contractor agree to be bound by the terms and conditions of this Charter.

13. THIRD PARTY CONTRACTS

- 13.1 If the Contractor shall assume any supply, service or rental contracts associated with the Watercraft, the Contractor shall keep them in good standing until they terminate.
- 13.2 The Contractor may enter into new supply, service or rental contracts during the term provided that the Province shall have no liability with respect to any of these contracts, either during or after the expirations of the Term.

14. INSPECTION AND SURVEY OF THE WATERCRAFT

- 14.1 The Contractor represents and warrants to the BCTFA and agrees with the BCTFA as follows:
 - (a) that the Contractor has and shall be deemed to have been afforded the opportunity prior to executing this Charter to inspect and examine the

Watercraft and that the Contractor shall be deemed to have inspected and examined the same and to have satisfied itself with respect thereto; and

- (b) that the Contractor has and shall be deemed to have satisfied itself in all respects prior to executing this Charter as to the Watercraft including as to the condition, situation, status, quality, fitness and standard of the Watercraft.

15. RETURN OF WATERCRAFT

- 15.1 Upon the expiration of the Term or sooner termination of this Charter, the Contractor at its sole cost and expense shall deliver the Watercraft to the BCTFA at a location designated by the BCTFA.
- 15.2 The Watercraft shall be in the same condition as when it was delivered to the Contractor, reasonable wear and tear excepted.
- 15.3 On redelivery of the Watercraft, the parties shall do the following:
 - (a) conduct an inventory of the Watercraft; and
 - (b) conduct a marine off-hire condition survey by an independent qualified marine surveyor, appointed by the Province at the Province's cost.
- 15.4 Upon receipt by the Contractor and the BCTFA of the off-hire survey report, the Contractor shall at its sole cost and expense remedy any and all defects and damages set out in the survey report other than those existing at the time of delivery of the Watercraft as provided in the on-hire survey at the time and that were not rectified by the BCTFA and except for defects attributable to reasonable wear and tear.

16. NOTICE

- 16.1 Unless otherwise provided for in this Charter, any notice, request, report, demand or other document desired or required to be given under this Charter, shall be in writing and may be given by personal delivery to the party to whom it is to be given, by facsimile transmission from either party or by mailing in Canada with postage prepaid addressed,

if to the BCTFA or the Province (or both of them):

Ministry of Transportation and Infrastructure
PO Box 9850, Stn Prov. Gov't
940 Blanshard Street
Victoria, B.C.
V8W 9T5

Attention: Ministry Manager, Inland Ferries, Marine Branch
Fax: (250) 356-0897

If to the Contractor:

@
@
@
@

Attention: @

Fax: (@) @

and any such notice, request, report, demand or other document so mailed shall 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, request, report, demand, or other document shall be deemed given to and received by the addressee when actually delivered to the particular address set out above, and such notice, request, report, demand or other document transmitted by facsimile shall be conclusively deemed validly given to and received by the intended recipient when transmitted if transmitted to the above-referenced facsimile numbers.

- 16.2 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 shall, for purposes of this Charter, be deemed to be the address or facsimile number of the party giving such notice.

17. ASSUMPTION OF RISK

- 17.1 Except as may be expressly provided herein and in the Ferry Agreement, the Watercraft is in all respects solely the responsibility of the Contractor and the Contractor assumes the entire risk of loss or damage to the Watercraft from any cause whatsoever, including without limitation loss of or damage to the hull, machinery, spare parts, equipment, accessories, supplies and additions and accessories incorporated therein or affixed thereto.

18. INDEMNITY PROVISIONS

- 18.1 The Contractor will indemnify and save harmless the BCTFA and the Province, their servants, directors, officers, employees, deputies, delegates, representatives and agents (together, the "Indemnitees"), from and against all claims, demands, losses, damages, costs, liabilities, expenses, fines, penalties, assessments and levies, including without limitation fees of solicitors and other professional advisors, made against or incurred, suffered or sustained by any of the Indemnitees at any time or times (whether before or after the expiration or termination of this Charter or the Ferry Agreement) where the same or any of them are based upon or arise out of:
- (a) any breach, violation or non-performance by the Contractor of any covenant, condition or term in this Charter; or
 - (b) any bodily injury, death or property damage or loss of use thereof occurring or happening in, on or off the Ferry Facility in any way relating to this Charter;
 - (c) any fines, penalties or expenses levied or charged against the Indemnitees or the Contractor by any Governmental Authority, court or board pursuant to any law, by-law or regulation for the protection of the environment as a result of the use and occupation of the activities of the Contractor on, or in any way related to, the Watercraft, or
 - (d) any act or omission taken or maintained or the exercise of any rights by the Contractor (or others for whom the Contractor is responsible at law) pursuant to any provisions of this Charter.
- 18.2 The indemnity contained in this Article will survive the expiration or earlier termination of this Charter and the Ferry Agreement.

19. MISCELLANEOUS

- 19.1 Any public announcement relating to this Charter shall be arranged by the BCTFA in consultation with the Contractor.

- 19.2 The Contractor shall treat as confidential and shall not, without the prior written consent of the BCTFA, publish, or disclose or permit to be published or disclosed either before or after the expiration or sooner termination of this Charter, any information supplied to, obtained by, or which comes to the knowledge of the Contractor as a result of this Charter except insofar as such publication, or disclosure is required by law or is necessary to enable the Contractor to fulfill the obligations of the Contractor under this Charter.
- 19.3 This Charter and the Ferry Agreement and related documents constitute the entire agreement between the parties in respect of the subject matter of this Charter and no understandings, representations or agreements, oral or otherwise, exist between the parties with respect to the subject matter of this Charter.
- 19.4 Each of the parties shall, 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 Charter.
- 19.5 Public disclosure of this Charter shall be governed by the Freedom of Information and Protection of Privacy Act, R.S.B.C. 1996, c. 165.
- 19.6 This Charter shall enure to the benefit of and be binding upon the BCTFA and its assigns and the Contractor and its successors and permitted assigns.
- 19.7 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 Charter shall be effective unless it is in writing and no such waiver shall be deemed or construed to be a waiver of any other breach or default and failure or delay on the part of a 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, shall not constitute a waiver by such party of any of its rights against the other.
- 19.8 If any provision of this Charter or the application thereof to any person or circumstance is invalid or unenforceable to any extent, the remainder of this Charter and the application of such provision to any other person or circumstance shall not be affected or impaired thereby and shall be valid and enforceable to the extent permitted by law
- 19.9 This Charter may only be amended by a further written agreement executed by the parties.
- 19.10 Time is and shall be in all respects of the essence of this Charter.

19.11 BCTFA has granted, to the Province pursuant to Section 29.2 of the Ferry Agreement, the full right and authority to act on BCTFA's behalf in respect of any and all matters affecting this Charter.

20. INTERPRETATION

- 20.1 The headings or captions in this Charter are inserted for convenience only and do not form a part of this Charter and in no way define, limit, or alter or enlarge the scope or meaning of any provision of this Charter.
- 20.2 In this Charter, "person" includes a corporation, firm, association and any other legal entity and wherever the singular or masculine is used it shall be construed as if the plural, the feminine or the neuter, and shall wherever the plural or the feminine or the neuter is used it shall be construed as the singular or masculine, as the case may be, had been used where the context or the parties so require.
- 20.3 In this Charter, 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.
- 20.4 All dollar amounts expressed in this Charter refer to lawful currency of Canada.
- 20.5 This Charter shall be governed by and construed and interpreted in accordance with the laws of the Province of British Columbia.

The parties have executed this Charter as of the date first written above.

BC Transportation Financing Authority

Nancy Bain
Executive Financial Officer and Corporate Secretary

Contractor

(Name)

(Title)



BC Transportation
Financing Authority



BRITISH
COLUMBIA

Ministry of Transportation
and Infrastructure

LICENCE OF OCCUPATION

THIS AGREEMENT is dated for reference **XXX**

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA, as represented by the Minister of Transportation and Infrastructure, with the following address: The Ministry of Transportation and Infrastructure, Marine Branch, 940 Blanshard Street, Victoria, British Columbia V8W 9T5

(the "Province")

AND:

BC TRANSPORTATION FINANCING AUTHORITY, a corporation continued under the *Transportation Act* with the following address: 940 Blanshard Street Victoria, British Columbia V8W 9T5

("BCTFA")

(together, the "Licensor")

AND:

XXX

(the "Licensee")

WHEREAS:

- A. The BCTFA is the registered owner in fee simple of the water covered land and the remainder of the land under license hereto is a provincial public highway (as defined in the *Transportation Act*) and, in accordance with Section 58 of the *Transportation Act*, the BCTFA holds all of the Province's right in and title to the soil and freehold of such land; and
- B. The Contractor and the Guarantor have entered into the Ferry Agreement and as a condition of the same has agreed to be bound by the terms of this Licence.
- C. The Licensee wishes to use and occupy the Land and the Licensor has agreed to permit it to do so in accordance with the terms and conditions of this Agreement.
- D. Pursuant to and in accordance with the Barnston Island Ferry Agreement, the BCTFA has granted authority to the Province to act on BCTFA's behalf.

For valuable consideration, the parties agree as follows:

ARTICLE 1 - DEFINITIONS

1.1 In this Agreement,

"**Agreement**" means this licence of occupation;

"**Commencement Date**" means April 1, 2018;

"**Event of Force Majeure**" means the Event of Force Majeure defined in the Ferry Agreement;

"**Fee**" means the fee set out in Article 3;

"**Ferry Agreement**" means the Barnston Island Ferry Agreement entered into between the parties on even date;

"**Ferry Service**" means the ferry service defined in the Ferry Agreement;

"**Improvement(s)**" includes anything made, constructed, erected, built, altered, repaired or added to, in, on or under the Land, and attached to it or intended to become a part of it, and also includes any clearing, excavating, digging, drilling, tunnelling, filling, grading or ditching of, in, on or under the Land;

"**Land**" means the land and the water-covered land shown outlined by a red line in Appendix 1

"**Realty Taxes**" means all taxes, rates, levies, duties, charges and assessments lawfully levied or charged, at any time, by any competent governmental authority which relate to the Land, the Improvements or both of them;

"**Security**" means the security referred to in Section 6.1, as replaced or supplemented in accordance with Section 6.2; and

"**Term**" means the period of time set out in Section 2.2.

ARTICLE 2 - GRANT AND TERM

- 2.1 On the terms and conditions set out in this Agreement, the Licensor grants the Licensee a licence of occupation over the Land and Improvements, including all equipment, machinery and accessories thereon, for the purpose of conducting the Ferry Service pursuant to the Ferry Agreement and the Licensee acknowledges that this Agreement does not grant it the exclusive use and occupancy of the Land and Improvements.
- 2.2 The term of this Agreement shall be concurrent with the term set out in the Ferry Agreement and this Agreement shall, notwithstanding Article 8 ("Cancellation"), automatically terminate upon the early termination or expiry of the Ferry Agreement.

