

6HIGHWAY MAINTENANCE AGREEMENT

SERVICE AREA #

THIS AGREEMENT dated for reference the ____ **day of** _____, **20**_____.

BETWEEN:

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

AND:

@NAME
(the "Contractor")

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HIGHWAY MAINTENANCE AGREEMENT

SERVICE AREA

THIS AGREEMENT dated for reference the ____ day of _____, 20____.

BETWEEN:

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

AND:

@Name
(the "Contractor")

WHEREAS:

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

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

1. DEFINITIONS

1.1 In this Agreement, unless the context otherwise requires:

- (a) "**Additional Maintenance Services**" means the same as it is defined in Schedule 3 ("Additional Maintenance Services");
- (b) "**Adjusted Annual Price**" means the sum payable by the Province to the Contractor (exclusive of GST and inclusive of all other applicable taxes, duties and other charges), in consideration for the provision of Maintenance Services during a Contract Year subsequent to the First Contract Year. It is calculated using the Annual Price, and thereafter with the Adjusted Annual Price from the immediately preceding Contract Year, all in accordance with the Annual Adjustment Process and, as that sum may be adjusted during a Contract Year in accordance with Articles 6 or 7;
- (c) "**Agreement**" means this Highway Maintenance Agreement for Service Area #, including the Schedules attached hereto.
- (d) "**Anniversary Date**" means Month, xx, 201X, and each anniversary thereafter;

- (e) **“Annual Adjustment Process”** means the annual adjustment process described in Schedule 6 (“Annual Adjustment Process”);
- (f) **“Annual Price”** means the First Contract Year Price or the Adjusted Annual Price, as the context requires, expressed for a 365 day time period (exclusive of GST and inclusive of all other applicable taxes, duties and other charges) for a particular Contract Year. For greater clarity, the QMS Payment is part of the Annual Price;
- (g) **“Appropriation”** means the same as it is defined in section 1 of the FAA;
- (h) **“Automated Vehicle Tracking”** means automatic electronic tracking and reporting, at 60-second intervals, of the time and location of each:
 - (i) plow truck;
 - (ii) grader; and
 - (iii) vehicle used for patrol (including, but not limited to each pick-up truck, plow truck and/or grader used for patrol),

that is being operated on the Highways for 100 or more hours in a Contract Year for the purpose of performing the Winter Services;

- (i) **“Automated Weather Stations”** means the same as it is defined in Schedule 10 (“Automated Weather Stations”);
- (j) **“Bonds”** means the performance bond and labour and material payment bond as set out in Schedule 17 (“Bonds”), includes any additional or replacement bond and any agreement extending or amending any bond as referenced in Article 9 and each issued by a surety company acceptable to the Province;
- (k) **“Changeable Infrastructure Components”** means Highway lengths and Classifications, Rest Area open days and Classifications, and Bridge deck areas;
- (l) **“Claim”** means any demand, commencement of legal proceedings, settlement discussions or alternative dispute resolution mechanisms and any termination, suspension, abandonment, discontinuance, appeal or review thereof;
- (m) **“Class”** and **“Classification”** mean, without limiting the discretion of the Province in section 6.2,
 - (i) summer classification is as follows:

Highway Classification

<u>Class</u>	<u>Vehicles per Day (A.D.T. (average daily traffic))</u>
1	over 10,000;
2	5,000 - 10,000;
3	1,000 - 5,000;
4	500 - 1,000;

- 5 100 – 500;
- 6* 10 – 100;
- 7* 0 – 10; and
- 8 roads typically not constructed or not open but for which maintenance responsibilities may exist pursuant to Additional Maintenance Services.
*Highways Classed 6 or 7 with heavy industrial use shall be increased one Class.

(ii) winter classification is as follows and is generally based on but not limited to the following:

Highway Classification

<u>Class</u>	<u>Definition</u>
A	high volume traffic (over 5,000 winter average daily traffic count) or commuter routes and certain expressways and freeways through mountain passes. For the purposes of Classification, a freeway is a multi-lane highway with fully controlled access. Class A are heavy commuter traffic routes extended to include the bulk of vehicles commuting daily to a center and cut-off where traffic drops below a 2,500 winter average daily traffic count. These include, but are not limited to, high volume ski hill and commuter routes;
B	trunk and main routes (or portion thereof as designated by the Province) not included in Class A, with a cut-off traffic volume of 1,000 winter average daily traffic count. These include but are not limited to lower volume ski hill and commuter routes;
C	school bus routes and industrial (truck) traffic routes (more than 25% trucks) not included in Class A and B;
D	other regularly maintained winter routes;
E	other irregularly maintained winter routes; and
F	roads not maintained or not open in the winter, or not maintained by the Contractor.

(iii) classification of Rest Areas is as follows:

Rest Area Classification

<u>Class</u>	<u>Definition</u>
A	A major full service facility, containing a large, permanent building with sinks, usually with nine or more flush or composting toilets, power, and illumination of pedestrian and/or parking facilities. These sites may also contain a tourist information facility operated by others;
B	A moderate sized facility containing a permanent building, usually with four or more flush or composting toilets; and
C	A small facility containing one or more one-person structures with pit or

chemical toilet facilities.

- (n) “**Collective Agreement**” means the same as it is defined in section 11.2;
- (o) “**Commencement Date**” means Month, XX, 201X;
- (p) “**Commercial Vehicles Permit**” means the agreement described in Schedule 12 (“Commercial Vehicles Permit Agreement”) entered into by the Contractor and the Province effective on the Commencement Date;
- (q) “**Contract Month**” means a calendar month;
- (r) “**Contract Year**” means a period of 12 consecutive months during the Term, commencing on the Commencement Date and continuing for each 12 consecutive calendar months thereafter;
- (s) “**Contractor**” means @name;
- (t) “**Contractor Assessment Program**” or “**CAP**” means a discretionary program whereby the Province rates the Contractor’s performance under this Agreement pursuant to the Province’s “Quality Plan and Contractor Assessment Program Manual”;
- (u) “**Contractor’s Stockpiles**” means the same as it is defined in Schedule 13 (“Gravel License”);
- (v) “**Controlled Persons**” means the Contractor’s representatives, employees, agents, directors, officers, management, shareholders, suppliers, subcontractors (and their employees and representatives), hired equipment owners or operators (and their employees and representatives) and any other person or entity retained to perform the Services, along with the Contractor’s partners and other joint venture members, if applicable;
- (w) “**Cost Plus Rates**” means the rates described in Schedule 4 (“Cost Plus Rates”);
- (x) “**CVSA**” means the Commercial Vehicles Safety Alliance;
- (y) “**Daily Price**” means, in respect of a particular Contract Year, the Annual Price or Adjusted Annual Price for that Contract Year divided by the total number of days in that Contract Year (representing the per diem costs to the Province of the Contractor providing the Maintenance Services during that Contract Year, less the paid QMS Payment portion of the Annual Price or Adjusted Annual Price);
- (z) “**Damage to Government Property**” means damage to Highways caused by motor vehicles, acts of vandalism, or other acts of a third party and does not include damage caused by a Major Event;
- (aa) “**Damage to Government Property Claim**” means the mechanism through which the Contractor makes an application to the Province for recovering the cost of repairing Damage to Government Property;

- (bb) **“Designated First Nations Services”** means Additional Maintenance Services designated by the Province to be undertaken by a First Nation Entity pursuant to a Work Order;
- (cc) **“Dispute Resolution Protocol”** means the dispute resolution protocol attached as Schedule 15 (“Dispute Resolution Protocol”);
- (dd) **“Equipment Requirements”** means the standards for the Contractor’s equipment as described in Schedule 11 (“Equipment Requirements”);
- (ee) **“Event of Default”** means any event described in section 18.1;
- (ff) **“Expiry Date”** means Month, XX, 20XX or Month, XX, 20XX of the renewal term, as the case may be;
- (gg) **“FAA”** means the *Financial Administration Act*, R.S.B.C. 1996, c.138, as amended from time to time;
- (hh) **“First Contract Year”** means the period from the Commencement Date to the first Anniversary Date;
- (ii) **“First Contract Year Price”** means the sum of \$@ payable by the Province to the Contractor (exclusive of GST and inclusive of all other applicable taxes, duties and other charges) in consideration for the provision of Maintenance Services for the First Contract Year, and as that sum may be further adjusted during that First Contract Year in accordance with Articles 6 and 7;
- (jj) **“First Nation”** means an Indian Band within the meaning of the Indian Act (R.S.C., 1985 c.1-5);
- (kk) **“First Nation Entity”** means an entity which complies with the legal requirements to carry on business in the Province of British Columbia and which is a:
 - (i) **“First Nation Member”** means band member and dependent spouses and/or children of band members;
 - (ii) **“First Nation Business”** means a sole proprietorship, limited company, co-operative, partnership or not-for-profit organization where:
 - A. at least 51% is owned and controlled by the band members, and;
 - B. if it has 6 or more full-time employees, at least 33% of the full time employees are band members;
 - (iii) **“First Nation Joint Venture”**
 - A. consists of two or more First Nation Businesses or a First Nation Business and a non-First Nation Business(es), provided that the First

Nation Business(es) has at least 51% ownership and control of the joint venture; and

- B. if it has 6 or more full-time employees, at least 33% of the full time employees are band members;

(II) **“Force Majeure”** means:

- (i) acts of God, wars (declared or undeclared), revolutions, riots, insurrections, lockouts, or strikes, provided that any such event is a major disabling event or circumstance in relation to the normal operations of the party directly affected as a whole, which is beyond the reasonable control of that party and results in a material delay, interruption or failure by that party in carrying out its duties, covenants or obligations under this Agreement, provided always that lack of money, financing or credit to resolve such contingencies shall not be deemed an event of Force Majeure; and
- (ii) for the purposes of section 20.3, the failure by the Contractor to obtain or maintain in force commercial general liability insurance as described in Article 9, provided that:
 - A. the Contractor has used its best efforts to obtain the insurance;
 - B. the Contractor’s failure to retain the insurance, that is in place, is not due to the Contractor’s breach of the terms of an existing insurance contract placed in compliance with Article 9;
 - C. the Contractor’s failure to obtain the insurance does not occur as a result of the Contractor’s lack of money, financing or credit or due to the Contractor’s performance record under this Agreement; and
 - D. the Province and the Contractor have not resolved the issue of the Contractor’s failure to obtain insurance in a manner that is acceptable to both of them;
- (mm) **“General Specifications”** means the general requirements for all Service Areas described in Schedule 1 (“Specifications”);
- (nn) **“Government Property”** means all Highways that the Contractor is obligated to replace, repair or maintain under this Agreement;
- (oo) **“Granular Material”** means processed pit-run aggregate, Winter Abrasive (with or without salt or other chemical deicers), crush, sealcoat and any other aggregate used for the Services which may be processed from Pit Run, and includes any by-products resulting from the processing of Pit Run;
- (pp) **“Gravel Fee”** means the same as it is defined in Schedule 13 (“Gravel License”);
- (qq) **“Gravel License”** means the license described in Schedule 13 (“Gravel License”) to enter on and occupy the Gravel Pits in order to process, store and remove Granular Material and Pit-Run for the purposes of this Agreement;

- (rr) “**Gravel Pits**” means the same as it is defined in Schedule 13 (“Gravel License”);
- (ss) “**GST**” means the Goods and Services Tax imposed under the *Excise Tax Act*, R.S.C. 1985, c. E-15 as amended from time to time, and the regulations prescribed thereunder;
- (tt) “**Highways**” means all “highways” as defined in the *Transportation Act*, S.B.C. 2004, c. 44, and all “provincial public undertakings” as defined in that Act, that are under the administration of the Province or that are by arrangement maintained by the Province and includes:
 - (i) ancillary features, excavations, Structures, embankments and improvements reasonably related to the operation of highways or provincial public undertakings;
 - (ii) licenses, properties, rights of way and easements ancillary to such highways existing as of the date of this Agreement;
 - (iii) highways that may be amended, added, deleted or changed in Classification in accordance with Article 6;
 - (iv) highways described in Schedule 8 (“Infrastructure”); and
 - (v) highways that are vested in a Municipality (as that term is defined in the *Local Government Act* R.S.B.C. 2015, c. 1), at the discretion of the Province and on written notice from the Province to the Contractor,

but for the purposes of this Agreement, except for Structures thereon, roads designated as Class 8 or Class F are excluded from the meaning of Highways (for the avoidance of doubt, Structures on Class 8 or Class F roads are included in the meaning of Highways);
- (uu) “**Insurance Premium Quote**” means \$@ for the First Contract Year;
- (vv) “**Local Area Specifications**” means the additional requirements or enhancements to a General Specification for a particular Service Area described in Schedule 1 (“Specifications”);
- (ww) “**Lump Sum Item**” means an item of Quantified Maintenance Services identified in Appendix A of Schedule 2 (“Quantified Maintenance Services”) by the notation “L.S.” in the column entitled Lump Sum;
- (xx) “**Lump Sum Value**” means the individual amount negotiated in the Contract Year between the parties for each Lump Sum Item identified in Appendix A of Schedule 2 (“Quantified Maintenance Services”);
- (yy) “**Major Event(s)**” means the same as it is defined in Schedule 1 (“Specifications”);
- (zz) “**Maintenance Services**” means the provision of all labour, materials and equipment for the purpose of providing the maintenance services described as such in Schedule 1 (“Specifications”), as those maintenance services may be changed from time to time in accordance with Article 7 and includes Quantified Maintenance Services and Routine Maintenance Services;