ARTICLE 3 - FEE

- 3.1 The Licensor acknowledges receipt from the Licensee of \$3.00 as the fee for the Term.

ARTICLE 4 - COVENANTS

- 4.1 The Licensee must

- (a) pay, when due,

- (i) the Realty Taxes, and
- (ii) all charges for electricity, gas, water and other utilities supplied to the Land;
- (b) deliver to the Licensor, immediately upon demand, receipts or other evidence of the payment of Realty Taxes and all other money required to be paid by the Licensee under this Agreement;
- (c) observe, abide by and comply with
 - (i) all applicable laws, bylaws, orders, directions, ordinances and regulations of any competent governmental authority in any way affecting the Land and the Improvements, or their use and occupation, and
 - (ii) the provisions of this Agreement;
- (d) keep the Land and the Improvements in a safe, clean and sanitary condition satisfactory to the Province, and at the Province's written request, make the Land and the Improvements safe, clean and sanitary and notwithstanding the generality of Section 4.1(c)(i), such clean up shall be completed in compliance with environmental laws;
- (e) not commit any wilful or voluntary waste, spoil or destruction on the Land or do anything on the Land that may be or become a nuisance or annoyance to an owner or occupier of land in the vicinity of the Land;
- (f) use and occupy the Land only in accordance with and for the purposes set out in Section 2.1;
- (g) not construct, place or affix any Improvement on or to the Land except as necessary for the purposes set out in Section 2.1;
- (h) pay all accounts and expenses as they become due for labour or services performed on, or materials supplied to, the Land except for money that the Licensee is required to hold back under the *Builders Lien Act*;
- (i) if any claim of lien over the Land is made under the *Builders Lien Act*, immediately take all steps necessary to have the lien discharged, unless the claim of lien is being contested in good faith by the Licensee and the Licensee has taken the steps necessary to ensure that the claim of lien will not subject the Land or any interest of the Licensee's under this Agreement to sale or forfeiture;
- (j) cut or remove timber on or from the Land
 - (i) only to address an unsafe condition or for the purposes set out in Section 2.1, and
 - (ii) in accordance with an agreement issued to the Licensee under the *Forest Act* to permit the harvest of Crown timber on the Land unless the minister responsible for the *Forest Act* permits the harvest of timber on the Land without the issuance of an agreement under the *Forest Act*;
- (k) permit the Licensor, or its authorized representatives, to enter on the Land at any time to inspect the Land and the Improvements;
- (l) indemnify and save the BCTFA and Her Majesty the Queen in right of the Province of British Columbia and their respective servants, employees, officers, directors and agents harmless against all claims, demands, actions, causes of action, losses, damages, fines, penalties, costs and liabilities, including fees of solicitors and other professional advisors, arising out of or in connection with,

- (i) the Licensee's breach, violation or nonperformance of a provision of this Agreement,
- (ii) any personal injury, bodily injury (including death) or property damage occurring or happening on or off the Land by virtue of the Licensee's entry upon, use or occupation of the Land, and
- (iii) without limiting paragraph (ii), any environmental liability on or off the Land related to the Licensee's entry upon, use or occupation of the Land, including, without limitation, any contamination or any liability related to any toxic, hazardous, dangerous or potentially dangerous substances migrating from the Land,

and the amount of all such losses, damages, fines, penalties, costs, expenses and liabilities will be payable to the Licensor immediately upon demand; and

- (m) release the BCTFA and Her Majesty the Queen in right of the Province of British Columbia and their respective servants, employees, officers, directors and agents from and against all claims, demands, actions, causes of action, losses, damages, fines, penalties, costs, expenses and liabilities arising out of or in connection with any environmental liability on or off the Land related to the Licensee's entry upon, use or occupation of the Land, including, without limitation, any contamination or any liability related to any toxic, hazardous, dangerous or potentially dangerous substances migrating from the Land; and
- (n) on the termination of this Agreement,
 - (i) peaceably quit and deliver to the Licensor possession of the Land and, subject to paragraphs (ii) and (iii), the Improvements in a safe, clean and sanitary condition (including, without limitation, free of any environmental contamination related to the Licensee's entry upon, use or occupation of the Land),
 - (ii) within 60 days, remove from the Land any Improvement the Licensee wants to remove, if the Improvement was placed on or made to the Land by or for the Licensee, is in the nature of a tenant's fixture normally removable by tenants and is not part of a building or part of the Land,
 - (iii) remove from the Land any Improvement that was placed on or made to the Land by or for the Licensee, and that the Licensor, in writing, directs or permits the Licensee to remove, and
 - (iv) restore the surface of the Land as nearly as may reasonably be possible to the same condition as it was on the Commencement Date, to the Licensor's satisfaction, but if the Licensee is not directed or permitted to remove an Improvement under paragraph (ii) or (iii), this paragraph will not apply to that part of the surface of the Land on which that Improvement is located,

and to the extent necessary, this covenant will survive the termination of this Agreement.

4.2 The Licensee will not permit any person to do anything it is restricted from doing under this Article.

ARTICLE 5 - LIMITATIONS

5.1 The Licensee agrees with the Licensor that

- (a) the Licensor is under no obligation to provide access or services to the Land or to maintain or improve existing access roads;
- (b) the Licensor may, without the Licensee's consent, make other dispositions of or over the Land;
- (c) the Licensee will make no claim for compensation, in damages or otherwise, in respect of a disposition

- made under subsection (b);
- (d) all of the Licensee's costs and expenses, direct or indirect, that arise out of any interference with its rights under this Agreement as a result of a disposition made by the Lessor under subsection (b) will be borne solely by the Licensee;
 - (e) the Licensee releases and discharges the Lessor from all claims for loss or damage arising directly or indirectly out of any interference with the Licensee's rights under this Agreement as a result of a disposition made by the Lessor under subsection (b);
 - (f) the Licensee will not remove or permit the removal of any Improvement from the Land except as expressly permitted or required under this Agreement;
 - (g) any interest the Licensee may have in the Improvements ceases to exist and becomes the property of the Lessor upon the termination of this Agreement, except where an Improvement may be removed under paragraph 4.1(n)(ii) or (iii) in which case any interest the Licensee may have in that Improvement ceases to exist and becomes the property of the Lessor if the Improvement is not removed from the Land within the time period set out in paragraph 4.1(n)(ii) or the time period provided for in the direction or permission given under paragraph 4.1(n)(iii); and
 - (h) if, after the termination of this Agreement, the Lessor permits the Licensee to remain in possession of the Land and the Lessor accepts money from the Licensee in respect of such possession, the Licensee will be deemed to be a monthly licensee only subject to all of the provisions of this Agreement, except as to duration, in the absence of a written agreement to the contrary.

ARTICLE 6 - INSURANCE AND SECURITY

- 6.1 The Licensee must, without limiting its obligations or liabilities under this Agreement, at its expense, maintain during the Term the insurance and securities required by Section 12 and Schedule H of the Ferry Agreement;
- 6.2 The Licensee acknowledges that the Lessor may, from time to time, notify the Licensee to
 - (a) change the form or amount of the security; and
 - (b) provide and maintain another form of security in replacement of or in addition to the security posted by it under the Ferry Agreement;

and the Licensee will, within 30 days of receiving such notice, deliver to the Lessor written confirmation that the change has been made or the replacement or additional form of Security has been provided by the Licensee.

ARTICLE 7 - ASSIGNMENT

- 7.1 The Licensee must not sublincense, assign, mortgage or transfer this Agreement, or permit any person to use or occupy the Land, without the Lessor's prior written consent, which consent it may withhold in its sole discretion.
- 7.2 For the purpose of Section 7.1, if the Licensee is a corporation, a change in control (as that term is defined in subsection 2(3) of the *Business Corporations Act*) of the Licensee will be deemed to be a transfer of this Agreement.
- 7.3 Section 7.2 does not apply to a corporation if the shares of the corporation which carry votes for the election of the directors of the corporation trade on a stock exchange located in Canada.

- 7.4 Prior to considering a request for consent under Section 7.1, the Licensor may require the Licensee to meet certain conditions, including without limitation, that it provide to the Licensor a "site profile", "preliminary site investigation" or "detailed site investigation" (as those terms are defined in the *Environmental Management Act*) for the Land and or other similar type of investigation of the Land.

ARTICLE 8 - CANCELLATION

- 8.1 The Licensee agrees with the Licensor that

- (a) if the Licensee
 - (i) defaults in the payment of any money payable by it under this Agreement , or
 - (ii) fails to observe, abide by and comply with the provisions of this Agreement (other than the payment of any money payable by it under this Agreement),
and its default or failure pursuant to (i) and (ii) herein continues for 3 days after the BCTFA gives written notice of the default or failure to the Licensee,
- (b) if, in the Licensor's opinion, the Licensee fails to make diligent use of the Land for the purposes set out in this Agreement, and its failure continues for 3 days after the Licensor gives written notice of the failure to the Licensee;
- (c) if the Licensee
 - (i) becomes insolvent or makes an assignment for the general benefit of its creditors,
 - (ii) commits an act which entitles a person to take action under the *Bankruptcy and Insolvency Act* (Canada) or a bankruptcy petition is filed or presented against it or it consents to the filing of the petition or a decree is entered by a court of competent jurisdiction adjudging it bankrupt under any law relating to bankruptcy or insolvency, or
 - (iii) voluntarily enters into an arrangement with its creditors;
- (d) if the Licensee is a corporation,
 - (i) a receiver or receiver-manager is appointed to administer or carry on its business, or
 - (ii) an order is made, a resolution passed or a petition filed for its liquidation or winding up;
- (e) if the Licensee is a society, it converts into a company in accordance with the *Society Act* without the Licensor's prior written consent; or
- (f) if this Agreement is taken in execution or attachment by any person;

the Licensee, at the Licensor's option, with or without notification, will be in default of this Agreement and the Licensor may utilize any and all remedies afforded to the Province pursuant to the Ferry Agreement as a default of this Agreement shall be a default of the Ferry Agreement, and without limitation the Licensor may, with or without entry, terminate the Licensee's right of occupation in the Land, which will be absolutely forfeited to the Licensor.

- 8.2 If the condition complained of in subsection 8.1(a) or (b) (other than the payment of any money payable by the Licensee under this Agreement) reasonably requires more time to cure than 3 days, the Licensee will be deemed to

have complied with the remedying of it if the Licensee commences remedying or curing the condition within 3 days and diligently completes the same.

8.3 The Licensee agrees with the Lessor that

- (a) the Lessor may, on 3 days' written notice to it, terminate this Agreement if the Lessor requires the Land for any purpose; and
- (b) it will make no claim for compensation, in damages or otherwise, upon the lawful termination of this Agreement under Sections 2.2, 8.1 or 8.3 or under subsection 62(5) of the *Transportation Act*.

ARTICLE 9 - DISPUTE RESOLUTION

9.1 If any dispute arises under this Agreement, the parties will attempt to resolve the dispute pursuant to Section 10 ("Dispute Resolution") in the Ferry Agreement.

ARTICLE 10 - NOTICE

10.1 Any notice or other document required or permitted to be given by either party to the other must be in writing and will be deemed to be given if mailed by prepaid registered mail in Canada or delivered to the address of the other as follows:

to the BCTFA and the Province (or both of them)

Ministry of Transportation and Infrastructure
PO Box 9850, Stn Prov. Gov't
940 Blanshard Street
Victoria, B.C.
V8W 9T5
Facsimile Number: (250) 356-0897

to the Licensee

XXX

Facsimile Number: **(xxx) xxx**

or at such other address as a party may, from time to time, direct in writing, and any such notice will be deemed to have been received if delivered, on the day of delivery, and if mailed, 7 days after the time of mailing, except in the case of mail interruption in which case actual receipt is required.

10.2 In order to expedite the delivery of any notice or other document required or permitted to be given by either party to the other, a concurrent facsimile copy of any notice will, where possible, be provided to the other party but nothing in this section, and specifically the lack of delivery of a facsimile copy of any notice, will affect the deemed delivery provided in Section 10.1.

10.3 The delivery of all money payable to the Lessor under this Agreement will be effected by hand, courier or prepaid regular mail to the Lessor's address specified in or otherwise established under Section 10.1, or by any other payment procedure agreed to by the parties, such deliveries to be effective on actual receipt.

ARTICLE 11 - MISCELLANEOUS

- 11.1 No provision of this Agreement will be considered to have been waived unless the waiver is in writing, and a waiver of a breach of a provision of this Agreement will not be construed as or constitute a waiver of any further or other breach of the same or any other provision of this Agreement, and a consent or approval to any act requiring consent or approval will not waive or render unnecessary the requirement to obtain consent or approval to any subsequent same or similar act.
- 11.2 No remedy conferred upon or reserved to the Lessor under this Agreement is exclusive of any other remedy in this Agreement or provided by law, but that remedy will be in addition to all other remedies in this Agreement and the Ferry Agreement or then existing at law, in equity or by statute.
- 11.3 The grant of a sublease, assignment or transfer of this Agreement does not release the Licensee from its obligation to observe and perform all the provisions of this Agreement on its part to be observed and performed unless the Lessor specifically releases the Licensee from such obligation in its consent to the sublease, assignment or transfer of this Agreement.
- 11.4 This Agreement extends to, is binding upon and enures to the benefit of the parties, their heirs, executors, administrators, successors and permitted assigns.
- 11.5 If, due to an Event of Force Majeure, as that term is defined in the Ferry Agreement, the Licensee is delayed in performing any of its obligations under this Agreement, the time for the performance of that obligation will be extended by a period of time equal to the period of time of the delay so long as the Licensee
 - (a) gives notice to the Lessor within 30 days of the commencement of the delay setting forth the nature of the delay and an estimated time frame for the performance of its obligation; and
 - (b) diligently attempts to remove the delay.
- 11.6 The Licensee agrees with the Lessor that
 - (a) the Lessor is under no obligation, express or implied, to provide financial assistance or to contribute toward the cost of servicing, creating or developing the Land or the Improvements and the Licensee is solely responsible for all costs and expenses associated with its use of the Land and the Improvements for the purposes set out in this Agreement;
 - (b) nothing in this Agreement constitutes the Licensee as an agent, joint venturer or partner of the BCTFA or Her Majesty the Queen in right of the Province of British Columbia or gives it any authority or power to bind the BCTFA or Her Majesty the Queen in right of the Province of British Columbia in any way; and
 - (c) any information regarding this Agreement or the Licensee may be disclosed or required to be disclosed under the *Freedom of Information and Protection of Privacy Act*, governmental policy or otherwise.
- 11.7 There is no representation or warranty by the Lessor as to the validity of its title or interest to the Land.
- 11.8 There are no warranties, representations, collateral agreements or conditions affecting this Agreement except as set out in this Agreement.

ARTICLE 12 - JOINT AND SEVERAL

- 12.1 If more than one person constitutes the Licensee, the covenants, agreements, representations, warranties and obligations on the part of the Licensee shall be joint and several covenants, agreements, representations, warranties and obligations of each such person.

- 12.2 Where a person is named as and executes this Agreement and the other agreements referred to herein as a guarantor, then such person is primarily liable to the Licensor, on a joint and several basis with the Licensee and not as a surety, for the due performance of all covenants, agreements and obligations on the part of the Licensee to be performed, and shall execute and deliver to the Licensor, prior to the commencement of the Term, an instrument of guarantee of the Licensee's obligations in a form to the satisfaction of the Licensor.

ARTICLE 13 - INTERPRETATION

- 13.1 In this Agreement, "person" includes a corporation, firm or association and wherever the singular or masculine form is used in this Agreement it will be construed as the plural or feminine or neuter form, as the case may be, and vice versa where the context or parties require.
- 13.2 The captions and headings contained in this Agreement are for convenience only and do not define or in any way limit the scope or intent of this Agreement.
- 13.3 This Agreement will be interpreted according to the laws of the Province of British Columbia.
- 13.4 Where there is a reference to an enactment of the Province of British Columbia or of Canada in this Agreement, that reference will include a reference to every amendment to it, every regulation made under it and any subsequent enactment of like effect and, unless otherwise indicated, all enactments referred to in this Agreement are enactments of the Province of British Columbia.
- 13.5 If any section of this Agreement, or any part of a section, is found to be illegal or unenforceable, that section or part of a section, as the case may be, will be considered separate and severable and the remainder of this Agreement will not be affected and this Agreement will be enforceable to the fullest extent permitted by law.
- 13.6 Each schedule to this Agreement is an integral part of this Agreement as if set out at length in the body of this Agreement.
- 13.7 This Agreement, as an appended schedule to the, the Ferry Agreement, the Ferry Agreement itself and its other appended scheduled agreements including the Charter constitute the entire agreement between the parties and no understanding or agreement, oral or otherwise, exists between the parties with respect to the subject matter of this Agreement except as expressly set out in this Agreement and this Agreement may not be modified except by subsequent agreement in writing between the parties.
- 13.8 If there is a conflict between this Agreement and the Ferry Agreement, the Ferry Agreement shall prevail.
- 13.9 Each party will, upon the request of the other, do or cause to be done all lawful acts necessary for the performance of the provisions of this Agreement.
- 13.10 All provisions of this Agreement in the Licensor's favour and all of its rights and remedies, either at law or in equity, will survive the termination of this Agreement.
- 13.11 Time is of the essence of this Agreement.
- 13.12 Wherever this Agreement provides that an action may be taken, a consent or approval must be obtained or a determination must be made then each party will act reasonably in taking such action, deciding whether to provide such consent or approval or making such determination; but where this Agreement states that a party has sole discretion to take an action, provide a consent or approval or make a determination, there will be no requirement to show reasonableness or to act reasonably in taking that action, providing that consent or approval or making that determination.

- 13.13 BCTFA hereby grants to the Province the full right and authority to act on its behalf in respect of any and all matters affecting BCTFA in relation to this Agreement, the Ferry Agreement and generally the provision and operation of the Ferry Service by the Licensee which full right and authority includes, without limitation, the full right and authority to do anything, take any step, sign any document, enforce any right and pursue any remedy, or to refrain from doing any such thing or things as the case may be, without the Province having to seek or obtain from BCTFA any further approval or direction in respect of the foregoing.

The parties have executed this Agreement as of the date of reference of this Agreement.

SIGNED by an authorized signatory of
BC TRANSPORTATION FINANCING AUTHORITY

Nancy Bain **XXX**
Executive Financial Officer and Corporate Secretary

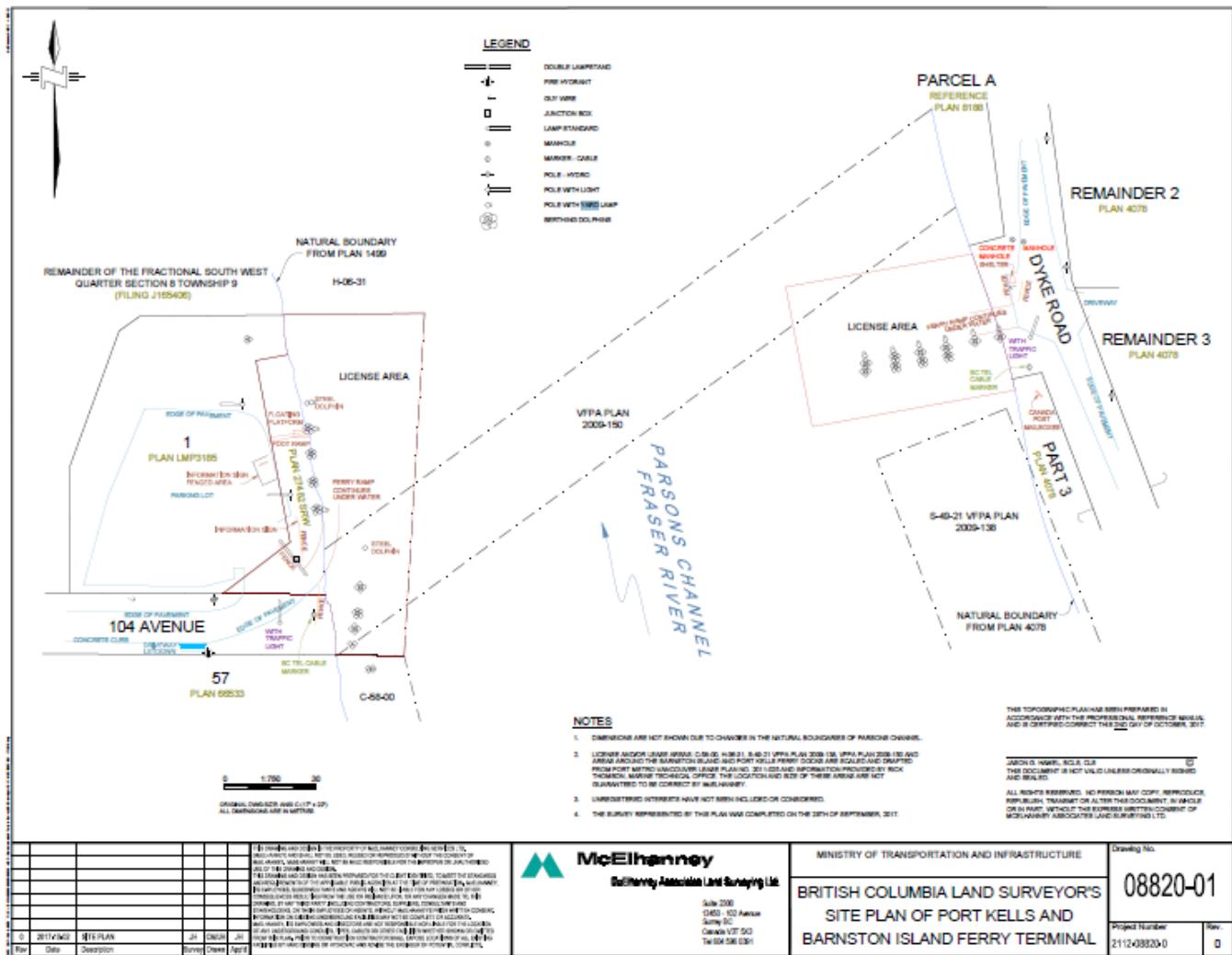
SIGNED on behalf of **XXX**
by its authorized signatories