- (aaa) “**Maintenance Services Reporting Manual**” means the work reporting manual entitled “Round 6 (2018-2019) Highway Maintenance Agreements Maintenance Services Reporting Manual”;
- (bbb) “**Materials**” means the same as it is defined in section 15.4;
- (ccc) “**Minister**” means the member of the Executive Council of the Province who is charged with the administration of the *Transportation Act*, S.B.C. 2004, c. 44 and includes the Minister’s deputy and any person authorized to act for or on behalf of either of them with respect to any matter under this Agreement;
- (ddd) “**Ministry**” means the Ministry of Transportation and Infrastructure;
- (eee) “**MVAR**” means the *Motor Vehicle Act Regulations*, B.C. Reg. 26/58;
- (fff) “**NSC**” means the National Safety Code as defined in British Columbia in MVAR Division 37;
- (ggg) “**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 obligations in this Agreement;
- (hhh) “**OHS Regulation**” means the British Columbia Regulation 296/97 entitled “*Occupational Health and Safety Regulation*”, as it may be amended from time to time;
- (iii) “**Pit-Run**” means pit-run granular aggregate without further processing, naturally occurring broken rock or in-situ rock excavated (including blasting) from a Gravel Pit;
- (jjj) “**Prime Contractor**” means the “prime contractor” as defined in the *Workers Compensation Act*;
- (kkk) “**Province**” means Her Majesty the Queen in right of the Province of British Columbia as represented by the Minister and her agents, servants, representatives, contractors and employees;
- (lll) “**Provincial Material**” means all materials, equipment, components, supplies and personal property of any nature or kind identified by the Province as Provincial Material from time to time during the Term, including, but not limited to, Structures, RWIS Information and aviation fuel, that are provided by or on behalf of the Province to the Contractor from time to time during the Term;
- (mmm) “**QMS Payment**” means the sum of \$100,000.00 that is included in the Annual Price but is paid separately in accordance with Schedule 5 (“Maintenance Services Fee”);
- (nnn) “**Qualified Person**” means an individual that:
 - (i) has obtained a Survey or Geomatics Engineering Technology diploma or degree from a recognized university, institute of technology, or college; and/or
 - (ii) is a member of the Association of British Columbia Land Surveyors;

- (ooo) “**Quality Management System**” or “**QMS**” means the quality management system developed by the Contractor as revised from time to time;
- (ppp) “**Quantified Maintenance**” and “**Quantified Maintenance Services**” means those quantified maintenance services described as such in the Specifications and classified by work activity in Schedule 2 (“Quantified Maintenance Services”);
- (qqq) “**Rates for Changes to Infrastructure**” means the daily change rate used to calculate the cost or change in the cost of additions, deletions and changes to Changeable Infrastructure Components pursuant to Schedule 7 (“Rates for Changes to Infrastructure”);
- (rrr) “**Recovered Amount**” means an amount recovered by the Province in respect of a Claim relating to Damage to Government Property;
- (sss) “**Reference Documents**” means any documents, manuals or publications referenced in this Agreement;
- (ttt) “**Repeater System**” means the mountain-top radio equipment, control console equipment, telecommunications circuits, satellite back-up systems, and control room operating staff provided by the Province;
- (uuu) “**Rest Area(s)**” means a roadside development for use by the travelling public that has washrooms, litter receptacles and often has other facilities;
- (vvv) “**Revised Daily Price**” means, in respect of a particular Contract Year, the revised Daily Price to the Province of the Contractor providing the Maintenance Services during that Contract Year, as calculated from time to time by the Province pursuant to subsection 6.5(b);
- (www) “**RFP**” means the document package titled “Highway Maintenance Agreements for Service Area # – Request for Proposals #HM-R6-SA#” and published by the Province (for the Services for this Service Area) on the electronic procurement system maintained by the Province of British Columbia (BC Bid);
- (xxx) “**Routine Maintenance**” and “**Routine Maintenance Services**” means those routine maintenance services described as such in the Specifications, that consist generally of the maintenance and repair of the Highways to a condition that is safe for Highway users, and that are:
- (i) of an unpredictable and/or non-quantifiable and/or non-measurable nature; or
 - (ii) of such a predictable and/or cyclical nature that the quantity of work is determined by the frequency specified;
- (yyy) “**Routine Maintenance Services Cap(s)**” means the maximum value of the work for specific Routine Maintenance Services, excluding GST and including applicable taxes, duties and charges, as set out in the Specifications;
- (zzz) “**RWIS Information**” means the same as in Schedule 10 (“Automated Weather Stations”);

- (aaaa) "**Safety Program**" means an occupational health and safety program described in the *Workers Compensation Act* and the *OHS Regulation*;
- (bbbb) "**Services**" means the services to be provided by the Contractor to the Province as described in Article 5 and includes Maintenance Services and Additional Maintenance Services;
- (cccc) "**Service Area**" means the area described in Schedule 9 ("Service Area");
- (dddd) "**Specifications**" means the General Specifications and the Local Area Specifications described in Schedule 1 ("Specifications") or both as the context requires;
- (eeee) "**Structure(s)**" means a Bridge, a Retaining Wall greater than two (2) metres in height, a Culvert greater than three (3) metres in diameter, a tunnel, or a sign bridge, as the context requires;
- (ffff) "**Term**" means a period of ten (10) years, and one renewal term of a further five years, at the Province's sole discretion, pursuant to section 3.4, and subject to earlier termination pursuant to Article 18;
- (gggg) "**Total Lump Sum Value**" means the total value of all Lump Sum activities pursuant to Appendix A of Schedule 2 ("Quantified Maintenance Services"), and as may be adjusted annually by Schedule 6 ("Annual Adjustment Process") and in accordance with the terms of this Agreement;
- (hhhh) "**Two-Year Quantified Work Plan**" means a work plan that is comprised of an annual plan for two consecutive years, with each such annual plan apportioning on a monthly basis the work described in Schedule 2 ("Quantified Maintenance Services"), provided that, when less than two consecutive years remain in the Term, the Two-Year Quantified Work Plan shall be a work plan that is comprised of a plan for each of the remaining months of the Term, apportioning on a monthly basis, the work described in Schedule 2 ("Quantified Maintenance Services");
- (iiii) "**Unit Price**" means the individual amount as bid by the Contractor in its proposal to the RFP for each Unit Price Item identified in Appendix A of Schedule 2 ("Quantified Maintenance Services") and as may be adjusted annually by Schedule 6 ("Annual Adjustment Process") and in accordance with the terms of this Agreement;
- (jjjj) "**Unit Price Item**" means an item of Quantified Maintenance Services having a numeric entry in the "Unit Price" column in Appendix A of Schedule 2 ("Quantified Maintenance Services") and thus is not identified as a Lump Sum Item in Schedule 2 ("Quantified Maintenance Services");
- (kkkk) "**Winter Services**" means all activities related to the removal and control of Winter Accumulation from the Travelled Lanes and Shoulders, including, but not limited to, plowing, patrolling, and snow blowing activities and the application of Winter Abrasives and Winter Chemicals;

- (lll) **“Work Order(s)”** means a written direction by the Province prepared on the Additional Maintenance Services Approval Form H0200, requiring the Contractor to do Additional Maintenance Services pursuant to Schedule 3 (“Additional Maintenance Services”);
- (mmmm) **“Workers Compensation Act”** means the *Workers Compensation Act*, R.S.B.C. 1996, c. 492, as amended from time to time, and the regulations prescribed thereunder;
- (nnnn) **“Working Day”** means any day which is not a Saturday, a Sunday or a day on which Provincial government offices are closed in British Columbia; and
- (oooo) All other capitalized terms and phrases shall have the meanings attributed to such terms and phrases in the Schedules, including, but not limited to Schedule 1 (“Specifications”), unless otherwise referring to a specific document or publication.

2. REPRESENTATIONS AND WARRANTIES

- 2.1 The Contractor represents and warrants to the Province, with the knowledge and intent that the Province shall rely thereon in entering into this Agreement, that on the execution of this Agreement and at all times thereafter during the Term:
 - (a) it is an entity duly organized, validly existing and in good standing under the laws of the Province of British Columbia, Canada or under the laws of its jurisdiction of existence, in which case it is registered extra-provincially in the Province of British Columbia, Canada;
 - (b) it is in good standing with respect to the filing of annual reports according to the records of the Office of the Registrar of Companies of the Province of British Columbia, Canada, if applicable;
 - (c) it has the full authority, power and capacity to enter into and to carry out the transactions contemplated by, and to observe, perform and comply with the terms of, this Agreement and all other documents, instruments and agreements required to be executed and delivered by the Contractor pursuant to or in connection with this Agreement (including, but not limited to, the Commercial Vehicles Permit);
 - (d) all necessary proceedings and actions have been taken and done, and approvals obtained, to authorize the execution and delivery by the Contractor of this Agreement and all of the other documents, instruments or agreements referred to in subsection 2.1(c);
 - (e) this Agreement and all of the other documents, instruments or agreements referred to in subsection 2.1(c) have been legally and properly executed by the Contractor and are valid, subsisting and legally binding upon and enforceable against the Contractor in accordance with their respective terms;
 - (f) all information, statements, documents and reports furnished or submitted to the Province in connection with this Agreement and all of the other documents, instruments or agreements referred to in subsection 2.1(c) are true, accurate and correct in all respects and remain correct and accurate in all respects and do not omit any information required to make such statements, representations and information not misleading when taken as a whole;

- (g) it has no knowledge of any fact that materially adversely affects or, so far as it can foresee, might materially adversely affect its properties, assets, condition (financial or otherwise), business or operations or its ability to fulfill its obligations under this Agreement and all of the other documents, instruments or agreements referred to in subsection 2.1(c), including its obligations to observe, perform and comply with the terms and conditions thereof;
- (h) the execution and delivery of this Agreement and all of the other documents, instruments or agreements referred to in subsection 2.1(c), the observance, performance and compliance with the terms and conditions thereof, and the consummation of the transactions contemplated thereunder, do not and shall not conflict with, result in a breach of, constitute a default under, accelerate or permit the acceleration of any indebtedness or performance under, or require any consent, authorization or approval under (whether with notice or lapse of time or both):
 - (i) any statute, regulation or bylaw (including, but not limited to, those of Canada or the Province of British Columbia) applicable to or binding on it;
 - (ii) its constating documents (including, but not limited to, any memorandum, notice of articles, articles or bylaws); or
 - (iii) any contract, instrument or agreement to which it is a party or any other document which is binding upon it or any of its assets, including, but not limited to, any terms, provisions or conditions of, any indenture, mortgage, deed of trust, agreement, security agreement, license, franchise, certificate, consent, permit, authority, judgment, decree, order, rule or regulation of any court or administrative body;
- (i) the authorized capital of the Contractor is as disclosed in Schedule 21 ("Contractor Detail");
- (j) the effective control and the direct, indirect legal or beneficial ownership of all of the authorized, issued and outstanding equity securities or other equity interests of the Contractor are as disclosed in Schedule 21 ("Contractor Detail");
- (k) there are no agreements, options or rights of any kind held by any person with respect to any of the equity securities or other equity interests of the Contractor, except as disclosed in Schedule 21 ("Contractor Detail");
- (l) 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 21 ("Contractor Detail");
- (m) all information completed in Schedule 21 ("Contractor Detail") is true and accurate;
- (n) the Contractor is not a party to, and to its knowledge is not threatened with, any litigation or claim that would materially affect its undertaking or financial condition or its ability to fulfil its obligations under this Agreement or any of the other documents, instruments or agreements referred to in subsection 2.1(c), including to observe, perform and comply with the terms thereof;