XXX, President, Secretary

Authorized Signatory:

Schedule F - Appendix 1

"Land" means the land shown outlined by bold line on the following plan:



Schedule G

Dispute Resolution Protocol

1. The Contact Persons will meet to discuss and attempt to resolve the dispute.
2. If there is no resolution within 10 Business Days of this meeting, the Contractor will set out its position and proposed resolution in writing, stating the applicable section of the Agreement involved, and forward this to the Executive Director, Marine Branch.
3. The Executive Director, Marine Branch, on behalf of the Province, must provide a written response, within 20 Business Days of receipt of the Contractor's proposal. This response must either:
 - (a) Indicate agreement with the Contractor's position and propose a resolution; or
 - (b) Propose an alternative to the Contractor's resolution with written reasons for the alternative; or
 - (c) Reject the Contractor's resolution with written reasons for the rejection.
4. If the Province fails to provide a written response pursuant to 3 above, within this time period, the Contractor can immediately refer the matter to the Referee.
5. If either 3 (b) or 3 (c) above occur, the Contractor may either accept the Province's response, or refer the matter to the Referee.
6. Time limits may be extended by mutual written agreement, but extensions cannot exceed an additional 10 Business Days in total.
7. All disputes arising under this Agreement will first follow the escalation procedure set forth above, and if unresolved, then the dispute may be referred to and finally resolved by a Referee by either party by written notice from one party to the other.
8. The parties shall, forthwith after entering into this Agreement, enter into a contract with a Referee in the form set out in Schedule "I".
9. If the parties are unable to agree on a Referee with whom to contract, then a Referee shall be chosen by an arbitrator pursuant to the Commercial Arbitration Act.
10. The decision by the Referee will be final and binding on the parties, unless the contrary is specifically noted for any specific Dispute in this Agreement.

Schedule H**Insurance and Securities****1. Insurance****(a) General Insurance Provisions**

The Contractor shall, at the Contractor's expense, obtain and maintain insurance coverage, in wording and in amounts as hereinafter specified, all in form and content satisfactory to the Province. Such insurance shall remain in full force and effect during the term of this Agreement, of which these insurance requirements are a part.

All insurance coverage shall be issued with insurers acceptable to the Province and issued by an insurance carrier or agent licensed to transact business in the Province of British Columbia and Canada. For clarity, the Province means Her Majesty the Queen in right of the Province of British Columbia as represented by the Minister of Transportation and Infrastructure.

In the event of loss, the Contractor shall immediately notify the Province with full details of the incident. The Contractor shall act in the best interests of the Province and any adjustment of the loss with insurers and any repairs to the vessel shall be carried out subject to the instruction of the Province.

The Province may from time to time, require that the Contractor increase the minimum coverage and/or limits of insurance and in this regard, the Province will provide 30 days written notice to the Contractor.

Evidence of Coverage:

- a)** Evidence that the insurance requirements have been met shall be delivered to the Province upon execution of this Agreement by way of a duly completed
 - (i) Ministry of Transportation and Infrastructure "Certificate of Insurance" Form H0111 in all form and content acceptable to the Province; and
 - (ii) with respect to Automobile Liability insurance, either a duly executed I.C.B.C. APV47 or APV250L form, or a Ministry Certificate of Insurance H-0111 form. Evidence shall be provided to the address set out in this Agreement.
- b)** The Contractor shall, upon request by an authorized official of the Province, deliver originals or signed, certified copies of all policies, renewals and endorsements. Evidence of renewals or extensions shall be received by the Province at least 30 days prior to the expiration of any and all policies provided hereunder.

The Contractor shall ensure that all insurance coverage required herein will not be lapsed, cancelled, reduced, materially altered or changed without the insurer

or insurers providing not less than thirty (30) days prior written notice to the Province by registered mail to the address set out in this Agreement.

(b) Specific Policies Required

(i) Commercial General Liability Insurance The Contractor shall obtain and maintain Commercial General Liability insurance with inclusive limits of not less than FIVE MILLION DOLLARS (\$5,000,000), for bodily injury or death and property damage arising from any one accident or occurrence. The insurance coverage shall apply to liability arising from the work or operations of the Contractor or the Province in any way related to, including under, this Agreement [including but not limited to each and every boat, tug, barge, or vessel which may be used in connection with, or in any way related to, including under, this Agreement]. A deductible not exceeding TEN THOUSAND DOLLARS (\$10,000) for all claims arising from a single event will be allowed. Deductibles are payable by the Contractor.

The policy shall contain the following provisions:

"The insurance as is afforded by this policy shall apply in the same manner and to the same extent as though a separate policy had been issued to each insured. Any breach of a condition of the policy by any Insured shall not affect the protection given by this policy to any other insured. The inclusion herein of more than one Insured shall not operate to increase the limit of liability under this policy."

"All policies of insurance shall also contain a waiver of subrogation against "Her Majesty the Queen in right of the Province of British Columbia as represented by the Minister of Transportation and Infrastructure and BC Transportation Financing Authority and their respective servants, directors, officers, employees, deputies, delegates, representatives and agents."

The policy shall include the Province and BCTFA as additional named insureds on the following terms:

"BC Transportation Financing Authority, and Her Majesty the Queen in right of the Province of British Columbia as represented by the Minister of Transportation and Infrastructure, together with any of their employees, agents, and servants, hereinafter referred to as the Additional Named Insureds, are added as Additional Named Insureds, in respect of liability arising from the work or operations of the Insured and any of the Additional Named Insureds, in connection with contracts entered into between the Insured and the Additional Named Insureds."

Products and Completed Operations Hazard coverage shall be provided and such coverage shall remain in full force and effect for a period of **twelve (12)** months after the work has been completed, irrespective of the expiry date of the policy.

Extension Of Coverage: The policy shall contain liability insurance including all liability arising out of completed operations, contractual

liability, contingent employers liability, non-owned automobile liability and liability assumed by the Contractor in connection with and applicable to the Agreement.

In addition, such liability insurance will cover pollution liability (minimum coverage Sudden and Accidental) in amounts not less than **FIVE MILLION DOLLARS (\$5,000,000)**.

Exclusions Not Permitted: The policy shall not exclude claims arising out of the legal liability imposed upon the insured at common law and extended by statute for bodily injury or death to employees of the Insured. However, exclusions applicable to liability imposed upon or assumed by the Insured under any Workers' Compensation statutes or for assessment by any Workers' Compensation Board will be allowed.

Hazardous operations such as excavation, pile driving, shoring, blasting, under-pinning, or demolition work or any other operation or work to be performed by the Contractor shall not be excluded from insurance coverage, where such type of work or operation is to be performed under the Agreement.

(ii) Protection and Indemnity Insurance

The Contractor shall obtain and maintain through a Protection and Indemnity Club, Protection and Indemnity insurance with inclusive limits of not less than **TWENTY MILLION DOLLARS (\$20,000,000)**, providing indemnity for bodily injury or death and property damage arising from any one accident or occurrence for all vessels that are owned, leased, rented or operated by the Contractor. Such Protection and Indemnity insurance will include four-fourths collision liability insurance. The Contractor will be responsible for ensuring that any changes to the requirements of the Marine Liability Act and/or the regulations of the Marine Liability Act are reflected in the insurance coverage provided. Notwithstanding the requirements of the Marine Liability Act, the limits must not be less than **TWENTY MILLION DOLLARS (\$20,000,000)**. The insurance coverage shall apply to liability arising from the work or operations of the Contractor in any way related to, including under, this Agreement and liability to persons while being transported on, embarking on or debarking from the vessel, and to property of every kind and description while being transported on, loaded.

The policy shall contain the following provision:

"The insurance as is afforded by this policy shall apply in the same manner and to the same extent as though a separate policy had been issued to each insured. Any breach of a condition of the policy by any insured shall not affect the protection given by this policy to any other insured. The

inclusion herein of more than one insured shall not operate to increase the limit of liability under this policy.”

The policy shall include the Province and BCTFA as additional named insureds on the following terms:

“BC Transportation Financing Authority, and Her Majesty the Queen in right of the Province of British Columbia as represented by the Minister of Transportation and Infrastructure, together with the employees, agents, and servants of the Minister, hereinafter referred to as the Additional Named Insured, is added as an Additional Named Insured, in respect of liability arising from the work or operations of the Insured and the Additional Named Insured, in connection with contracts, entered into between the Insured and the Additional Named Insured”

(iii) Hull Insurance

The Contractor shall obtain and maintain hull insurance covering the vessels as follows:

- 1) Watercraft/vessels owned or leased by the Contractor:
 - a. Each Watercraft/vessel owned or leased by the Contractor shall be insured for not less than the replacement cost value of the vessel at the insurance effective date and subsequent renewal dates;
- 2) Watercraft/vessels owned or leased by the BCTFA or the Province:
 - a. Each Watercraft/vessel owned by BCTFA or the Province shall be insured for not less than the replacement cost value of the Watercraft/vessel at the insurance effective date and subsequent renewal dates;
 - b. The named insureds on the insurance policies required above shall include:

“Her Majesty the Queen in right of the Province of British Columbia as represented by the Minister of Transportation and Infrastructure and the BC Transportation Financing Authority are added as Additional Named Insureds”
 - c. Loss Payable – the insurance policy must contain a loss payable clause directing payment to either the Province or BCTFA as directed by the Province at the time of the loss.

In respect of the above insurance requirement, a deductible of up to 5% of the value of the vessel (determined at the time of the insurance effective or renewal date) or \$5,000.00, whichever is the greater. Payment of any deductible shall be the responsibility of the Contractor.

(iv) Automobile Liability Insurance

If any licensed vehicles are owned, leased, rented or used in the performance of or in any way related to this Agreement, then Automobile Liability coverage with inclusive limits of not less than **TWO MILLION DOLLARS (\$2,000,000)** providing third party liability and accident benefits insurance.

(v) Aircraft Insurance

If aircraft (including helicopters) are owned, leased, rented or used in the performance of or in any way related to this Agreement, then third party liability coverage with inclusive limits of not less than **TWENTY MILLION DOLLARS (\$20,000,000)** must be provided.

2. Contract Securities

(a) General Securities Provisions

The Contractor shall provide and maintain the security hereinafter referred to in place for the full Term of the Agreement to which this schedule is attached all in form and substance acceptable to the Province and in keeping with the Agreement.

The Contractor will retain and maintain security in place for the full 10 year Term of this Agreement all in the form and content acceptable to the Province.