- (o) there are no liabilities of the Contractor, contingent or otherwise, that are not disclosed or reflected in Schedule 21 ("Contractor Detail"), except those incurred in the ordinary course of its business;
- (p) if the Contractor is a partnership, then the identification of all of the partners of the partnership and their respective interests in the partnership are as disclosed in Schedule 21 ("Contractor Detail");
- (q) if the Contractor is a joint venture member, then the identification of all of the joint members and each joint venture member's respective interests in the joint venture are as disclosed in Schedule 21 ("Contractor Detail");
- (r) if the Contractor is a partnership or a joint venture member and if any of the partners or joint members are corporate entities, then:
 - (i) a separate Schedule 21 ("Contractor Detail") for each partner or joint venture member discloses the details set forth in subsections 2.1(i), 2.1(j), 2.1(k), 2.1(l) and 2.1(o) of each such partner or joint venture member; and
 - (ii) the representations and warranties required under the other subsections of this section 2.1 with respect to a Contractor which is a partnership or joint venture member are true for each corporate partner or joint venture member;
- (s) 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;
- (t) no act or proceeding has been taken by or against the Contractor in connection with the dissolution, liquidation, winding up, bankruptcy or reorganization of the Contractor or for the appointment of a trustee, receiver, manager or other administrator of the Contractor or any of its properties or assets nor, to the knowledge of the Contractor, is any such act or proceeding threatened. The Contractor has not sought protection under the *Bankruptcy and Insolvency Act* (Canada) R.S.C. 1985, c. B-3, the *Companies' Creditors Arrangement Act* (Canada) R.S.C. 1985, c. C-36 or other similar legislation;
- (u) the Contractor is not in breach of any statute, regulation or bylaw applicable to the Contractor or its operations or to its performance of its obligations under this Agreement or any of the other documents, instruments or agreements referred to in subsection 2.1(c), including its observance, performance and compliance with the terms thereof;
- (v) the Contractor holds all permits, licences, consents, agreements and authorities issued by any federal, provincial, regional or municipal government or an agency of any of them or by any third parties that are required for the execution by the Contractor of this Agreement and all of the other documents, instruments or agreements referred to in subsection 2.1(c) or the observance, performance and compliance with the terms and conditions thereof or that are necessary in connection with the operations of the Contractor;
- (w) it has no knowledge of any untrue or incorrect representation or assurance, whether verbal or written, given by the Contractor, or any Controlled Persons to the Province in

connection with this Agreement or any of the other documents, instruments or agreements referred to in subsection 2.1(c);

- (x) it has and shall maintain at all times sufficient qualified, trained and experienced staff, and the necessary labour, facilities, financial, insurance, bonding and security arrangements, materials, appropriate equipment and subcontractual agreements and hired equipment contracts in place and available to fully observe, comply with and perform this Agreement (and any of the other documents, instruments or agreements referred to in subsection 2.1(c)), including the Services and to ensure and enable such observance, compliance and performance of this Agreement (and any of the other documents, instruments or agreements referred to in subsection 2.1(c));
- (y) the Contractor has independently reviewed, inspected, examined and assessed and is knowledgeable of and has satisfied itself, including by obtaining all necessary information and documentation and professional advice as to:
 - (i) all labour relations issues related to this Agreement;
 - (ii) Highways and their surroundings and conditions, and all existing improvements and works (including works carried out or to be carried out by third parties including other governmental agencies, contractors of the Province and local governments in the Service Area) in, on, over or under such Highways and the Services including all conditions, constraints, restrictions, requirements, factors, contingencies and risks relating or necessary to, affecting or that may affect the provision of the Services under and in accordance with this Agreement (or any of the other documents, instruments or agreements referred to in subsection 2.1(c));
 - (iii) the terms of this Agreement (and any of the other documents, instruments or agreements referred to in subsection 2.1(c)), including all notices and instructions issued in connection with the foregoing, if any; and
 - (iv) the risks, factors, contingencies, requirements and all other circumstances and conditions, legal and otherwise, which may affect this Agreement (or any of the other documents, instruments or agreements referred to in subsection 2.1(c)), including the Services, and the observance, performance and compliance with the terms and conditions thereof;
- (z) the Contractor is not currently subject to any charge, conviction, ticket, notice of defect or non-compliance, work order, pollution abatement order, pollution prevention order, remediation order or any other order or proceeding under any environmental laws that might reasonably be expected to have a material adverse effect on the performance by the Contractor of its obligations under this Agreement (or any of the other documents, instruments or agreements referred to in subsection 2.1(c)); and
- (aa) it has received from the Province and reviewed this Agreement and all Schedules thereto, including, but not limited to, Schedule 1 ("Specifications").

2.2 All representations, warranties, covenants and agreements made in this Agreement and all certificates and other documents delivered by, or on behalf of, the Contractor and any Controlled Persons are material and shall conclusively be deemed to have been relied upon by the Province,

notwithstanding any prior or subsequent assessment, review, consideration or investigation by the Province or any information, statements, documents, plans or reports furnished or submitted by the Contractor to the Province, prior to or subsequent to the Province entering into this Agreement.

2.3 All statements contained in any certificate or other document delivered by or on behalf of the Contractor and any Controlled Persons to the Province under this Agreement or in connection with any of the transactions contemplated by this Agreement shall be deemed to be representations and warranties of the Contractor under this Agreement.

2.4 The provisions of sections 2.1 and 2.2 shall continue in full force and effect notwithstanding the fulfillment by the Contractor of any or all of its obligations under this Agreement or the payment by the Province to the Contractor of any or all of the monies that the Province becomes liable to pay to the Contractor pursuant to this Agreement.

3. APPOINTMENT, TERM, RENEWAL AND CONDITIONS PRECEDENT

3.1 The Province retains the Contractor to provide the Services in accordance with the terms of this Agreement.

3.2 The Contractor shall provide the Services during the term of this Agreement which term shall, notwithstanding the date of execution and delivery of this Agreement, be deemed to commence on the Commencement Date and shall end on the Expiry Date or such date of earlier termination as may be established in accordance with Article 18 or any other termination provisions of this Agreement, subject to a possible renewal term, pursuant to the terms set out in section 3.4.

3.3 The Province's obligations under this Agreement are subject to the following conditions precedent:

- (a) the Contractor's fulfillment of its obligations included in section 9.1 on or before the 30th day prior to the Commencement Date;
- (b) the Contractor's fulfillment of its obligations included in section 9.13 on or before the 30th day prior to the Commencement Date;
- (c) the Contractor's fulfillment of its obligations included in the RFP section 20 on or before the Commencement Date; and
- (d) the Contractor providing written confirmation, on the 30th day prior to the Commencement Date, in a form satisfactory to the Province, that all of the representations and warranties included in Article 2 are true and accurate as of the date of the confirmation.

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

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

3.4 The Province shall be entitled, in its sole discretion, to renew this Agreement for a further five Contract Years, such that the Expiry Date shall then become five Contract Years after the original Expiry Date. If the Province elects to renew this Agreement, the following provisions shall apply:

- (a) the Province shall give the Contractor notice of the Province's election to renew this Agreement no later than 12 months prior to the original Expiry Date set out in this Agreement;
- (b) the Contractor must no later than 10 months prior to the original Expiry Date provide the Province with the following documents as a condition precedent of the renewal, failing which the Province shall have the option of revoking the notice of renewal with the result that the Term of this Agreement shall end on the original Expiry Date:
 - (i) a consent of surety in the form attached in Schedule 19 ("Insurance & Securities (Renewal Term)") in the event that an alternate surety shall provide the Bonds for renewal term, or written evidence from (and executed by) the surety, in form satisfactory to the Province, in its sole discretion, that the Bonds shall be maintained in full force and effect in accordance with the terms thereof for the renewal term of this Agreement; and
 - (ii) an undertaking to provide liability insurance in the form attached in Schedule 19 ("Insurance & Securities (Renewal Term)") (with the Province notifying the Contractor of the amount of insurance to be set out in the undertaking no later than 12 months prior to the original Expiry Date);
- (c) the consent of surety by an alternate surety for the renewal term of this Agreement, and the undertaking to provide liability insurance documents to be submitted by the Contractor under subsection 3.4(b) shall be in the same format as set out in Schedule 19 ("Insurance & Securities (Renewal Term)") and the only changes between the former undertaking to provide liability insurance and the updated undertaking to provide liability insurance replacing it, shall be that coverage is to be provided to and including the new Expiry Date of Month, XX, 20XX, in the amounts set out in the Province's notice of its election to renew, and possibly the name of the issuing insurer. In the event the Bonds are extended pursuant to their terms, the evidence of said extension must be satisfactory to the Province, in its sole discretion;
- (d) the foregoing condition precedents set out in subsections 3.4(b) and 3.4(c) are included for the sole benefit of the Province and may be unilaterally waived by the Province at any time prior to the dates specified for satisfaction of the conditions; and
- (e) subject to the satisfaction of the condition precedents in subsections 3.4(b) or 3.4(c) above or the waiver of same by the Province or the Province not terminating this Agreement prior to or on the original Expiry Date for an Event of Default, the Term of this Agreement shall be extended for a further five Contract Years to and including Month, xx, 20XX and all the terms and conditions of this Agreement shall continue to apply during this renewal with any necessary changes as if the original Expiry Date had been the same as the Expiry Date of the renewal.

Notwithstanding the foregoing, the Province shall be under no obligation to renew, extend or renegotiate the terms of this Agreement following its termination or expiration.

4. LEGAL RELATIONSHIP INDEPENDENT CONTRACTOR

- 4.1 The Contractor is an independent contractor and not the servant, employee, partner or agent of the Province.
- 4.2 The Contractor shall not, in any manner whatsoever, commit or purport to commit the Province or the Ministry to the payment of any money to any person.
- 4.3 The Province may, from time to time, give such instructions to the Contractor as the Province considers necessary in connection with provision of the Services, which instructions the Contractor shall comply with, but the Contractor shall not be subject to the control of the Province with respect to the manner in which such instructions are carried out.
- 4.4 No partnership, joint venture or agency shall be created or shall be deemed to be created by this Agreement or any action of the parties under this Agreement.
- 4.5 The Contractor is the Prime Contractor in connection with the provision of the Services and this Agreement, and shall, no later than 15 days after the Commencement Date, deliver written notice to the Province:
- (a) of the name of the person appointed by the Contractor who shall discharge the responsibilities of a “qualified coordinator” as described in the *OHS Regulation* and the *Workers Compensation Act*, for the Contractor;
 - (b) confirming that the Safety Program has been initiated and is readily available in accordance with the *Workers Compensation Act* and the *OHS Regulation*, in connection with this Agreement; and
 - (c) acknowledging and agreeing that the Contractor shall be responsible for compliance with all conditions and regulations under the *Workers Compensation Act*, and for all assessments and levies which may be made thereunder.
- 4.6 Notwithstanding section 4.5, the Contractor shall not be designated as the Prime Contractor in the event the Services being rendered by the Contractor are within the limits of construction of an ongoing highway construction improvement project, in which case the construction contractor is designated by the Province as the Prime Contractor and the reporting protocol as between the Contractor, the construction contractor, the electrical maintenance contractor and the Province is set forth in Schedule 16 (“Prime Contractor Designation”).
- 4.7 The Province may, from time to time:
- (a) on prior written notice to the Contractor, appoint a contractor other than the Contractor as the Prime Contractor in connection with works and activities that may be undertaken and performed at any location or locations in the Service Area, for a period of time, and such works and activities, location(s), and period(s) of time shall be specified and defined by the Province in the written notice; and
 - (b) on conclusion of the works and activities referenced in subsection 4.7(a), deliver written notice to the Contractor of the conclusion of such works and activities and, upon receipt of such notice, the Contractor shall resume the responsibilities of the Prime Contractor in connection with the Services and the Agreement at the applicable location.

5. SERVICES

- 5.1 The Contractor shall provide Maintenance Services to the Province, on or in respect of all Highways within the Service Area and shall identify, prioritize and plan the Maintenance Services, all in accordance with the terms and conditions of this Agreement.
- 5.2 The Contractor shall provide Additional Maintenance Services to the Province in accordance with Schedule 3 ("Additional Maintenance Services").

6. CHANGES TO INFRASTRUCTURE WITHIN SERVICE AREA

- 6.1 The Province may, in its sole discretion, for any purpose whatsoever, including, but not limited to, in connection with the commencement, completion, suspension, or administration, of construction or improvement projects relating to one or more of the Highways or portions thereof:
- (a) on one day's written notice to the Contractor, add Changeable Infrastructure Components within the Service Area which was created by the deposit of a plan under the *Land Title Act*, R.S.B.C. 1996, c. 250 or by any other means under the *Land Act*, R.S.B.C. 1996, c. 245; or
 - (b) on 30 days' written notice to the Contractor, make an addition or deletion to, or change the Classifications within the Service Area, other than as provided for under subsection 6.1(a),

and the Contractor shall perform the Services required with respect to the changes to Changeable Infrastructure Components. The Province shall amend Schedule 8 ("Infrastructure") to reflect the notices provided pursuant to subsections 6.1(a) and (b) and deliver it to the Contractor, on an annual basis.

- 6.2 The Classifications are in the sole discretion of the Province, and amendments to the Classifications may be made from time to time during the Term in accordance with Article 6.
- 6.3 Notwithstanding any other provision of this Agreement, the Contractor shall not be entitled to any additional compensation in any form whatsoever, nor shall the compensation payable hereunder be reduced, as a result of the changes referred to in a notice delivered under section 6.1, unless the cumulative net change in the Daily Price for the then current Contract Year, determined in accordance with section 6.5 and Schedule 7 ("Rates for Changes to Infrastructure"), exceeds 2%, positive or negative, as calculated by the Province in accordance with section 6.5, and in such case, the fees payable pursuant to section 12.1 and that portion of the Annual Price attributable to the remainder of that Contract Year, shall be adjusted by the change in the Daily Price determined by the Province under section 6.5, from the effective date of the latest change made pursuant to section 6.1 to the end of that Contract Year.
- 6.4 If the fees payable to the Contractor under section 12.1 for a particular Contract Year are adjusted pursuant to section 6.3, then:
- (a) the Contractor shall not be entitled to any additional compensation in any form whatsoever, nor shall the compensation payable hereunder be reduced, as a result of the changes referred to in any further notice delivered under section 6.1 during that Contract Year, unless the cumulative net change in the Revised Daily Price for that Contract Year

(determined in accordance with section 6.5 and Schedule 7 (“Rates for Changes to Infrastructure”) exceeds 2%, positive or negative, as calculated by the Province in accordance with section 6.5 and Schedule 7 (“Rates for Changes to Infrastructure”), and in each such case, the fees payable pursuant to section 12.1 and that portion of the Annual Price attributable to the remainder of that Contract Year, shall be adjusted by the change in the Revised Daily Price determined by the Province under section 6.5, from the effective date of the latest change made pursuant to section 6.1 to the end of that Contract Year; and

- (b) each adjustment in compensation under section 6.3 and subsection 6.4(a) during a Contract Year shall result in a new Revised Daily Price for that Contract Year, the quantities of Unit Price Items shall be adjusted pro rata to reflect such additions, deletions or changes and the provisions of subsection 6.4(a) shall apply to all subsequent changes made pursuant to section 6.1.

6.5 The Province shall:

- (a) on or before the effective date of each notice delivered under section 6.1, complete the calculations in Schedule 7 (“Rates for Changes to Infrastructure”);
- (b) on or before the effective date of a change in compensation under sections 6.3 or 6.4, calculate a Revised Daily Price in accordance with Schedule 7 (“Rates for Changes to Infrastructure”); and
- (c) provide copies of the calculations to the Contractor forthwith.

6.6 The calculations of the Province under section 6.5 shall be final and binding on the parties under this Agreement.

6.7 If the Province gives any single notice under either subsection 6.1(a) or 6.1(b) which is calculated by the Province to be an increase or decrease of the Daily Price or Revised Daily Price of the current full Contract Year by more than 3%, once the Province has completed and delivered the calculations as required in section 6.5 to effect a change in compensation to the Contractor, if either the Contractor or the Province is of the view that the compensation adjustment shall not properly recognize the Contractor’s altered circumstances which arise from the change in Changeable Infrastructure Components then:

- (a) either the Province or the Contractor may, within 30 days of delivery of the calculations under section 6.5, advise the other party in writing of its disagreement, specifying its reasons; and
- (b) if the parties under this Agreement have not resolved, through consultation and negotiation, the disagreement disclosed under subsection 6.7(a), within 60 days of delivery of the notice under subsection 6.7(a), the unresolved issues may be referred by either party under this Agreement to arbitration pursuant to sections 19.4 and 19.5, and in determining that issue the arbitrator shall take into consideration:
 - (i) the increase/decrease in Maintenance Services relative to the amount of Maintenance Services prior to the increase/decrease;

- (ii) the practical effect of the change on the business operations of the Contractor, including direct cost changes (plus or minus) and the indirect costs of the significant change (plus or minus) in Maintenance Services arising as a result of a notice under section 6.1, without a corresponding reduction/increase in fixed and overhead costs;
- (iii) whether, in the aggregate, the change in compensation, as calculated under section 6.5, shall result in an improvement or deterioration in the Contractor's financial condition; and
- (iv) the provisions of this Agreement.

6.8 The Contractor shall be limited to the compensation adjustments, specified in sections 6.3, 6.4 and 6.7 and, the Contractor shall not have any other remedies either in contract under this Agreement or for claims for damages in tort with respect to any notices issued under section 6.1.

7. CHANGES TO MAINTENANCE SERVICES

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

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

7.2 The Province may, in the Province's sole discretion (whether pursuant to section 7.1 or on the Province's own initiative) change the Maintenance Services whether by varying, amending or modifying the Maintenance Services, and/or changing the Specifications by the delivery of a written notice to the Contractor specifying the change and the date by which the change is to be implemented by the Contractor and the Contractor shall perform the Maintenance Services, as so changed.

7.3 When implementing the notice in section 7.2, in the event there is an impact to the net costs in material, equipment and labour, the Contractor shall obtain the best value for money when procuring any work, services, supplies, materials or equipment and shall hold itself to a standard for the procurement that is no less than good industry practice.

7.4 The parties under this Agreement acknowledge that not all notices under section 7.2 shall result in a change to the Annual Price.

- 7.5 As a consequence of the notice under section 7.2, the Contractor shall, at its cost, prepare and deliver to the Province a change report within 30 days of the Contractor receiving the notice under section 7.2 that includes:
- (a) the net amount for a full Contract Year of all cost changes (positive or negative), if any, in material, equipment and labour reasonably required to accommodate and implement the notice under section 7.2 in a cost effective manner and provide overall value to the Province; and
 - (b) sufficient relevant information and supporting documentation to enable the Province to properly evaluate the compensation adjustment, if any, relating to the notice under section 7.2 including the supporting calculations.
- 7.6 If the Province agrees to adjust the Annual Price pursuant to the Contractor's change report pursuant to section 7.5, the Province may, in its sole discretion, prorate the adjustment if it is effective for a portion of the current Contract Year. The full value of the adjustment shall be reflected in the next Annual Price.
- 7.7 If the Province does not agree to the adjustment as identified in the Contractor's change report pursuant to section 7.5, then the Province shall provide written notice to the Contractor of the disagreement and the parties shall make bona fide efforts to reach a consensus on the adjustment to the Annual Price. If the parties under this Agreement cannot reach a consensus within 30 days from the delivery of the Contractor's change report to the Province, then the Province shall deliver a written notice to the Contractor within a further 7 days that:
- (a) cancels the notice under section 7.2; or
 - (b) directs the Contractor to proceed with the notice under section 7.2 with the adjustment to the Annual Price to be determined by arbitration in accordance with sections 19.4 and 19.5.
- 7.8 If the parties under this Agreement proceed to arbitration pursuant to sections 7.7, 19.4 and 19.5, then the arbitrator in determining the issue, shall take into consideration:
- (a) service level changes relative to existing obligations;
 - (b) the practical effect of the change on the business operations of the Contractor;
 - (c) whether, in the aggregate, the change in compensation, as calculated by the change report, shall result in an improvement or deterioration in the Contractor's financial condition; and
 - (d) the provisions of this Agreement.
- 7.9 The Contractor shall not receive any adjusted payment during the arbitration process and the Province shall make an adjustment to the Annual Price or Adjusted Annual Price (as the case may be) based on the determination of the Arbitrator, effective from the date that the Contractor implemented the notice under section 7.2.

8. MATERIALS, LICENSES AND REPEATER SYSTEM

- 8.1 Any materials, equipment or improvements installed or deposited on Highways by the Contractor during the Term as part of the Services shall immediately become the sole property of the Province

and the Contractor shall, at the request of the Province, assign or transfer to the Province any warranties available with respect to the same.

- 8.2 Any materials, equipment or improvements installed or deposited on Highways which are:
- (a) de-installed or removed from Highways by the Contractor during the Term in accordance with the Contractor's obligations under this Agreement; and
 - (b) damaged, deteriorated or otherwise not in compliance with the applicable manufacturers' specifications or Specifications such that they are no longer usable to perform the Services,

shall, upon their de-installation or removal, become the sole property of the Province, unless the Province directs to the Contractor that the Province shall not retain them.

- 8.3 The Contractor shall, as applicable, in respect of each item of Provincial Material:
- (a) receive, unload, store, reload and be responsible for the Provincial Material; and
 - (b) if requested by the Province,
 - (i) provide an accounting for and inventory of the Provincial Material satisfactory to the Province,
 - (ii) allow persons specified by the Province access to the Provincial Material, for any purpose, including, but not limited to, for the purposes of transporting the same, and
 - (iii) maintain and identify all inventories of Provincial Material separate from any other property,

all at no expense to the Province.

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

- 8.5 The Contractor may have access to and use the Repeater System for the sole purpose of performing the Services in accordance with this Agreement, including on the terms and conditions set out in Schedule 14 ("Repeater System").

- 8.6 The Province grants to the Contractor a license to enter on and occupy the Gravel Pits during the Term, on the terms and conditions set out in the Gravel License and the Contractor shall observe and comply with those terms and conditions.

9. INSURANCE AND BONDS

Insurance

- 9.1 The Contractor shall obtain at its sole cost and expense, and maintain in good standing during the Term, insurance in such amounts, in such form of policy, containing such terms and against such risks, all as may be acceptable to the Province from time to time, acting reasonably. Without

limiting the generality of the foregoing, the terms of such insurance shall meet the insurance requirements in Schedule 18 ("Insurance Requirements") and shall be placed with an insurer or insurers acceptable to the Province.

- 9.2 Evidence satisfactory to the Province that the insurance required under Schedule 18 ("Insurance Requirements") has been obtained must be submitted by the Contractor to the Province not later than the 30th day prior to the Commencement Date, and if applicable, not later than the 30th day prior to the commencement date of the renewal term, and the Contractor shall, upon the request of the Province made at any time or times, submit to the Province evidence, satisfactory to the Province, that the insurance remains in force and effect.
- 9.3 The Contractor shall ensure that the insurance described in Schedule 18 ("Insurance Requirements") may not be cancelled or materially changed in any way whatsoever without the insurer or insurers giving not less than 30 days prior written notice to the Province and if notice of cancellation or material change is given the Contractor's obligations under section 9.1 shall continue in effect.
- 9.4 If any policy of insurance contains a co-insurance clause, the Contractor shall maintain or cause to be maintained in force a sufficient amount of such insurance to meet the requirements of any such co-insurance clause so as to prevent the Province, or the Contractor from being a co-insurer under the terms of such policy or policies and to permit for a full recovery up to the amount insured in the event of loss, less any deductibles.
- 9.5 The Contractor shall provide 30 days' written notice to the Province of any expiry, non-renewal, lapse, refusal to extend by the insurer, cancellation or any material change of the insurance policy or policies required by the Contractor pursuant to this Article 9.
- 9.6 The Contractor shall, at the request of the Province, in the Province's sole discretion, secure insurance to replace the insurance coverage provided in compliance with section 9.1 with new coverage terms or increased policy limits, as specified by the Province.
- 9.7 The Province may, in the Province's sole discretion, review the insurance requirements stipulated by this Article 9 and Schedule 18 ("Insurance Requirements") and the Contractor shall cooperate as required to implement any changes arising from this review.
- 9.8 The Contractor shall deliver or cause to be delivered to the Province originals or signed, certified copies of the commercial general liability and equipment "all risks" insurance policies required to be maintained pursuant to this Agreement no later than one hundred and twenty (120) days from the Commencement Date. Evidence of the extension or the renewal of such insurance policy shall be delivered or caused to be delivered to the Province by the Contractor in accordance with subsection 3.4(b). Delivery of the evidence of insurance and its extension or its renewal as required by the terms of this Agreement in no way releases the Contractor of its obligations pursuant to insurance requirements in this Agreement and does not operate as a waiver by the Province of any of its rights.
- 9.9 The Contractor shall, at the request of the Province, provide all underwriting information, including loss history information that may be requested from time to time.
- 9.10 The Contractor shall, upon the demand of the Province, deliver information and pertinent details of the claims history, including the details of the occurrence or accident and final disposition of any

such occurrence or accident, in relation to the commercial general liability and equipment “all risks” insurance policies to be maintained pursuant to this Agreement.