OR

The initial security will cover security for the first 5 years of the Agreement, to be renewed before the commencement of the second 5 years of the Agreement. This form of security shall contain a commitment from the issuer to the Province that the form of security shall stay in place for a period of 5 years.

The Contractor will, within fourteen (14) days of being notified of award and before commencement of any work, deliver to the Province, the security documents that the Proponent selected in its' Proposal **[based upon the security selected by the Proponent]** namely, either:

(i) a Performance Bond and a Labour and Material Payment Bond in the same form and content as in the specimens attached hereto.

Each bond must be in the amount of 25% of the five year average of the proposed annual Service Fee.

The Bonds shall contain a commitment from the issuer to the Province that the Bonds shall remain in effect for at least the first 5 years of this Agreement (the “Initial Term” in respect of the bonds) or the full and entire Term of this Agreement.

If the Surety notifies either party that the bonds are no longer in force, the Contractor must obtain and provide the Province with valid security which comply with the requirements of this schedule for any remainder of the Term of this Agreement.

OR

- (ii) an **Irrevocable Letter of Credit (ILOC)** in the amount of **ONE HUNDRED FIFTY THOUSAND DOLLARS (\$150,000)**. This ILOC shall be in form and substance the same as the specimen attached hereto.

The \$150,000 ILOC shall remain in effect for at least the first 5 years of this Agreement (the “Initial Term” in respect of the ILOC) or the full and entire Term of this Agreement.

In no event shall the Province be liable to the Contractor for drawing down funds under the ILOC or for paying funds which the Contractor is obligated to do under the Agreement.

In the event that the Agreement is terminated prior to the end of the Term as a result of default by the Contractor, then the Province may, at its sole discretion, call on the \$150,000 ILOC, and any amount or amounts thereby paid to the Province shall be on account of damages and not as a penalty.

The Irrevocable Letter of Credit shall be held by the Beneficiary until all contractual obligations in the Agreement have been fulfilled by the Customer and the Beneficiary shall deliver to the Issuer written notice of the date that all said obligations in the Agreement have been fulfilled.

(b) Extension or Change of Security for Last 5 Years of this Agreement

The Contractor shall, no later than 90 days prior to the expiry of the Initial Term of this Agreement, deliver to the Province a written notice of extension or change in the security or that substitute securities pursuant to Subsection (c) below, will be provided, as and where applicable.

In the event of an alternate surety for the Renewal Term, the Contractor shall, no later than 60 days prior to the expiry of the Initial Term of the Bonds, deliver a completed and executed consent of surety for the issuance of a Performance Bond and a Labour and Material Payment Bond, by an alternate surety, such consent being in the format set out in Appendix D of the RFP. Thereafter the Contractor shall, no later than 30 days prior to the expiry of the Initial Term of

the Bonds, deliver the bonds issued by that alternate surety, 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 Renewal Term (as that phrase is defined in the Bonds specimen) and for the remainder of the Term of this Agreement.

The Contractor shall, with regard to a change in the issuer of the ILOC security, no later than 60 days prior to the expiry of the Initial Term of this Agreement, deliver an “Undertaking to Provide an ILOC” in the form set out in the RFP to secure the issuance of the \$150,000 ILOC so as to secure the observance and performance by the Contractor of this Agreement for the Renewal Term. No later than 30 days prior to the expiry of the Initial Term of this Agreement, the substitute ILOC by the alternate issuer on the form provided in this Schedule H shall be delivered to the Province.

(c) Substitute Securities

The Contractor may request, and the Province may at its sole discretion agree, during the Term to substitute one form of security with another form of security, provided that in the sole opinion of the Province, the Contractor maintains the security in good standing during the Term.

SPECIMEN - ILOC
IRREVOCABLE LETTER OF CREDIT

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

(The Beneficiary)

IRREVOCABLE LETTER OF CREDIT

In reference to

Performance of the Barnston Island Ferry Agreement (the "Agreement")

At the request of _____
(Full name of the Customer)

we, _____
(the Issuer)

do hereby issue this Irrevocable Letter of Credit to guarantee payment on demand to the Beneficiary on the following Terms and Conditions:

- 1) This Irrevocable Letter of Credit becomes effective immediately and shall remain in effect until at least noon on **March 31, 2023**.
- 2) This Irrevocable Letter of Credit shall be automatically renewed for successive and consecutive periods of 180 days from the above date or any future expiration date, until either:
 - a) the Beneficiary provides notice of release to the issuer; or
 - b) the Issuer provides notice of non-renewal to the Beneficiary.
- 3) Any notice of release or nonrenewal to have effect shall be provided to the other party in writing by registered mail at least 30 days prior to the next effective expiration date.
- 4) Presentation of sight drafts or letters of demand for payment to be made against this Irrevocable Letter of Credit shall be at the discretion of the Beneficiary without requirement of further documentation, notice or prejudice to the rights of any party. Partial and multiple drawings are permitted under this Letter of Credit.
- 5) We shall honour any demand(s) for payment signed by **Executive Director, Marine Branch of the Ministry of Transportation and Infrastructure**, your representative, without inquiring as to whether you have the right as between yourselves and our customer to make such demand and without recognizing any claim(s) of our said customer or any other party.
- 6) Presentation for payment may be made at our offices located at **(financial institution address)** in the municipality of **Victoria**, British Columbia, or at our offices located at **(financial institution address)** in the municipality of **Vancouver**, British Columbia.
- 7) Payment(s) shall be made payable to the **Minister of Transportation and Infrastructure**, and shall be in the amount(s) specified by your representative, but shall not in the aggregate exceed, **CAD \$150,000 (One Hundred Fifty Thousand Canadian Dollars)**.
- 8) We covenant to hold the Beneficiary, its employees, agents and representatives safe from any and all claims for costs or damages which may arise out of any act, error or omission related to the handling, storage or presentation of this Irrevocable Letter of Credit. # **(financial institution filing #)**.

Unless otherwise stated this credit is subject to the Uniform Customs and Practice for Documentary Credits 2007 Revision, I.C.C., Publication Number 600.

Executed under Seal, this _____ day of _____, 20____.

SEAL

Signature for the Issuer

Countersigned

SPECIMEN SET - BONDS**LABOUR AND MATERIAL PAYMENT BOND
(British Columbia Government Form)**

No. _____ \$ _____

Note: This Bond is issued simultaneously with a Performance Bond in favour of the Obligee conditioned for the full and faithful performance of the contract.

KNOW ALL PERSONS BY THESE PRESENTS, that Contractor's Name as principal ("the Principal") and Surety / Insurance Company or Companies name(s) and address(es), a corporation or corporations created and existing under the laws of Canada, and duly authorized to transact the business of suretyship in Canada, as surety, hereinafter called the "Surety" if one surety is named in this Bond and the "Co-Sureties" if more than one, is/are held and firmly bound, jointly and severally in the case of Co-Sureties, unto HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA AS REPRESENTED BY THE MINISTER RESPONSIBLE FOR THE TRANSPORTATION ACT, as obligee, hereinafter called the Obligee, for the use and benefit of the Claimants, their and each of their heirs, executors, administrators, successors and assigns, in the amount of _____ Dollars (\$_____) in lawful money of Canada (the "Bond Amount"), for the payment of which sum, well and truly to be made, the Principal and the Surety, or Co-Sureties, as the case may be, bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a multi-year contract with the Obligee, dated the ___ day of 20___ for the operation and maintenance of the existing Barnston Island Ferry Agreement ("the Contract") for a term of April 1, 2018 to March 31, 2023 ("Initial Term") that shall automatically renew for the period from April 1, 2023 to March 31, 2028 (the "Renewal Term") provided the Contract is not terminated in accordance with its provisions, which document is incorporated by reference as part of this Bond;

AND WHEREAS, concurrently with the issuance of this Bond, the Surety has issued a Performance Bond which names Her Majesty the Queen in Right of the Province of British Columbia as represented by the Minister responsible for the Transportation Act, as Obligee (the "Performance Bond").

NOW, THEREFORE, THE CONDITIONS OF THIS OBLIGATION are such that, if the Principal shall make payment to all Claimants (as hereinafter defined) for all labour and material used or reasonably required for use in the performance of the Contract then this obligation shall be null and void; otherwise it shall remain in full force and effect, subject, however, to the following conditions:

1. A Claimant for the purpose of this Bond is defined as one having a direct contract with the Principal for labour, material, or both, used or reasonably required for use in the performance of the Contract, labour and material being construed to include that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment directly applicable to the Contract; provided that a person, firm or corporation who rents equipment to the Principal to be used in the performance of the Contract under a contract which provides that all or any part of the rent is to be applied towards the purchase price thereof, shall only be a Claimant to the extent of the prevailing industrial rental value of such equipment for the period during which the equipment was used in the performance of the Contract. The prevailing industrial value of equipment shall be determined, insofar as it is practical to do so, in accordance with and in the manner provided for in the latest revised edition of the publication of the Canadian Construction Association titled "Rental Rates on Contractors Equipment" published before the period during which the equipment was used in the performance of the Contract.

2. The Principal and the Surety or Co-Sureties, as the case may be, hereby jointly and severally agree with the Obligee that every Claimant who has not been paid as provided for under the terms of their contract with the Principal, before the expiration of a period of ninety (90) days after the date on which the last of such Claimant's work or labour was done or performed or materials were furnished by such Claimant, may use the name of the Obligee to sue on and enforce the provisions of this bond, prosecute the suit to final judgment for such sum or sums as may be justly due to such Claimant under the terms of their contract with the Principal and have execution thereon subject to the following terms and conditions: the Obligee is not to be obliged to do or take any act, action or proceeding against the Surety on behalf of the Claimants, or any of them, to enforce the provisions of this Bond; and if any act, action or proceeding is taken either in the name of the Obligee or by joining the Obligee as a party to such proceeding, then such act, action or proceeding, shall be taken on the understanding and basis that the Claimants, or any of them, who take such act, action or proceeding shall indemnify and save harmless the Obligee against all costs, charges and expenses or liabilities incurred thereon and any loss or damage resulting to the Obligee by reason thereof.
3. No suit or action shall be commenced hereunder by any Claimant:
 - (a) unless such Claimant shall have given written notice within the time limits hereinafter set forth to each of the Principal, the Surety or Co-Sureties, as the case may be, and the Obligee, stating with substantial accuracy the amount claimed and at least 90 days shall have passed since the notice was given. Such notice shall be served by mailing the same by registered mail to the Principal, the Surety and the Obligee, at any place where an office is regularly maintained for the transaction of business by such persons or served in any manner in which legal process may be served in the Province or other part of Canada in which the subject matter of the contract is located. Such notice shall be given:
 - (1) in respect of any claim for the amount or any portion thereof, required to be held back from the Claimant by the Principal, under either the terms of the Claimant's contract with the Principal or under the builders lien Legislation applicable to the Claimant's contract with the Principal (whichever is the greater), within one hundred and twenty (120) days after such Claimant should have been paid in full under the Claimant's contract with the Principal.
 - (2) in respect of any claim other than for the holdback, or portion thereof, referred to above, within one hundred and twenty (120) days after the date upon which such Claimant did, or performed, the last of the work or labour or furnished the last of the materials for which such claim is made, under the Claimant's contract with the Principal;
 - (b) after the expiration of one (1) year following the earlier of:
 - (1) the expiry of the Initial Term if the Surety elects not to extend this Bond for the Renewal Term; or
 - (2) the date on which the Principal ceased work on the Contract, including work performed under the guarantees provided in the Contract.
 - (c) other than in a Court of competent jurisdiction in a Province or Territory of Canada in which the subject matter of the contract, or any part thereof, is situated and not elsewhere, and the parties hereto agree to submit to the jurisdiction of such Court.
4. The Surety or Co-Sureties, as the case may be, agree(s) not to take advantage of Article 2365 of the Civil Code of the Province of Quebec in the event that, by an act or an omission of a Claimant, the Surety can no longer be subrogated in the rights, hypothecs and privileges of said Claimant.
5. The amount of this Bond shall be reduced by, and to the extent of any payment or payments made in good faith, and in accordance with the provisions hereof, inclusive of the payment by

- the Surety or Co-Sureties, as the case may be, of builders liens which may be filed of record against the subject matter of the contract, whether or not claim for the amount of such lien be presented under and against this Bond.
6. The Surety or Co-Sureties, as the case may be, shall not be liable for a greater sum than the specified penalty of this Bond.
 7. Although the term of the Contract is ten years commencing on April 1, 2018 and ending on March 31, 2028, the term of this Bond is for the Initial Term only. The Initial Term may be extended, solely at the option of the Surety, for the Renewal Term. If the surety elects not to extend the bond at the end of the Initial Term, it must so inform the Obligee in writing prior to ninety (90) days before the Initial Term ends. If the surety does not so inform the Obligee of its intention not to extend the bond at the end of the Initial Term as stated herein, this Bond will automatically be deemed extended for the Renewal Term.
 8. If the Surety or Co-Sureties elect(s) not to extend this Bond and the Performance Bond for the Renewal Term, the Principal and the Surety or Co-Sureties shall remain liable hereunder and in accordance with the terms hereof for all of the obligations of the Principal for the Initial Term or those Renewal Term(s) by which this Bond was extended, exclusive, in the case of the Surety or Co-Sureties, of the obligation to provide replacement bonds for the remainder of the term of the Contract to the Expiry Date of the Contract. The Surety's election not to renew this Bond and the Performance Bond for a Renewal Term is not intended to diminish the Obligee's rights, as against the Principal only, for any breach of the Contract.
 9. The Bond Amount is not and shall not be deemed to be cumulative in the event this Bond and the Performance Bond are extended for a Renewal Term(s).
 10. If this Bond is issued by Co-Sureties, then the Co-Surety that signs the first signature block on this Bond shall be designated as the "Lead Surety" for the purposes of this Bond and the Co-Sureties hereby jointly and severally irrevocably: appoint and authorize the Lead Surety to act as the sole representative of and agent for the Co-Sureties, and with authority to bind the Co-Sureties, in all dealings and matters between the Co-Sureties and the Obligee arising from or relating to this Bond, including without limitation the receipt on behalf of the Co-Sureties of a written notice, of any demand or draw on this Bond issued by the Obligee and in the investigation, payment, compromise, settlement and defence of any claims, demands and draws on, arising from or related to this Bond; and, agree and acknowledge that the Obligee shall be entitled to assume that any act done, document executed or entered into or waiver given by the Lead Surety to the Obligee arising from or related to this Bond has been duly authorized by each Co-Surety and is binding upon each Co-Surety without the Obligee being under any obligation to enquire into the authority of the Lead Surety in such matters.

IN WITNESS WHEREOF, the Principal and the Surety have Signed and Sealed this Bond
this _____ day of _____ 20____

SIGNED and SEALED
In the presence of:

For the Principal

SEAL

For the Surety

Attorney-in-fact

SEAL

SPECIMEN SET - BONDS continued'**PERFORMANCE BOND**

NO. _____

\$ _____

KNOW ALL PERSONS BY THESE PRESENTS, that Contractor's Name as principal ("the Principal") and Surety / Insurance Company's or Companies' name(s) and address(es), a corporation or corporations created and existing under the laws of Canada, and duly authorized to transact the business of suretyship in Canada, as surety (hereinafter the "Surety(ies)" if one Surety is named in this Bond and the "Co-Sureties" if more than one), is/are held and firmly bound, jointly and severally in the case of Co-Sureties, unto HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA AS REPRESENTED BY THE MINISTER RESPONSIBLE FOR THE TRANSPORTATION ACT, as obligee ("the Obligee") in the amount of Dollars (\$_____), lawful money of Canada (the "Bond Amount"), for the payment of which sum, well and truly to be made, the Principal and the Surety, or Co-Sureties, as the case may be, bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a multi-year contract with the Obligee, dated the day of 20 for the operation and maintenance of the existing Barnston Island Ferry Agreement ("the Contract") for a term of April 1, 2018 to March 31, 2023 ("Initial Term") that shall automatically renew for the period from April 1, 2023 to March 31, 2028 ("Renewal Term") provided the Contract is not terminated in accordance with its provisions, which document is incorporated by reference as part of this Bond;

AND WHEREAS concurrently with the issuance of this Performance Bond the Surety has issued a Labour and Material Payment Bond which names Her Majesty the Queen in Right of the Province of British Columbia as represented by the Minister responsible for the Transportation Act, as Obligee (the "L&M Payment Bond").

NOW, THEREFORE, THE CONDITIONS OF THIS OBLIGATION are such that if the Principal shall promptly and faithfully perform that portion of the Contract that corresponds with the Initial Term or Renewal Term (as those terms are defined herein), as the case may be, then this Obligation shall be null and void; otherwise it shall remain in full force and effect, subject, however, to the following conditions:

1. If the Obligee declares an Event of Default, as defined in the Contract, then upon written notice of same being given by the Obligee to the Surety or Co-Sureties as the case may be, the following shall apply:
 - (a) if the work is not taken out of the Principal's hands, by the Obligee, the Obligee may require the Surety or Co-Sureties, to remedy the default giving rise to the Event of Default, in which case the Surety or Co-Sureties shall cause the Principal to remedy the Event of Default within thirty (30) days of the date the Surety or Co-Sureties received the written notice from the Obligee or, if the Principal has not remedied the Event of Default, the Surety or Co-Sureties shall, subject to the Bond Amount, remedy the Event of Default within a further period of fifteen (15) days; and/or;
 - (b) the Obligee may, whether or not the Contract is terminated, and whether or not the Contract is taken out of the Principal's hands by the Obligee, to take reasonable steps to cure the Event of Default itself or to cause the Event of Default to be cured by other persons, and then make demand under this Bond for indemnification by the Principal and Surety or Co-Sureties for the costs thereof after making all reasonable adjustments and credits under the Contract, in which case the resulting cost, including but not limited to the costs of the Event of Default and

administrative costs of the Obligee, determined by the Obligee, shall be paid by the Principal within thirty (30) days of demand by the Obligee or, failing payment by the Principal, shall be paid, subject to paragraph 2 of this Bond, by the Surety or Co-Sureties within the following fifteen (15) day period; and/or

- (c) the Obligee may take the Contract out of the Principal's hands, in which case:

- (i) if after written notice has been given to the Surety or Co-Sureties of the Event of Default, the Surety or Co-Sureties and the Obligee agree in writing, the Surety or Co-Sureties may complete or cause to be completed the Contract, through methods including, but not limited to using the employees, equipment and subcontractors of the Principal;
- (ii) absent such agreement,
 - (1) the Obligee will request proposals from not less than two ferry service contractors who are then performing ferry services in other areas in British Columbia;
 - (2) the Obligee will, with consultation from the Surety or Co-Sureties, if requested by the Surety or Co-Sureties, evaluate all proposals PROVIDED THAT the final selection of a replacement contractor shall be within the sole discretion of the Obligee, after consultation with the Surety or Co-Sureties.

If the Obligee considers the Event of Default to represent a material risk to public safety then the Obligee may take immediate steps to protect public safety by engaging others (the "Emergency Forces") to perform such services as the Obligee may reasonably decide are required for the purpose of ensuring services, works, safeguards, environmental protection and public safety are maintained and, further, to ensure that necessary work shall reasonably proceed with minimal interruption. The Obligee and the Surety will meet at the reasonable request of the Surety, to explore methods of completing the work under the Contract, including engaging a permanent replacement contractor pursuant to the provisions of Clause 1(c) of this Bond. The Emergency Forces may remain in place until a replacement contractor is appointed or until other arrangements for completing the work or the Contract, acceptable to the Obligee, are made by the Surety or Co-Sureties.

Upon selection by the Obligee of a bidder acceptable to the Obligee, the Obligee will contract with such bidder. The Surety or Co-Sureties will pay, at the direction of the Obligee, not less frequently than every thirty (30) days, as work progresses, whether by Emergency Forces or by a replacement contractor or both, sufficient funds to pay by monthly instalments the difference between the cost of completion of all the obligations of the Principal under the Contract and the balance of the Contract price; but not exceeding, including other costs and damages for which the Surety or Co-Sureties may be liable hereunder, the Bond Amount. The term "balance of the Contract price" as used in this Bond means the total amount payable by the Obligee to the Principal under the Contract, less the amount properly paid by the Obligee to the Principal.

2. Unless otherwise agreed in writing by the Surety or Co-Sureties and the Obligee, all payments under this Bond will be made on a monthly basis such that within thirty (30) days of the end of any month for which a claim is made under this Bond, the Surety or Co-Sureties will pay to or at the direction of the Obligee:

- (a) the difference between:

- (i) the amount of the payment that would have been due from the Obligee to the Principal for that month pursuant to the Contract, but for the default of the Principal; and
- (ii) the amount paid by the Obligee to other contractors to complete the obligations of the Principal under the contract for that month.

- (b) the reasonable additional and actual direct costs incurred by the Obligee to select and retain the other contractors required to complete the work of the Principal and to direct the completion of the work for that month.

The cumulative total of the monthly payments will be subject to the final adjustment after the expiry of the original term of the Contract when all costs are known.