- 9.11 Without limiting the generality of subsection 11.1(d), within the time period specified by the Province in any written demand, the Contractor shall provide the Province with information and supporting documentation to the satisfaction of the Province that the annual insurance premium amounts are true and correct or reflect or are commensurate with available reasonable market rates, and as verified by the statutory declaration of any director, officer, or employee of the Contractor or any representative of the Contractor’s insurer or insurers, of:
- (a) the true and correct premium cost of the commercial general liability insurance required by section 9.1 and Schedule 18 (“Insurance Requirements”) of this Agreement (excluding the premium for any sudden and accidental pollution liability portion of such coverage), for the current, previous or subsequent Contract Year;
 - (b) the availability or otherwise of alternative market-based quotes that may be obtained, including on a competitive basis, for the annual premium at the renewal or replacement of such insurance, to maintain such renewed or replacement insurance in force; and
 - (c) the Insurance Premium Quote or any subsequent annual insurance premium amounts delivered pursuant to subsection 9.11(a) is true and correct competitively established, market premium amounts.
- 9.12 Without limiting any rights, powers and remedies existing available to the Province under this Agreement, any other agreement, at law or in equity, if the Province is not satisfied with any information and documentation delivered by, or on behalf of, the Contractor pursuant to section 9.11, the Province may, in its sole discretion, deliver notice in writing to the Contractor, requiring the Contractor to use its best efforts to obtain the requisite insurance from an alternative insurer or insurers, on a competitive basis, at more competitive rates, or at rates that more closely reflect or are commensurate with available reasonable market rates, and upon receipt of such request, the Contractor shall use its best efforts to obtain such insurance on such basis and at such rates as set out above.

Bonds

- 9.13 The Contractor shall obtain and maintain the Bonds in full force and effect during the Term of this Agreement, all in form and content and with a surety company acceptable to the Province, pursuant to Schedule 17 (“Bonds”). Sections 9.14, 9.15 and 9.16 shall apply in the event the Bonds are issued pursuant to Option B.
- 9.14 The Bonds shall both be issued by one surety company, or one group of surety companies, which are created and existing under the laws of Canada and duly authorized to transact the business of suretyship in Canada and the Bonds shall be delivered by the Contractor concurrently with or in advance of the execution of this Agreement.
- 9.15 The Contractor shall deliver to the Province evidence of the extension of the Bonds, or a consent of surety from an alternate surety pursuant to section 3.4 and Schedule 19 (Insurance & Securities (Renewal Term)), so as to secure the observance and performance by the Contractor of this Agreement for the Term.

- 9.16 In order to satisfy the requirements of section 3.4, an alternate surety company must be acceptable to the Province, in the Province's sole discretion.
- 9.17 In the event of a renewal of this Agreement pursuant to section 3.4, the provisions of sections 9.13 to 9.16 shall apply mutatis mutandis to the renewal term.

10. DAMAGE TO GOVERNMENT PROPERTY

- 10.1 The Contractor shall be responsible for all costs related to repair the Damage to Government Property.
- 10.2 Notwithstanding section 10.1, the Contractor shall with respect to any damage to Structures caused by motor vehicles, acts of vandalism or other acts of a third party (but excluding any damage caused by a Major Event), be fully responsible for all costs related to repair such damage up to \$50,000 per occurrence. The repair work exceeding \$50,000 per occurrence shall be subject to the provisions of Schedule 3 ("Additional Maintenance Services").
- 10.3 The Contractor shall submit to the Province a Damage to Government Property Claim for all Damage to Government Property. The Damage to Government Property Claim must include all costs incurred by the Contractor to repair the damage and must be accompanied by supporting documentation, including any documentation required by a third party's insurer for the Province's Claim to proceed. Subject to section 10.4, the Province shall reimburse the Contractor for any of the Contractor's costs if the Province is satisfied that:
- (a) the Contractor's costs have been solely and properly incurred for the purpose of repairing or restoring Government Property damaged by persons other than the Contractor or the Controlled Persons; and
 - (b) all such repairs or restorations of Damage to Government Property damaged by persons other than the Contractor or the Controlled Persons have been repaired or restored in accordance with this Agreement.
- 10.4 Unless the damage to Government Property has been caused by the Province, any reimbursement by the Province under section 10.3 for Routine Maintenance Services is subject to the following terms and conditions:
- (a) the reimbursement shall apply only if the Province has made a Claim against the insurer or responsible third party respecting the Damage to Government Property in accordance with this Article 10 and has received a Recovered Amount in respect of such Claim. The Contractor acknowledges that its costs incurred to repair the damage, including the Contractor's mark-up, may not be fully accepted and reimbursed by the insurer or responsible third party. The Contractor also acknowledges that, subject to this section 10.4, its reimbursement by the Province shall not be greater than, and may be less than, the Recovered Amount;
 - (b) the Province may deduct from the Recovered Amount all reasonable expenses incurred by the Province in making such Claim;
 - (c) the Contractor has diligently prepared and delivered all information, documents and reports reasonably necessary in connection with, or in support of, the Claim of the Province;

- (d) the Province may allocate the Recovered Amount as between the Province and the Contractor such that each shall be entitled to a portion of the Recovered Amount representing its proportionate share of expenses incurred to repair or restore the Government Property;
 - (e) in no event shall the Province be required to reimburse the Contractor for an amount in excess of the Recovered Amount less any expenses deducted by the Province in making such Claim. However, in the event some or all of the Contractor's costs pursuant to section 10.1 are for Quantified Maintenance Services, the Province shall credit the Quantified Maintenance Services that were not reimbursed to the Contractor in the Recovered Amount, where the Quantified Maintenance Services pertain to Unit Price Items, at a value pursuant to the relevant Unit Price and, where the Quantified Maintenance Services pertain to Lump Sum Items, at a value determined by the Province, in its sole discretion, pursuant to the approved Two-Year Quantified Work Plan;
 - (f) the Contractor shall not make or purport to make on its own behalf or on behalf of the Province any claims whatsoever for damage to Government Property or for any Contractor's costs, except to the Province to obtain reimbursement under section 10.3;
 - (g) the Province may assign, by written notice to the Contractor, all of its rights to make a Claim with respect to Damage to Government Property;
 - (h) subject to subsection 10.4(g), the decision to make a Claim and all decisions respecting the conduct of a Claim shall be within the Province's sole discretion; and
 - (i) the provisions of section 10.3 and 10.4 shall survive the expiration or termination of this Agreement.
- 10.5 The Contractor shall co-operate with the Province and its counsel in any and all investigations, settlements and judicial determinations of any claims made against the Province or the Contractor and any Claims relating to Damage to Government Property relating directly or indirectly to this Agreement and shall cause the Controlled Persons to be similarly bound.

11. CONTRACTOR'S COVENANTS

11.1 The Contractor shall:

- (a) observe, abide by and comply with all laws, by-laws, orders, directions, rules and regulations (including, but not limited to, those related to the environment or to occupational health and safety, including the *Workers Compensation Act*, and the *OHS Regulation*) of any competent government authority or branch or agency thereof directly or indirectly applicable to the Contractor, this Agreement, or the Services to be performed under this Agreement, including by ensuring that the provision of and performance of the Services, complies with all such laws, by-laws, orders, directions, rules and regulations;
- (b) ensure that the representations and warranties set out in Article 2 of this Agreement are true and correct at all times during the Term and provide evidence to that effect to the Province promptly on the written request of the Province;

- (c) maintain its corporate existence and carry on and conduct its business in a proper business-like manner in accordance with good business practice and keep or cause to be kept proper books of account in accordance with international financial reporting standards applied on a consistent basis;
- (d) not commit any act of bankruptcy, become an insolvent person or otherwise cease to function as a going concern, make an assignment for the benefit of its creditors, adopt any plan in connection with (or otherwise permit) the dissolution, liquidation, winding up, bankruptcy or reorganization of the Contractor, or attempt to avail itself of any applicable law relating to insolvent debtors;
- (e) within 15 days of the delivery of a written demand from the Province, provide the Province with such information and documentation with respect to the affairs and undertaking (financial and otherwise, as the case may be) of the Contractor as the Province may reasonably request, including for greater certainty, information and documentation related to the actual or anticipated observance, performance and compliance by the Contractor with the terms of this Agreement;
- (f) punctually pay as they become due all accounts, expenses, wages, salaries, taxes, levies, rates, fees, contributions and assessments required to be paid by it on any of its undertaking;
- (g) provide and maintain all financial management and technical expertise necessary for the Contractor to carry out its obligations under this Agreement;
- (h) co-operate with the Province and any other contractors providing services to the Province in the Service Area and in areas adjacent to the Service Area;
- (i) perform the Services in a good workmanlike manner, free of defects or deficiencies and to the satisfaction of the Province, in its sole discretion;
- (j) provide and maintain at all times qualified, trained and experienced staff, including the continual training of its staff, to perform all Services to the satisfaction of the Province, and including Incident Command System (ICS) training in order that all staff have Level 100 and the Contractor's general manager, division manager, operations manager and those in equivalent roles have Levels 200 and 300 at a minimum. In addition, the appropriate staff shall have the training and skills with which to perform their work that include but are not limited to: Highway maintenance, Danger Tree assessment, avalanche, Traffic Management, ISO/quality management (including environmental compliance), cost estimating, negotiation, communication and media training;
- (k) provide and maintain at all times sufficient staff, facilities, labour, materials, appropriate equipment and subcontractor agreements and financial, insurance, bonding and security arrangements in place and available to it as required to fully observe, comply with and perform this Agreement, including the Services, and in no event shall the level of resources deployed in the field and ready to respond be less than what is required to supply the Maintenance Services and to comply with the Specifications and the Quality Management System;
- (l) obtain, maintain and hold all permits, licences, consents, authorities, agreements and consents issued by any federal, provincial, regional or municipal government or an

agency of any of them, or by any third parties that are necessary for the Contractor to observe, comply with and perform its obligations under this Agreement or that are necessary in connection with the operations of the Contractor;

- (m) paint, identify and light all vehicles and equipment in accordance with Schedule 11 (“Equipment Requirements”) and such other directives of the Province delivered to the Contractor from time to time;
- (n) with respect to the Contractor, any subcontractors and any hired equipment operators involved in the performance of Services, ensure that:
 - (i) such persons maintain a minimum NSC safety rating of “satisfactory” or “satisfactory unaudited”; and
 - (ii) such persons and their drivers comply with the requirements of section 37.12 of the MVAR;
- (o) with respect to the Contractor, ensure that, if at least 10% of the vehicles operating under the Contractor’s NSC certificate number are subject to a CVSA inspection, the results of such inspections shall not be greater than a 20% out of service (OOS) rate for mechanical safety violations over any 12 month period;
- (p) notwithstanding any limitation in the *OHS Regulation* which would exempt the Contractor from the requirement to initiate and maintain an occupational health and safety program, initiate and at all times maintain the Safety Program in connection with the Services and this Agreement, and ensure that the Safety Program:
 - (i) is designed to prevent injuries and occupational diseases within the contemplation of the *Workers Compensation Act* and the *OHS Regulation*;
 - (ii) provides for the establishment and maintenance of a system or process to ensure compliance with the *Workers Compensation Act* and the *OHS Regulation* in respect of the Services and this Agreement; and
 - (iii) satisfies the requirements of an occupational health and safety program under the *Workers Compensation Act* and the *OHS Regulation*;
- (q) subject to section 4.6, discharge the responsibilities of the Prime Contractor under the *Workers Compensation Act* and the *OHS Regulation*, in connection with the Services and this Agreement;
- (r) upon receipt of the Province’s written notice under section 4.7, in good faith, cooperate with the contractor appointed the Prime Contractor for the location and the period of time described in the Province’s notice, including the coordination of health and safety activities;
- (s) perform, or cause Controlled Persons to perform, where applicable, all obligations in respect of the Services in a manner which meets or exceeds the Specifications in Schedule 1 (“Specifications”), and Schedule 3 (“Additional Maintenance Services”);
- (t) comply with all of the Contractor’s obligations included in:

- (i) the Automated Weather Stations attached as Schedule 10 (“Automated Weather Stations”);
- (ii) the Commercial Vehicles Permit attached as Schedule 12 (“Commercial Vehicles Permit Agreement”);
- (iii) the Gravel License in Schedule 13 (“Gravel License”); and
- (iv) the Privacy Protection Schedule attached as Schedule 20 (“Privacy Protection”);
- (u) offer continued employment effective on the Commencement Date to the non-management, **bargaining unit** employees of the Contractor performing Services within the Service Area immediately before the Commencement Date (including employees on leave or layoff immediately prior to the Commencement Date)–under the terms of their existing collective agreement;
- (v) assume the existing collective agreement, with the union representing the non-management, **bargaining unit** employees of the Contractor performing Services within the Service Area immediately before the Commencement Date and the Contractor hereby acknowledges the requirement to offer continued employment to non-management **bargaining unit** employees; and
- (w) update the Province’s Corporate Highway and Resource Information System (CHRIS) in accordance with the Maintenance Services Reporting Manual.
- (x) provide all records and reports required in accordance with this Agreement.