3. The requirement to make payment under this Bond will arise solely on the written demand for payment by the Obligee in respect of an Event of Default under the Contract or this Bond and the making of any payment under or pursuant to this Bond shall not be deemed to be an admission of liability on behalf of the Principal or Surety or Co-Sureties and will be made without prejudice to any right or cause of action which either or both the Principal or Surety or Co-Sureties may have against the Obligee. If payment has been made under or pursuant to the Bond by the Surety or if the Principal has paid to remedy the Event of Default or paid the cost of completion under the Contract, either the Principal or Surety or Co-Sureties may challenge the validity of the declaration of the Event of Default, the demand under this Bond, the accounting for Contract monies, the reasonableness or validity of the completion costs, or any other claim they may have relating to the Obligee's performance under the Contract and this Bond and make claim against the Obligee for damages.
4. Nothing herein contained shall release the Obligee from any duty to operate with the utmost good faith and to mitigate any costs or damages incurred as a result of the Event of Default.
PROVIDED ALWAYS that the provision as to mitigation shall not be construed as requiring the Obligee to allow the Principal to complete the Contract.
5. Either or both the Principal or Surety or Co-Sureties may, by giving written notice to the Obligee within fourteen (14) days of receiving notice of an Event of Default from the Obligee, take the position that the notice of the Event of Default was wrongfully issued by the Obligee and claim for damages by suit, arbitration, or otherwise, provided however that neither delivery of such notice, nor any litigation, arbitration or other dispute resolution process, actual or contemplated, shall in any way delay payment from the Principal or failing payment by the Principal then from the Surety or Co-Sureties, and any payment will be made without prejudice to the right of the Principal or Surety or Co-Sureties to pursue any claim against the Obligee by litigation, arbitration or otherwise.
6. If a Court of competent jurisdiction, or an arbitrator in any arbitration proceeding between the Obligee and any one or more of the Principal and Surety or Co-Sureties, where the agreement to arbitrate provides that the decision is to be final and binding on the parties, holds that funds are owing by the Obligee to the Principal or Surety in connection with the Contract or Bond, the Obligee shall, after the period for appeals has expired, provided no appeals have been filed, remit the amount of any judgement or award to either the Principal or the Surety or Co-Sureties, with interest as determined in accordance with the provisions of B.C. Regulation 215/83 entitled "Interest on Overdue Accounts Payable Regulation", as amended from time to time from the date of such decision by the Court or arbitrator. Subject to the judgement or award, such payment obligation shall be without prejudice to any rights available to the Obligee.
7. The Obligee shall account for any unpaid Contract monies, including any holdback monies, relating to the Contract up to the date of the Event of Default as declared by the Obligee, which are payable to the Principal, and upon written notice from the Surety or Co-Sureties shall apply those monies:
 - (a) first, to pay for labour, material, equipment and services used by the Principal in the performance of the Contract prior to the Event of Default;
 - (b) second, to reimburse the Obligee for the difference between the cost of completion and the balance of the Contract price.

Any excess and all remaining Contract monies shall be paid by the Obligee to the Surety or Co-Sureties. Subject to the terms of this Bond and the Bond Amount, the Surety or Co-Sureties shall be liable for and pay the Obligee for the difference between the cost of completion under the

Contract and the balance of the Contract price if the cost of completion exceeds the Contract price, and such other costs of completing the obligations of the Principal, including reasonable additional administrative costs of the Obligee, as determined by the Obligee, acting reasonably.

8. The Surety or Co-Sureties shall not be liable for any amount in excess of the Bond Amount. The Surety shall deliver to the Obligee timely notice of the amount from time to time paid under this Bond, and the Bond Amount shall be reduced by any amounts paid by the Surety to remedy or to cause to be remedied any Event of Default, notice of which has been provided by the Obligee to the Surety, with demand for payment, and by any amounts paid by the Surety under, or pursuant to its obligations under, this Bond.
9. The Obligee, whether or not an Event of Default has occurred or been declared, may advise the Surety or Co-Sureties in writing whenever:
 - (a) a Non-Conformance Report is issued by the Obligee to the Principal pursuant to Section 17 of the Contract;
 - (b) the Obligee issues written notice of an Event of Default to the Principal pursuant to Section 20.2 of the Contract; or
 - (c) the Obligee retains any holdback from any payment which, but for the holdback and the Obligee's reason for the holdback, would be due to the Principal under the Contract.
10. Copies of the Non-Conformance Report, notice of an Event of Default and notice of holdback may be provided to the Surety or Co-Sureties with the notice advising the Surety or Co-Sureties of same. Unless accompanied by a notice of a non-conformance or Event of Default and a written demand by the Obligee to the Surety or Co-Sureties requiring the Surety or Co-Sureties to fulfil its obligations under the Bond, such advice and copies of such documents shall be considered to be for general information only and shall not constitute a declaration of an Event of Default nor a call upon this Bond.
11. Although the term of the Contract is ten years commencing on April 1, 2018 and ending on March 31, 2028, the term of this Bond is for the Initial Term only. The Initial Term may be extended, solely at the option of the Surety, for the Renewal Term. If the Surety elects not to extend this Bond at the end of the Initial Term, it must so inform the Obligee in writing prior to ninety (90) days before the Initial Term ends. If the Surety does not so inform the Obligee of its intention not to extend this Bond at the end of the Initial Term as stated herein, this Bond will automatically be deemed extended for the Renewal Term.
12. If the Surety or Co-Sureties elect(s) not to extend this Bond and the Labour and Material Bond for the Renewal Term, the Principal and the Surety or Co-Sureties shall remain liable hereunder and in accordance with the terms hereof for all of the obligations of the Principal for the Initial Term or those Renewal Term(s) by which this Bond was extended, exclusive, in the case of the Surety or Co-Sureties, of the obligation to provide replacement bonds for the remainder of the term of the Contract to the Expiry Date of the Contract. The Surety's election not to renew this Bond and the Labour and Material Bond for a Renewal Term is not intended to diminish the Obligee's rights, as against the Principal only, for any breach of the Contract.
13. The Bond Amount is not and shall not be deemed to be cumulative in the event this Bond and the Labour and Material Bond are extended for a Renewal Term(s).
14. No suit or action shall be instituted by the Obligee against the Surety, or by the Surety or Co-Sureties or the Principal against the Obligee, under or pursuant to this Bond, after the expiration of two years from:
 - (a) the expiry of the Initial Term if the Surety elects not to extend this Bond and the Labour and Material Payment Bond for a Renewal Term, or
 - (b) the last date on which final payment under the Contract is due,

whichever is applicable.

15. If this Bond is issued by Co-Sureties, then the Co-Surety that signs the first signature block on this Bond shall be designated as the "Lead Surety" for the purposes of this Bond and the Co-Sureties hereby jointly and severally irrevocably: appoint and authorize the Lead Surety to act as the sole representative of and agent for the Co-Sureties, and with authority to bind the Co-Sureties, in all dealings and matters between the Co-Sureties and the Obligee arising from or relating to this Bond, including without limitation the receipt on behalf of the Co-Sureties of a written notice, of any demand or draw on this Bond issued by the Obligee and in the investigation, payment, compromise, settlement and defence of any claims, demands and draws on, arising from or related to this Bond; and, agree and acknowledge that the Obligee shall be entitled to assume that any act done, document executed or entered into or waiver given by the Lead Surety to the Obligee arising from or related to this Bond has been duly authorized by each Co-Surety and is binding upon each Co-Surety without the Obligee being under any obligation to enquire into the authority of the Lead Surety in such matters.
16. All notices and demands to be given to the Surety under this Bond shall be given to the Surety at the following address:

(Name of Surety)

(Address of Surety)

Attention: _____

IN WITNESS WHEREOF, the Principal and the Surety have Signed and Sealed this bond this _____ day of _____, 20 ____.

SIGNED and SEALED

In the presence of:

For the Principal

SEAL

For the Surety

Attorney-in-fact

SEAL



**BRITISH
COLUMBIA**

Ministry of Transportation
and Infrastructure

CERTIFICATE OF INSURANCE

Contracts/Leases/Agreements/Permits Number, Location and Description:

Brokers' Reference No.

Award or Effective Date

(yyyy/mm/dd)

INSURED Name _____

Business Address _____

BROKER Name _____

Business Address _____

Type of Insurance	Company and Policy Number	Policy Dates Effective	Expiry	Limits of Liability / Amounts
Commercial General Liability (including Non-Owned Automobile Liability)				Bodily Injury and Property Damage \$ _____ Inclusive \$ _____ Aggregate \$ _____ Deductible \$ _____ SIR
Additional Insureds:				Bodily Injury and Property Damage
Automobile Liability				\$ _____ Inclusive
Umbrella/Excess Liability				\$ _____ Limits excess of \$ _____ General liability excess of \$ _____ Automobile
<input type="checkbox"/> Builders Risk <input type="checkbox"/> Installation Floater <input type="checkbox"/> Other:				\$ _____ Site \$ _____ Other \$ _____ Location \$ _____ Transit
Equipment Insurance				\$ _____ Limit
Professional Liability Errors and Omissions				\$ _____ Each Claim \$ _____ Aggregate \$ _____ Deductible
<input type="checkbox"/> Protection & Indemnity <input type="checkbox"/> Hull & Machinery <input type="checkbox"/> Builders Risk (Vessels) <input type="checkbox"/> Ship Repairers' Liability				\$ _____ Limit \$ _____ Limit \$ _____ Limit \$ _____ Limit
Other:				\$ _____ Limit

The undersigned certifies the undersigned has reviewed the policies of insurance described above and Page 2 of this certificate and further certify that those policies have been issued to the insured named above and are in full force and effect and comply with the insurance requirements set out in the agreement / contract / lease / permit identified above, including the requirements set out on Page 2 of this certificate.

Signature of person authorized to sign on behalf of Insurer
certifying Page 1 and Page 2 of this Certificate

Print or Type Name

Date (yyyy/mm/dd)

ADDITIONAL CONDITIONS ARE SHOWN ON PAGE 2 OF THIS CERTIFICATE OF INSURANCE

Notwithstanding any other terms, conditions or exclusions elsewhere in the insurance policy(s), it is understood and agreed that the insurance policy(s) are extended to include insurance conditions as follows:

**CONDITIONS APPLICABLE TO:
COMMERCIAL GENERAL LIABILITY**

1. Additional Named Insured Clause for Ministry Contracts

Her Majesty the Queen in right of the Province of British Columbia as represented by the Minister of Transportation and Infrastructure, together with the employees, agents, and servants of the Minister, hereinafter referred to as the Additional Named Insured, is added as an Additional Named Insured, in respect of liability arising from the work or operations of the Insured and the Additional Named Insured, in connection with contracts, entered into between the Insured and the Additional Named Insured.

2. Extension of Coverage

Such liability insurance shall also include all liability arising out of completed operations, blanket written contractual, contingent employers liability, non-owned automobile liability, and liability assumed by the Contractor in connection with and applicable to the contract.

3. Cross Liability

The insurance as is afforded by this policy shall apply in the same manner and to the same extent as though a separate policy had been issued to each Insured. Any breach of a condition of the policy by any Insured shall not affect the protection given by this policy to any other Insured. The inclusion herein of more than one Insured shall not operate to increase the limit of liability under this policy.

4. Exclusions Not Permitted

If hazardous operations such as excavation, pile driving, shoring, blasting, underpinning, or demolition work or any other operation or work is to be performed by the Ministry or the Contractor, then this type of work or operation shall not be excluded from insurance coverage where such type of work or operation is to be performed by either party under the contract, subject to prior notification to the insurer by the Contractor.