11.2 The Contractor is solely responsible for the costs of the matters described in section 11.1 of this Agreement including, but not limited to, all labour liabilities, costs and expenses including under, in connection with, or resulting from, the Collective Agreement between enter Contractor name including info in brackets as shown on signed agreement and the B.C. Government and Service Employees’ Union (BCGEU) effective from Month, XX, 2019 to Month, XX, 202X (the “**Collective Agreement**”) and no part of any such costs including any such liabilities, costs and expenses shall be passed on to the Province in any manner whatsoever including through any part of the Annual Price or the Adjusted Annual Price, through any prices or costs under or relating to this Agreement, or through compromise or adverse impact to the performance of the Services (or any part thereof) including satisfaction of the Specifications or reduction in the obligations of the Contractor under this Agreement. For greater certainty, the Contractor acknowledges that the Province is not a party to and shall not in any way whatsoever be responsible for or committed to any costs, expenses, liabilities, decisions, actions, matters or things whatsoever in connection with or arising from, or be bound by the Collective Agreement or any part thereof, and such Collective Agreement shall not be considered to and does not in any way whatsoever form part of or be considered to modify, amend or impact on any term of this Agreement.

12. ANNUAL PRICE AND FEES

- 12.1 In full consideration of the Contractor providing the Maintenance Services, the Province shall, subject to an Event of Default or Force Majeure, pay to the Contractor the Annual Price corresponding to each Contract Year in the manner set out in section 1 of Schedule 5 ("Maintenance Services Fee"), all subject to the terms of this Agreement.
- 12.2 In full consideration of the Contractor providing Additional Maintenance Services, the Province shall pay the Contractor in the manner set out in Schedule 3 ("Additional Maintenance Services"), all subject to the terms of this Agreement.
- 12.3 The payments described in section 12.1 and 12.2 constitute the maximum amounts payable to the Contractor for its performance of the Maintenance Services and Additional Maintenance Services and the Contractor shall not be entitled to any further compensation for its performance whether or not the work actually undertaken by the Contractor is described in this Agreement and, without limiting the generality of the foregoing, there shall be no amended adjustment to the Annual Price except in accordance with Schedule 6 ("Annual Adjustment Process"), Article 6 and Article 7.
- 12.4 Notwithstanding any other provision of this Agreement, the payment of money by the Province to the Contractor under this Agreement is subject to:
- (a) there being sufficient monies available in an Appropriation, as defined in the FAA, to enable the Province, in any fiscal year or part thereof when any payment of money by the Province to the Contractor falls due under this Agreement, to make that payment; and
 - (b) Treasury Board, as defined in the FAA, not having controlled or limited, under the FAA, expenditure under any Appropriation referred to in subsection 12.4(a).
- 12.5 All sums due and owing by the Contractor to the Province under this Agreement shall be set off by the Province during the Term.
- 12.6 All payments made under this Agreement, net of sums set off as provided under sections 12.5 and, subject to section 12.8, shall be paid by electronic fund transfer to the appropriate party.
- 12.7 Concurrent with each set off payment, the Province shall deliver to the Contractor an accounting of the sums due and owing by the parties under the Agreement to the date of the payment.
- 12.8 The Province may, in the Province's sole discretion, pay an amount not exceeding 2% of the Annual Price or the Adjusted Annual Price, as the case may be, to the Contractor as compensation for the Contractor's rating under the Contractor Assessment Program, such payment or payments to be made at a time or times and in the manner determined by the Province.

13. PUBLIC ANNOUNCEMENTS AND FREEDOM OF INFORMATION

- 13.1 Any public announcement relating to the award or entry into this Agreement, as well as media relations that require a collaborative effort between the parties under this Agreement and between the parties and government agencies and other organizations shall be arranged by the Province in consultation with the Contractor.
- 13.2 Any documentation related to this Agreement that is in the custody or under the control of the Province is subject to the *Freedom of Information and Protection of Privacy Act*, R.S.B.C. 1996,

c.165. The Province shall provide the Contractor with notice pursuant to the *Freedom of Information and Protection of Privacy Act*, R.S.B.C. 1996, c. 165, prior to any proposed releases of such documentation.

14. ASSIGNMENT, SUBCONTRACTING AND HIRED EQUIPMENT

- 14.1 The Province may, without the prior consent of the Contractor, assign in whole or in part, either directly or indirectly, this Agreement or any rights of the Province under this Agreement.
- 14.2 The Contractor shall use its best efforts to co-operate with the Province, and any other interested parties to effect a full or partial assignment of the Province's rights and obligations under this Agreement, and a reasonable transition in performance of the Services as a result of any assignment, expiration or termination of this Agreement and this obligation shall survive such expiration, termination or assignment.
- 14.3 The Contractor shall not, without the prior written consent of the Province, assign, either directly or indirectly, this Agreement or any right of the Contractor under this Agreement.
- 14.4 The following events shall 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 shall result in, in the sole discretion of the Province, 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, in the sole discretion of the Province, a change in the ownership of such partner's interest.
- 14.5 The Contractor shall reimburse the Province, forthwith on demand, the costs incurred by the Province in respect of the Province's review of an assignment proposed pursuant to section 14.3 above, including the Province's administration costs and the fees and disbursements of professional advisors.
- 14.6 The Contractor may subcontract any obligation of the Contractor under this Agreement to any person, except if the Province has notified the Contractor that the Province's written consent is to be obtained prior to any such subcontracting by the Contractor.
- 14.7 The appointment of subcontractors and the hiring of equipment by the Contractor shall not relieve the Contractor of its responsibility to perform and comply with all terms of this Agreement, or for the quality of work, materials and services provided by it.
- 14.8 The Contractor shall at all times be held fully responsible to the Province for the acts and omissions of its subcontractors, hired equipment owners or operators and persons employed by them and no subcontract or agreement with hired equipment owners or operators entered into by the Contractor shall impose any obligation or liability upon the Province to any such subcontractor, hired equipment owner or operator or any of its employees.

- 14.9 The Contractor shall cause every subcontractor and hired equipment owner and/or operator to be bound by the terms of this Agreement so far as they apply to the Services to be performed by each subcontractor and hired equipment owner and/or operator, including, but not limited to, Schedule 4 ("Cost Plus Rates).
- 14.10 Nothing in this Agreement shall create any contractual relationship between the Province and a subcontractor of the Contractor or any hired equipment owner and/or operator retained by the Contractor.
- 14.11 In regards to providing Maintenance Services, the Contractor shall:
- (a) during a Contract Year, cause Maintenance Services which represent not less than X% of the Annual Price for that Contract Year to be performed by subcontractors in accordance with this Article 14;
 - (b) during a Contract Year cause Maintenance Services which represent not less than X% of the Annual Price for that Contract Year to be performed utilizing hired equipment;
 - (c) provide an open, transparent and equitable distribution of work to hired equipment owners and/or operators who are local to the Service Area. For greater clarity, the Contractor and Contractor controlled or affiliated companies or entities do not fall within the meaning of equipment owners for this purpose; and
 - (d) hire equipment at not less than the rates established in the "Equipment Rental Rate Guide" (the Blue Book) published by the B.C. Road Builders & Heavy Construction Association and authorized by the Province from time to time.

15. RECORDS AND REPORTS

- 15.1 The Contractor shall provide to the Province, at such time(s) and including such information as the Province may specify, the records and reports set forth in this Article 15 in accordance with the forms indicated in this Article 15, any modified or replacement version of such forms or any changes in reporting format or process as may be issued by the Province from time to time.
- 15.2 The Contractor shall:
- (a) establish and maintain at a location within British Columbia accurate books of account pursuant to subsection 11.1(c) (including supporting documents) and records to the satisfaction of the Province;
 - (b) give written particulars of the location within British Columbia, referred to in subsection 15.2(a), to the Province, not later than 30 days after the Commencement Date, and give written particulars of any new location within British Columbia within 30 days of any change of location;
 - (c) prepare, maintain and comply with its work reporting system (including a computerized maintenance management system) to the satisfaction of the Province;
 - (d) maintain in the books of account, accurate entries of all transactions in relation to removal of Granular Material from the Gravel Pits during the Term;

- (e) maintain records of all Pit-Run removed by or for the Contractor from the Gravel Pits and all Granular Material processed by or for the Contractor from the Gravel Pits, in such form and containing such information as the Province may reasonably require;
- (f) permit the Province, its servants and agents, at any time or times during normal business hours, to copy, inspect and/or audit, any or all of the books of account, records (including supporting documents) and the computerized maintenance management database system referred to in subsections 15.2(a), 15.2(c), 15.2(d) and 15.2(e) and upon the written request of the Province, deliver to the Province copies of the books of accounts and records (including supporting documents) referred to in subsections 15.2(a), 15.2(c), 15.2(d) and 15.2(e) no later than 10 days after the request;
- (g) prepare and maintain a computerized map of the Service Area that depicts, in real time only, all information (and no other information) pertaining to Automated Vehicle Tracking (and separately identifying each plow truck, grader and/or vehicle used for patrol that is depicted in such computerized map) and provide the Province, via an electronic hyperlink, access to such computerized map at any time;
- (h) prepare and maintain an electronic system that:
 - (i) records (and maintains electronic records of) all information pertaining to Automated Vehicle Tracking, including, but not limited to, the computerized real time map depictions referred to in subsection 15.2(g); and
 - (ii) maintains an electronic record of the information set forth in subsection 15.2(h)(i) until May 31 of the Contract Year following the Contract Year in which the information was created; and
- (i) permit the Province, its servants and agents, at any time or times during normal business hours, to inspect and/or audit, any or all of the electronic records (including supporting documents) referred to in subsection 15.2(h).

15.3 The Contractor shall upon the request, from time to time, of the Province:

- (a) fully inform the Province through electronic transmission of data of work identified, scheduled and completed by the Contractor in connection with provision of the Services in a format as specified by the Province;
- (b) upon the written request from the Province, deliver to the Province reports relating to and copies of any or all records demonstrating the compliance of the Contractor with the laws, by-laws, orders, directions, rules and regulations referenced in section 11.1, including, but not limited to, those related to the environment or to occupational health and safety, including the *Workers Compensation Act*, and the *OHS Regulation*; and
- (c) permit the Province at all reasonable times to inspect, examine, review and copy any and all findings, data, specifications, drawings, working papers, reports, including Non-Conformance Reports and audit reports, documents and material whether complete or otherwise that have been produced, received or acquired by, or provided by or on behalf of the Province to the Contractor as a result of this Agreement.

- 15.4 All case files, materials, software, manuals and memoranda of any ministry of the Province related to the provision of the Services that are, from time to time, in the possession or control of the Contractor shall at all times be the exclusive property of the Province (the “**Material**”). Within 30 days following the expiration or earlier termination of this Agreement, the Contractor shall, at the direction of the Province and at the Contractor’s cost, either:
- (a) deliver to the Province; or
 - (b) permanently destroy,
- all copies of the Materials in the Contractor’s possession or under its control, in a manner and as specified in the direction.
- 15.5 The Contractor shall, no later than the 10th Working Day of each month, for the prior month provide to the Province:
- (a) a report of completed Routine Maintenance Services prepared in accordance with the Maintenance Services Reporting Manual;
 - (b) a report of completed Quantified Maintenance Services prepared in accordance with the Maintenance Services Reporting Manual;
 - (c) a report of completed Additional Maintenance Services prepared in accordance with the Maintenance Services Reporting Manual;
 - (d) a Wildlife Accident Report (H0107) prepared in accordance with the Maintenance Services Reporting Manual, and if there have been no instances of wildlife accidents in the reporting period, then a nil report shall be forwarded;
 - (e) a Major Event Tracking Report prepared in accordance with the Maintenance Services Reporting Manual, and if there have been no instances of Major Events in the reporting period, then a nil report shall be provided; and
 - (f) summaries of all Non-Conformance Reports issued by the Contractor.
- 15.6 The Contractor shall, no later than 24 hours after the commencement of a Major Event, provide to the Province a Major Event Site Notification Report prepared in accordance with the Maintenance Services Reporting Manual.
- 15.7 The Contractor shall provide to the Province the Two-Year Quantified Work Plan prepared in a format determined by the Province:
- (a) by no later than 30 days after the Commencement Date, for the First Contract Year;
 - (b) each year thereafter on or before April 1 of each Contract Year (or such other date agreed in writing by the parties) for the Contract Year commencing on that Anniversary Date; and
 - (c) as soon as reasonably practicable within the current Contract Year, if the Two-Year Quantified Work Plan is amended pursuant to subsection 2.8(a) of Schedule 2 (“Quantified Maintenance Services”).