Claims arising out of the legal liability imposed upon the Insured at common law and extended by Statute for bodily injury or death to employees of the Insured. However, exclusions applicable to liability imposed upon or assumed by the Insured under any Workers' Compensation Statutes or for assessment by any Workers' Compensation Board will be allowed.

Liability assumed by the Insured under contract with railroad companies for the use and operation of railway sidings or crossings.

5. Products and Completed Operations Hazard

Products and Completed Operations Hazard coverage shall be provided and such coverage shall remain in full force and effect for a period of twelve (12) months after the contracted work has been completed (twenty four (24) months for Design Build Minor Contracts), irrespective of the expiry date of the policy.

Issuance of this certificate shall not limit or restrict the right of the Ministry of Transportation and Infrastructure to request any time certified copies of any insurance policy(s).

Schedule I**Referee Services Agreement**

This Agreement is dated for reference this _____ day of _____, 2012.

THE PARTIES TO THIS AGREEMENT ARE:**HER MAJESTY THE QUEEN in Right of the Province of British Columbia**

As represented by the Minister of Transportation and Infrastructure

c/o The Ministry of Transportation and Infrastructure

Marine Branch

940 Blanshard Street

Victoria, BC V8W 9T5

Phone: (250) 387-3417

Fax: (250) 356-0897

(the "Province")

AND:

(the "Contractor")

AND:

(the "Referee")

WHEREAS:

- A. The Province and the Contractor have entered into a contract entitled Barnston Island Ferry Agreement dated the 1st day of April, 2018 herein referred to as the "Contract", and
- B. The Contract calls for the appointment of a referee to fairly and expeditiously dispose of any disputes which may arise between the Province and the Contractor.

THE PROVINCE, THE CONTRACTOR AND THE REFEREE AGREE AS FOLLOWS:**1. Appointment**

- 1.1 The Province and the Contractor hereby appoint the aforementioned person to act as Referee in accordance with the Contract.
- 1.2 The Referee hereby accepts the appointment and acknowledges receipt of a complete copy of the Contract.

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

2. Bias

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

3. Duties

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

- 3.2 The Referee will, upon the written request of either party, attend or facilitate meetings between the Province and the Contractor.

4. Cooperation

- 4.1 The Province and the Contractor will cooperate with each other and with the Referee to allow the Referee to perform their duties and discharge all responsibilities as expeditiously as possible.

5. Communications

- 5.1 Except for matters of a purely administrative nature, the Referee will not communicate orally with the Province or the Contractor, or their representatives, respecting any matters arising out of this Agreement unless both parties, or both of their representatives, are present or a party to the communication.

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

6. Notices

- 6.1 Any notices or other documentation required to be given under this Agreement will be given in writing to the respective parties by delivery to the addresses for service shown in this Agreement or such other addresses as notified by the parties.

7. Evidence

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

8. Confidentiality

- 8.1 The Referee will hold in strict confidence and will not reveal, copy or disclose to any person, other than an expert retained under this Agreement, any documents or information provided to the Referee or to which the Referee gains access in the course of performing the duties or discharging the responsibilities under this

Agreement, without the prior, written permission of both the Province and the Contractor.

9. Experts

- 9.1 The Referee may retain any legal or technical experts the Referee considers necessary.
- 9.2 The Referee will impose on all experts the restrictions and obligations which are imposed on the Referee by Article 5 and Article 8 of this Agreement.
- 9.3 The Referee will promptly notify the Province and the Contractor of the names and the terms of appointment of any experts retained.
- 9.4 The Referee will direct all experts to give their advice or report, either orally or in writing, simultaneously to the Referee, the Province, and the Contractor.

10. Fees and Disbursements

- 10.1 The Province will pay the Referee monthly in arrears upon receipt of an invoice from the Referee, a minimum monthly fee of \$200.00.
 - 10.2 In addition to the minimum monthly fee stated above, the Province will pay upon receipt of an invoice from the Referee, monthly in arrears for:
 - a) services rendered by the Referee in excess of seven (7) hours in any month, at a rate of \$ _____ per hour;
 - b) all actual and reasonable disbursements made by the Referee in the performance of their duties under this Agreement, including but not limited to travel, board, lodging, administrative services, sundry disbursements; and
 - c) any fees and costs reasonably incurred in connection with obtaining any expert advice in accordance with Article 9 of this Agreement.
 - 10.3 In the event of termination of this Agreement, the Province will promptly reimburse the Referee for all fees and disbursements incurred prior to the effective date of termination and all costs reasonably associated with an orderly termination of service.
 - 10.4 The Contractor agrees that without further notice, the Province may recover from any payments otherwise payable to the Contractor, an amount equal to fifty percent (50%) of all payments made in good faith by the Province to the Referee.
 - 10.5 Total payments to the Referee shall not exceed \$ _____ for the Term.
- 11. Liability**
- 11.1 The Referee will not be liable to either party for any act or omission in connection with any of the duties, responsibilities or obligations performed in good faith by the Referee.

12. Termination

- 12.1 The Province and the Contractor may by mutual agreement and by written notice to the Referee, terminate this Agreement at any time; and such notice of termination shall be effective immediately upon delivery unless otherwise stated.
- 12.2 The Referee may by giving thirty (30) days' written notice to the Province and the Contractor, terminate this Agreement.

13. Completion of Agreement

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

IN WITNESS WHEREOF, the parties have executed this Agreement as of the _____ day of _____, 2018.

**SIGNED on behalf of Her Majesty the Queen
in Right of the Province of British Columbia
as represented by the Minister of Transportation
and Infrastructure**

Deborah Bowman
Assistant Deputy Minister, Transportation Policy & Programs

[The Contractor]

(Authorized Signatory)

Print Name and Title

(Authorized Signatory)

Print Name and Title

[The Referee]

Print Name

Schedule J**Changes****1. DEFINITION OF “CHANGES”**

A change shall be a written variation or change to the Work (excluding Additional Services) that shall be applied for the remainder of the Term in accordance with the terms and procedure set out herein.

2. CHANGE ORDER

The Province may, in writing, pursuant to Section 11 of this Agreement and the terms of this Schedule, make changes to the Work (excluding Additional Services) that is of an ongoing change to that Work for the remainder of the Term (“Change Order”). Unless the Change Order results in a change in scope, as described below, there will be no resulting amendment to the Annual Service Fee or Payment Schedule.

3. CONTRACTOR CHANGE REQUEST

The Contractor may, in writing, pursuant to Section 11 of this Agreement and the terms of this Schedule, request a change to the Work (excluding Additional Services) that is of an ongoing change to that Work for the remainder of the Term and such request shall include all relevant information reasonably required for the proper consideration of such change (“Change Request”).

The parties acknowledge that a Change Request may have an impact on the delivery and performance of that Work and in some circumstances, on the cost to the Contractor of providing that Work. Unless the Change Request results in a change in scope, as described below, there will be no resulting amendment to the Annual Service Fee or Payment Schedule.

No Change Request shall be implemented or incorporated as part of the Work unless and until such Change Request has been approved and has been executed by the Province, acting in its sole discretion.

Furthermore, the Province may set out any additional terms or conditions prior to granting its approval.

4. CHANGE VALUATION**4.1 Process**

The Province shall provide a full description of the proposed change to the Work (excluding Additional Services) to the Contractor and the Contractor will prepare and submit to the Province a change valuation, prepared at its own cost, with such detail as the Province may reasonably require to enable it to properly evaluate the change valuation, including a detailed summary of the prices, costs, charges and mark-ups. The change valuation shall be a reasonable estimate of the net amount of all changes in costs incurred and/or saved by the Contractor to implement the proposed change.

4.2 Dispute Resolution

If the parties are unable to agree to the change valuation of a scope change within 30 Business Days from the initial change valuation, the Province may withdraw from the Change Order or Change Request or either party may refer the matter to Dispute Resolution set out in Section 18 of this Agreement.

5. SCOPE CHANGES

If a Change Request is approved and executed by the Province or a Change Order is issued and executed by the Province that constitutes a 1% (whether positive or negative) change of either the timing of the performance of scheduled obligations under this Agreement or in the cost to the Contractor of performing the Work, then such change shall be considered a change in scope.

The Province, in consultation with the Contractor, shall determine whether or not any matter has arisen which constitutes a scope change for purposes of this Agreement.

5.1 Scope Change Amendments

If a matter constitutes a change in scope, the Change Order or Change Request will detail amendments to the Payment Schedule, the Annual Service Fee, the timeframes for the performance of the relevant scheduled obligation(s) and/or any other amendments to relevant portions of this Agreement.

5.2 Cost Decreases Resulting from Province Change Order

If a Change Order that constitutes a scope change will result in a decrease in the cost to the Contractor of performing the Work, the amount of such decrease shall be for the exclusive benefit of the Province, as set forth in the Change Order.

5.3 Cost Decreases Resulting from Contractor Change Request

If a Change Request executed by the Province that constitutes a scope change will result in a decrease in the cost to the Contractor of performing the Work, the amount of

such decrease shall be shared equally by the Province and the Contractor as set forth in the Change Request.

6. BEST VALUE

In the case of a Change Order or Change Request the Contractor shall obtain the best value for money when procuring any work, services, supplies, materials or equipment and will comply with good procurement practices.

7. CONTRACTOR TO PROCEED

In the event the Province requires the Change Order to be immediately proceeded with, the Province may direct the Contractor to promptly perform such Work, notwithstanding the resulting costs and amendment to the Payment Schedule and/or Annual Service Fee remains subject to resolution by mutual agreement within 30 days or pursuant to Dispute Resolution set out in Section 18 of this Agreement.

Schedule K**Corporate Information**

1. The Authorized Capital of the Contractor, if applicable is as follows:

2. 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 follows:

3. 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 follows:

4. The Contractor has good safekeeping, marketable title to and possession of all of its assets, free and clear of all liens, charges or encumbrances except as follows:

5. There are no liabilities for the Contractor, contingent or otherwise, that are not disclosed or reflected herein, except those incurred in the ordinary course of business:

6. If the Contractor is a partnership, then the identity of all of the partners and their respective interests in the partnership is as follows:

7. If the Contractor is a partnership and if any of the partners of the partnership are corporate entities, then the information required by Section 27.1(g), (h) and (i) inclusive of the Agreement to which this schedule is attached, with respect to each corporate partner is as follows:

Schedule L

Contractor's Proposal to the Barnston Island Ferry Service RFP

(To be inserted into Agreement by Commencement Date)

Schedule M
Contractor's Completed Plans

- Contractor's Safety Management System and Plans**
- Contractor's Organization and Management Plan**
- Contractor's Training Implementation Plan**
- Contractor's Business Continuity Plan**
- Contractor's Risk Management Plan**
- Contractor's Communications Plan**
- Contractor's Watercraft Maintenance Plan**
- Contractor's Watercraft Maintenance Refit Plan (due only in 2019)**
- Contractor's Ferry Facility Maintenance Plan**
- Contractor's Transition Services Plan**

(To be Submitted by Contractor and inserted into Agreement by Commencement Date)