- 15.8 The Contractor shall, no later than the 10th Working Day after the incident, provide to the Province a Chargeable Maintenance Cost Report (H0036) along with supporting documentation for the direct costs of Damage to Government Property.
- 15.9 The Contractor shall, on or before the Anniversary Date of each Contract Year, provide to the Province a Quality Management System revisions report in accordance with section 17.4, and if no revisions have occurred, then a nil report shall be forwarded, all subject to the Province's satisfaction and acceptance.
- 15.10 The Contractor shall provide to the Province:
- (a) no later than June 1 of each calendar year, or on such date(s) as may be specified by the Province, a report on the use of Winter Abrasives and Winter Chemicals used in providing the Maintenance Services, which includes the information and meets the requirements specified by Environment Canada and the Province for environmental monitoring and reporting on the use of Winter Abrasives and Winter Chemicals for a reporting period as specified by the Province;
 - (b) on or before the Anniversary Date of each Contract Year, the completed Insurance Premium Adjustment Form attached as Appendix D to Schedule 6 ("Annual Adjustment Process") as originally signed by an authorized representative of the insurer, in respect of the commercial general liability insurance described in Article 9 (excluding any Sudden and Accidental pollution liability coverage), of the total amount payable as the annual premium, to maintain such renewal or replacement insurance in force on the commencement of that Contract Year;
 - (c) no later than 30 days prior to the Commencement Date and thereafter no later than 90 days after a material change to any part of that information, to ensure such information remains current, complete and correct, all of the Contractor information specified in Schedule 21 ("Contractor Detail") with respect to:
 - (i) a corporate Contractor;
 - (ii) a Contractor that is a partnership, with respect to each corporate partner; and
 - (iii) a Contractor that is a joint venture member, with respect to each corporate joint venture member;
 - (d) on or before the Anniversary Date of each Contract Year, unless there has been a submittal of amended information within the previous 12 month period pursuant to subsection 15.10(c), a certificate of a senior officer certifying that there has been no material change to the information provided in Schedule 21 ("Contractor Detail") and that all information is current, complete and correct;
 - (e) no later than 30 days prior to the Commencement Date and thereafter no later than 90 days after a material change to any part of that information, to ensure such information remains current, complete and correct, emergency contact particulars (including name, email and phone number) of an authorized representative of the Contractor, for inclusion on the incident response management (IRM) website maintained by the Province;

- (f) by no later than 30 days after the Commencement Date, for the First Contract Year, and each year thereafter on or before the Anniversary Date of each Contract Year, waste management plan(s), detailing the items to be disposed of and the location of such disposal, and, if reclamation is required in connection with such disposal, the reclamation procedures to be carried out in connection therewith; provided that:
 - (i) if the waste management plan(s) require no revision or amendment, the Contractor shall provide to the Province a nil report; and
 - (ii) if, within the current Contract Year, there is a change (which for certainty, includes, but is not limited to, an addition or deletion) to the waste management plan(s), the Contractor shall provide a revised or amended waste management plan(s) to the Province as soon as reasonably practicable within the current Contract Year;
- (g) by no later than 30 days after an inspection pursuant to General Specification 7.03 of Schedule 1 ("Specifications"), an inspection record which includes, at a minimum, inventory identification, location of inventory, date of inspection, detailed condition inspection ratings, specific defects, recommended actions, comments/notes and digital photographs of defects;
- (h) on or before April 1 of each Contract Year, traffic management plan(s):
 - (i) in accordance with the Province's "Traffic Management Manual for Work on Roadways" (with the exception that Category 1 traffic management plan(s) shall be used), for those areas of Highway subject to disruption due to Services being performed; and
 - (ii) in accordance with the Province's "Traffic Management Manual for Work on Roadways" (prepared using the Category 2 or 3 traffic management plan(s), as applicable), for those areas of Highway subject to disruption due to full lane closures in connection with occurrences such as Major Events and/or incidents described in General Specification 7.01 of Schedule 1 ("Specifications").

If the traffic management plan(s) require no revision or amendment, the Contractor shall provide to the Province a nil report; and

- (i) on or before April 1 of each Contract Year, signs system management plan(s), in accordance with the National Cooperative Highway Research Program "Synthesis 157 - Maintenance Management of Street and Highway Signs" which includes, at a minimum, sign inventory, inspection methods and processes, sign condition assessment, preventative maintenance approach (including how the preventative maintenance approach is integrated with replacement process), process for sign replacement identification and prioritization, approach for completing the annual work schedule and two-year rolling proposed sign replacement schedule indicating sign, location, costs and timing.

- 15.11 The Contractor shall provide a Rockfall Report (H0207) prepared in accordance with the Maintenance Services Reporting Manual:
- (a) to the Province no later than the 7th calendar day of each month for the prior month, if rockfall greater than fist size reaches the Travelled Lane of a Highway; and
 - (b) to the geotechnical office listed on the H0207 form, no later than 48 hours after rockfall greater than one (1) cubic metre reaches the Travelled Lane of a Highway or damages a motor vehicle.
- 15.12 The Contractor shall provide to the Province, no later than 15 calendar days after the completion of processing of Granular Material (and prior to the removal of the Granular Material from the Gravel Pit), a quantity survey report prepared by a Qualified Person satisfactory to the Province, in its sole discretion, certifying the quantity of Granular Material produced by such processing, all to the satisfaction of the Province. The quantities of Granular Material reported shall form the basis of the calculation of the Gravel Fee in accordance with section 1(a) of Appendix "B" of Schedule 13 ("Gravel License"), with the rate specified in Appendix "B", section 2 of Schedule 13 ("Gravel License").
- 15.13 The Contractor shall provide to the Province, no later than the 10th Working Day of each month, for the prior month, a Gravel/Aggregate Usage Report (H1263) regarding the quantities of Pit-Run removed from the Gravel Pit. The quantities of Pit-Run reported shall form the basis of the calculation of the Gravel Fee in accordance with section 1(b) of Appendix "B" of Schedule 13 ("Gravel License"), with the rate specified in Appendix "B", section 2 of Schedule 13 ("Gravel License").
- 15.14 The Contractor shall:
- (a) by no later than the fifth day prior to the Anniversary Date of each Contract Year;
 - (b) by no later than the fifth day prior to the Expiry Date; and
 - (c) at the written request of the Province,
- arrange for, and provide to the Province, at the Contractor's sole cost and expense, an independent quantity survey to be undertaken by a Qualified Person satisfactory to the Province, in its sole discretion, to confirm the quantity of Pit-Run and Granular Material removed from each Gravel Pit or located in the Contractor's Stockpiles, during the previous Contract Year (or portion thereof) or both.
- 15.15 The Contractor shall, not less than 14 days prior to commencing any work or operations in a Gravel Pit:
- (a) complete and submit to the Province a Sand and Gravel Operations Notice of Work (Form H1258) for extraction or processing of Pit-Run and/or Granular Material in excess of 1,000 m³; and
 - (b) complete and submit to the Province a Routine Pit Operations Safety Checklist (Form H1276) for extraction or processing of Pit-Run and/or Granular Material less than 1,000 m³.

15.16 If applicable, prior to the Renewal Term of the Option B Bonds pursuant to section 9.13, the Contractor shall provide to the Province on or around the commencement of the Bonds' Renewal Term (as defined in the Bonds) or the date of commencement of the replacement bonds, written verification issued by the Contractor's surety company, in respect of the amount payable as the premium, to obtain and maintain such extended bonds or additional or replacement bonds.

16. FINANCIAL AUDIT

16.1 The Province may, in its sole discretion, conduct a financial and accounting audit of the Contractor, including in respect of the Contractor's (and its partners', joint venture members' and unit holders', if applicable) performance, observance and discharge of its obligations under this Agreement and of the Contractor's current and ongoing capacity to perform, observe and discharge such obligations, such audit to include the right to inspect and take copies of the books and records of the Contractor, and its partners, joint venture members, if applicable, upon reasonable notice and at reasonable times.

16.2 The Contractor shall fully co-operate with the Province in conducting an audit under section 16.1.

16.3 The Contractor shall, upon the request of the Province, provide to the Province a copy of the audited (or if unavailable, unaudited) financial statements of the Contractor, and to the extent necessary to consider the Contractor's performance, observance and discharge of its obligations under this Agreement and of the Contractor's current and ongoing capacity to perform, observe and discharge such obligations.

16.4 The Contractor shall prepare such financial information, reports or statements relating to the Contractor's financial condition and accounting records, including sufficient information, reports and statements relating to the financing, funding and equity structures, resources and facilities available to the Contractor to enable it to perform, observe and discharge and to continue to perform, observe and discharge its obligations under this Agreement, as the Province may request and shall deliver the same to the Province at such time(s) as the Province may specify.

17. QUALITY MANAGEMENT SYSTEM

17.1 The Contractor shall incorporate the principles of quality management as detailed in ISO 9001:2008 and/or ISO 9001:2015 "Quality Management Systems - Requirements" in the Quality Management System.

17.2 In addition to the processes required to be written for the ISO 9001:2008 and/or ISO 9001:2015 Standard including: control of documents, control of records, internal audit, control of non-conforming product, corrective action and preventative action, the Contractor shall also be required to include processes for an environmental management plan and Article 15 ("Records and Reports") and all Services.

In addition, the QMS shall include:

- (a) the necessary processes and procedures to ensure performance of the Services in accordance with this Agreement;
- (b) include a process for work identification, which identifies, prioritizes and plans, schedules, manages, records, tracks responses and monitors completion of Services; and

- (c) an environmental management plan that:
 - (i) includes processes to ensure best practices outlined in the Province's manual, "Environmental Best Practices for Highway Maintenance Activities" are followed when completing Services. In addition, the environmental management plan shall include processes for obtaining and maintaining environmental permits and approvals, monitoring and reporting, performing environmental management plan quality audits, control of non-conforming services, corrective actions and opportunities for improvement and environmental awareness and regulatory compliance training for the Contractor and subcontractors; and
 - (ii) includes a salt management plan that utilizes best practices as described in the Transportation Association of Canada's (TAC) "Salt Management Guide" as required by Environment Canada under the Code of Practice: road salts environmental management.

- 17.3 Throughout the Term, the Contractor shall continuously monitor the effectiveness of, implement, maintain, revise and document, the Quality Management System so that it reflects current practices and enables the Contractor to perform and deliver all Services in accordance with this Agreement, and to comply with the other terms of this Agreement.

- 17.4 The Contractor shall provide on or before the Anniversary Date of each Contract Year Quality Management System revision reports that provide sufficient information concerning revisions to the Quality Management System to evidence that all Services are being performed and delivered in accordance with the terms of this Agreement and if no revisions have occurred, then a nil report shall be forwarded. These annual revision reports and their contents are subject to the Province's satisfaction and acceptance.

- 17.5 The Contractor acknowledges and agrees that nothing in the Quality Management System shall in any way derogate from the Contractor's obligations under this Agreement, and that if there is any conflict between the Quality Management System, or any part thereof, and the terms of the Agreement, the terms of this Agreement shall prevail.

- 17.6 The Province shall conduct monitoring and quality audits at times and in a manner determined by the Province, in its sole discretion, in order to ensure the Contractor's compliance with the terms of this Agreement through a review of the Contractor's work activities and performance results and to verify the status of the processes, methods, documentation, records and conditions which are necessary for the Contractor's compliance with the terms of this Agreement.

- 17.7 The Province shall 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.

- 17.8 The Contractor shall 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 shall confirm the rectification in writing to the Province.

- 17.9 The Province shall pay the Contractor the QMS Payment in accordance with the terms of Schedule 5 ("Maintenance Services Fee").

18. DEFAULT AND REMEDIES

18.1 Any of the following events shall 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, but not limited to, the Gravel License and the Commercial Vehicles Permit, 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 deliver to the Province notice that there has occurred or is continuing a default under this Agreement and that 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;
- (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, condition (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)* R.S.C. 1985, c. B-3 is made by, the Contractor;
- (l) a compromise or arrangement is proposed in respect of the Contractor under the *Companies' Creditors Arrangement Act (Canada)* R.S.C. 1985, c. C-36;
- (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 consent of the Province, assigns, sells or in any manner disposes of or encumbers all or any of its rights or interests in this Agreement;
- (q) without the prior written consent of the Province, the effective control or ownership (whether direct or indirect, legal or beneficial) of the Contractor changes from that represented in subsection 2.1(j);
- (r) any action is taken to enforce any security interest, charge or encumbrance granted, created or issued by the Contractor; or
- (s) the failure of the Contractor to comply with any of the requirements under section 9.15.

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

- (a) pursue any remedy available to it at law or in equity;
- (b) retain as a holdback from any payment due to the Contractor under section 12.1:
 - (i) if the Event of Default is a failure to perform Quantified Maintenance Services in accordance with this Agreement, an amount equal to twice the value:
 - A. of the Unit Prices set out in Schedule 2 (“Quantified Maintenance Services”) for the Unit Price Items of Quantified Maintenance Services not performed, and
 - B. of the Lump Sum Values set out in the approved Two-Year Quantified Work Plan for the Lump Sum Items of Quantified Maintenance Services not performed; and/or
 - (ii) if the Event of Default is a failure to perform Routine Maintenance Services in accordance with this Agreement, an amount equal to twice the value of the Routine Maintenance Services not performed, such value to be determined by the 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 shall 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 subsection 18.2(b);
- (d) require the Contractor to cure the Event of Default within a time period specified by the Province;
- (e) if an Event of Default with respect to which an amount has been retained as a holdback under subsection 18.2(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 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, then the Province may keep the amount retained as a reduction of fees otherwise payable to the Contractor under section 1 of Schedule 5 (“Maintenance Services Fee”);
- (f) waive the Event of Default;
 - (g) terminate this Agreement, subject to the expiration of any time period specified by a notice delivered pursuant to subsection 18.2(d); and
 - (h) terminate this Agreement and pursue the remedy provided for in the Bonds, without the requirement for the Province to provide any notice, if the Event of Default is as described in subsection 18.1(s).

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

18.4 No failure or delay on the part of either party to complain of an act or failure of the other party or to declare such other party in default, irrespective of how long such act or failure to act shall continue, shall constitute a waiver by such party of its rights under this Agreement.

18.5 No interest shall be payable by the Province on any amount retained as a holdback in accordance with subsection 18.2(b).

19. DISPUTE RESOLUTION

19.1 Subject to section 19.4, with respect to disputes arising out of or in connection with any provision of this Agreement, the Contractor shall consider in good faith whether to elect to follow the Dispute Resolution Protocol pursuant to Schedule 15 (“Dispute Resolution Protocol”) in attempting to resolve the dispute.

19.2 The Contractor shall confirm in writing to the Province any election by the Contractor to follow the Dispute Resolution Protocol in respect of a particular dispute and upon any such election being made, unless otherwise agreed by the parties, the Dispute Resolution Protocol shall be followed.

19.3 Nothing in this Article 19 obliges the Contractor to elect to follow Schedule 15 (“Dispute Resolution Protocol”) in respect of a particular or any dispute.

19.4 All disputes arising out of or in connection with sections 6.3, 6.4(a), 6.7, 7.7, section 6 of Schedule 6 (“Annual Adjustment Process”), subsection 1.3(d) of Schedule 2 (“Quantified Maintenance Services”) and section 3 of Schedule 1 (“Specifications”) and with regard to payment for Additional

Maintenance Services pursuant to section 12.2 to shall be referred to and finally resolved by arbitration pursuant to the *Arbitration Act*, R.S.B.C. 1996, c. 55.

19.5 The place of arbitration shall be Victoria, British Columbia.

20. FORCE MAJEURE

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

- (a) the party under this Agreement directly affected shall notify the other party under this Agreement immediately, and shall use its best efforts to remove, curtail or contain the cause of the delay, interruption or failure and to resume with the least possible delay performance of its duties, covenants and obligations under this Agreement; and
- (b) if the party under this Agreement directly affected by the event of Force Majeure is the Contractor, then:
 - (i) the Province shall not be obliged to pay to the Contractor any amounts pursuant to section 1 of Schedule 5 ("Maintenance Services Fee") attributable, as determined by the Province, in its sole discretion, to the period during which the event of Force Majeure is continuing;
 - (ii) the Province shall, subject to the terms of this Agreement, pay to the Contractor fees monthly in arrears, for the time period while the Force Majeure continues which fees shall be the sum of the following:
 - A. the amount that is equal to the per diem value of the Quantified Maintenance Services that applies to the Contract Year during which the event of Force Majeure is continuing, for each day of the applicable monthly period while the Force Majeure continues; and
 - B. the direct costs incurred by the Contractor (excluding overhead and profit) to perform Routine Maintenance Services while the event of Force Majeure continues;
 - (iii) the Province's obligation to pay fees under subsection 20.1(b)(ii) is conditional on the Contractor providing to the Province a written statement of account in respect of the fees claimed, including evidence satisfactory to the Province of the direct costs of the Contractor described in subsection 20.1(b)(ii)B; and
 - (iv) in no event shall the Province be obliged to pay fees to the Contractor under subsection 20.1(b)(ii) in excess of the amounts pursuant to section 1 of Schedule 5 ("Maintenance Services Fee") attributable, as determined by the Province, to the same period and which would have been payable had the event of Force Majeure not occurred.

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

- 20.3 If a party under this Agreement:
- (a) is aware or is made aware, through its dealings with the insurance industry or the highway maintenance industry, that an event of Force Majeure described in subsection 1.1(II)(ii) is likely to occur, then that party shall notify the other party and both parties shall enter into good faith negotiations with a view to entering into a mutually acceptable agreement that shall prevent the event of Force Majeure from occurring;
 - (b) is aware or is made aware, through its dealings with the insurance industry or the highway maintenance industry, that an event of Force Majeure described in subsection 1.1(II)(ii) has occurred, then that party shall notify the other party immediately;
 - (c) giving notice under subsection 20.3(b) is the Contractor, then the Province shall, as soon as reasonably practicable, notify the Contractor whether or not the Province is satisfied, in its sole discretion, that the matter described in the notice constitutes an event of Force Majeure described in subsection 1.1(II)(ii), and the Province's notice shall be final and binding; and
 - (d) giving notice under subsection 20.3(b) is the Province, or if the Province has notified the Contractor under subsection 20.3(c) that the matter described in the Contractor's notice constitutes an event of Force Majeure described in subsection 1.1(II)(ii), then the Contractor shall 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.

21. NOTICES

21.1 Any notice, document, statement, report, demand to be given or made under this Agreement, shall be in writing and shall be given or made by personal delivery, courier, or by mail in Canada with postage prepaid to the following addresses or transmitted by electronic mail, to the following electronic mail addresses:

- (a) if to the Province

Ministry of Transportation and Infrastructure
XXXX District Office
Address
City, BC Postal Code
Email: District Manager's email address here

Attention: District Manager, Transportation

with a copy to:

Ministry of Transportation and Infrastructure
Rehabilitation and Maintenance Branch
4C-940 Blanshard Street
Victoria, BC V8W 3E6
Email: Maintenance.Programs@gov.bc.ca

Attention: Manager, Maintenance Agreements Procurement

(b) if to the Contractor:

@
@
@
Email: @

Attention: @

or such other contact and address as may be notified in writing by either party to the other from time to time during the Term.

- 21.2 Any notice, document, statement, report, or demand, if mailed, shall be deemed given to and received by the addressee on the third Working 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 shall be deemed given to and received by the addressee when actually delivered to the particular address set out above.
- 21.3 Any notice, document, report, statement or demand, if transmitted by electronic mail, shall be deemed given to and received by the addressee on the day on which it was transmitted (or, if such day is not a Working Day or such notice or communication was delivered or transmitted after 5:00 pm (addressee's time), on the next following Working Day).

22. INDEMNITY

- 22.1 The Contractor shall indemnify and save harmless the Province from and against all claims, liabilities, demands, losses, damages, costs and expenses, legal defence costs and expenses, fines, penalties, assessments and levies made against or incurred, suffered or sustained by the Province at any time or times (whether before or after the expiration or sooner termination of this Agreement) where the same or any of them are based upon or arise out of or from anything done or omitted to be done by the Contractor, the Controlled Persons, or any of them pursuant to this Agreement including, but not limited to, any claim against the Province for failure to supervise or inspect the work which is performed by the Contractor pursuant to this Agreement which indemnity shall survive the expiration or sooner termination of this Agreement.
- 22.2 Notwithstanding the provisions of the *Limitation Act*, S.B.C. 2012, c.13 the time for the Province to bring a claim for contribution or indemnity begins to run on the date on which the Province is called upon to make a payment in respect of a claim to which this indemnity may apply.

23. JOINT AND SEVERAL LIABILITY AND GUARANTEE RE JOINT VENTURES

- 23.1 If the Contractor is a joint venture member, each joint venture member comprising the joint venture:
- (a) shall be jointly and severally liable for,
 - (b) shall cause the performance of and compliance with, and
 - (c) hereby unconditionally and irrevocably guarantees,

the representations, warranties, covenants, obligations and agreements of the Contractor that are made, given or incurred by the Contractor, or to which the Contractor is otherwise subject, under, pursuant to, or as a result of or arising from this Agreement notwithstanding the nature of the legal relationship between the respective joint venture members.

24. MISCELLANEOUS

- 24.1 The Contractor shall treat as confidential and shall 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, any information supplied to, obtained by, or which comes to the knowledge of the Contractor as a result of this Agreement, except insofar as such publication, release or disclosure is required by law or is necessary to enable the Contractor to fulfill the obligations of the Contractor under this Agreement.
- 24.2 The Contractor shall 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.
- 24.3 This Agreement (including all Schedules hereto) constitutes the entire agreement between the parties under this Agreement in respect of the subject matter of this Agreement and no understandings, representations, contracts, or agreements, oral or otherwise, exist between the parties with respect to the subject matter of this Agreement, except as expressly set out in this Agreement. The Contractor agrees that in entering into this Agreement, the Contractor has not and does not rely upon any previous representation of the Province, or of servants, employees, agents, or representatives of the Province, whether expressed or implied, or upon any inducement or agreement of any kind or nature. All prior understandings, negotiations, representations, contracts or agreements are hereby canceled.
- 24.4 Each of the parties under this Agreement 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 Agreement.
- 24.5 Time shall be of the essence of this Agreement.
- 24.6 All provisions of this Agreement in favour of the Province and all rights and remedies of the Province, either at law or in equity, shall survive the expiration or termination of this Agreement.
- 24.7 This Agreement shall enure to the benefit of and be binding upon the Province and its assigns and Contractor and its successors and permitted assigns.
- 24.8 No waiver by either party under this Agreement of a breach or default by the other party in the observance, performance or compliance of any of its obligations under this Agreement 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 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, shall not constitute a waiver by such party of any of its rights against the other party.

- 24.9 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 shall not be affected or impaired thereby and shall be valid and enforceable to the extent permitted by law.
- 24.10 Except as otherwise set forth in this Agreement, this Agreement may only be amended by a further written agreement executed by both parties under this Agreement.
- 24.11 The Contractor shall 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.
- 24.12 This Agreement may be executed in counterparts by each party under this Agreement signing a separate copy of it (including photocopy, or Adobe Acrobat copy) and delivering it to the other by e-mail, with an originally executed copy of it to follow by personal delivery, mail or courier pursuant to Article 21.

25. INTERPRETATION

- 25.1 A reference in this Agreement:
- (a) to a statute whether or not that statute has been defined, means a statute of the Province of British Columbia unless otherwise stated and includes every amendment to it, every regulation made under it and any enactment passed in substitution therefor or in replacement thereof; and
 - (b) to any other agreement between the parties under this Agreement means that other agreement as it may be amended from time to time by the parties.
- 25.2 Unless the context otherwise requires, any reference to “this Agreement” means this instrument, all of the Schedules attached to it, all Reference Documents, any and all Work Orders issued by the Province under this Agreement, and any reference in this Agreement to any Article, section, or subsection by number is a reference to the appropriate article, section, or subsection in this Agreement.
- 25.3 Each Reference Document must be read in its entirety (including, but not limited to, in respect of any capitalized words and phrases contained therein). In the event of any conflict or inconsistency between a word or phrase (a) expressly defined in this Agreement and (b) expressly defined in a Reference Document, the meaning ascribed to such word or phrase in that Reference Document shall prevail for the purposes of construing such Reference Document.
- 25.4 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.
- 25.5 In this Agreement, “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 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.

- 25.6 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.
- 25.7 If any one or more provisions of this Agreement are in conflict, then the provisions apply in the following prioritized order:
- (a) amending agreements and Province notices, in reverse chronological order;
 - (b) the provisions of the main body of this Agreement;
 - (c) the Local Area Specifications;
 - (d) the General Specifications; and
 - (e) the remaining Schedules.
- 25.8 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.
- 25.9 All dollar amounts expressed in this Agreement refer to lawful currency of Canada.
- 25.10 All dollar amounts expressed in this Agreement are expressed in an amount excluding GST and including all other applicable taxes, duties and other charges.
- 25.11 This Agreement shall be governed by, construed and interpreted in accordance with the laws of the Province of British Columbia and the federal laws of Canada applicable therein and the courts of competent jurisdiction, within the province of British Columbia, shall have exclusive jurisdiction with respect to any legal actions commenced to enforce the provisions of this Agreement.

[Remainder of Page Left Intentionally Blank.]

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

SIGNED on behalf of **Her Majesty the Queen in Right of the Province of British Columbia** by a duly authorized representative of the Minister Responsible for the Transportation Act on the ___ day of _____, 20__ in the presence of:

For the Minister Responsible for the Transportation Act

(Witness)

SIGNED ON BEHALF OF @ by a duly authorized representative of the Contractor on the ____ day of _____, 20__ in the presence of:

Name:
Title:

(Witness)