

SCHEDULE "23"

StockPile License

Definitions

1.01 In this Stockpile License, unless the context otherwise requires:

- (a) **"BCBC Improvements"** means any Premises or Building Equipment existing on the Stockpile Sites at any time during the Term;
- (b) **"Building Equipment"** means the same as in the Facilities License;
- (c) **"Contractor's Stockpiles"** means
 - (i) all stockpiles of Material located at the Stockpile Sites unprocessed or processed by or for the Contractor; and
 - (ii) all stockpiles of Material located at the Stockpile Sites processed by or for the previous highway maintenance contractor or the Province and which have been sold or transferred to the use of the Contractor;
- (d) **"Material"** means the same as in the Gravel License;
- (e) **"Stockpile Sites"** means the stockpile sites described in Appendix "I" attached to this Stockpile License; and
- (f) **"Subsisting Rights"** means the same as in the Gravel License.

Limits on License

2.01 The Contractor acknowledges and agrees that this Stockpile License does not grant to the Contractor any proprietary or property rights or interests in the Stockpile Sites.

2.02 This Stockpile License is subject to all Subsisting Rights.

2.03 The Contractor acknowledges and agrees with the Province that:

- (a) any interference with the rights of the Contractor under this Stockpile License by virtue of the exercise or operation of any of the Subsisting Rights will not constitute a breach of the obligations of the Province under this Stockpile License and the Contractor releases and discharges the Province from and against any claim for loss or damage arising directly or indirectly out of any such interference;
- (b) all costs and expenses, direct or indirect, that arise out of any interference by the Contractor with any of the Subsisting Rights will be borne by the Contractor; and
- (c) the Contractor will not commence or maintain proceedings under section 65 of the *Land Act*, R.S.B.C. 1996, c. 245, in respect of any interference with rights of the Contractor under this Stockpile License arising directly or indirectly out of the exercise or operation of any of the Subsisting Rights.

Contractor's Covenants

3.01 The Contractor will:

- (a) enter upon and occupy the Stockpile Sites solely for the purpose of storing and stockpiling the Material in order to perform its obligations under the Maintenance Agreement, and in accordance with the terms and conditions of this Stockpile License;
- (b) not bring, keep, store, or stockpile or suffer to be brought, kept, stored, or stockpiled in or upon the Stockpile Sites any equipment, machinery, vehicles, supplies, goods, structures, substances or things other than the Material without the prior written consent of the Minister;
- (c) not remove Material from the Stockpile Sites except from locations or stockpiles approved by the Minister or from the Contractor's Stockpiles;
- (d) clearly mark and segregate from other stockpiles each of the Contractor's Stockpiles in a manner satisfactory to the Minister;
- (e) not place or maintain any improvements on any of the Stockpile Sites without the prior written consent of the Minister;
- (f) comply with any directives issued by the Minister in respect of environmental protection or preservation arising from the Contractor's occupation or use of the Stockpile Sites;
- (g) provide adequate security for each of the Stockpile Sites and prevent entry to the Stockpile Sites or removal of Material from the Stockpile Sites by persons unauthorized by the Minister;
- (h) provide drainage control measures at the Stockpile Sites as required by the Province;
- (i) not interfere with the activities of any person authorized by the Minister to enter upon and use any of the Stockpile Sites under a prior or subsequent licence granted by the Province;
- (j) permit persons authorized by the Province to enter on any of the Stockpile Sites and remove Material except from the Contractor's Stockpiles;
- (k) observe, abide by and comply with all laws, bylaws, orders, directions, ordinances and regulations of any competent governmental authority in any way affecting the Stockpile Sites, any improvements on the Stockpile Sites, or their use;
- (l) make and keep each of the Stockpile Sites in a safe, clean and sanitary condition satisfactory to the Minister and, unless otherwise specified by notice in writing by the Minister to the Contractor, make and keep safe, clean and sanitary any improvements at the Stockpile Sites;
- (m) not commit or suffer any willful or voluntary waste, spoil or destruction on the Stockpile Sites or do or cause or permit to be done on the Stockpile Sites anything that may be or become a nuisance or annoyance to the owners or occupiers of adjoining land other than as expressly

authorized under this Stockpile License;

- (n) permit the authorized representatives of the Minister to enter upon the Stockpile Sites at any time for any purpose;
- (o) pay and discharge when due all taxes, levies, charges and assessments now or hereafter assessed, levied or charged which relate to the Stockpile Sites or any improvements on the Stockpile Sites provided that if the Contractor does not pay the taxes as required the Province will have the right to pay such charges and to recover the same forthwith from the Contractor unless such taxes are being contested in good faith by the Contractor and the Contractor may in law withhold payment of them and in such event the Contractor will pay all costs of contestation and will not in any way render any of the Stockpile Sites subject to seizure;
- (p) pay for the cost of the supply to, or use and consumption on the Stockpile Sites of electricity, gas, water and other utilities provided that the cost of such utilities is determined by separate metering;
- (q) unless otherwise directed by the Minister, at all times keep and maintain any improvements, save for any BCBC Improvements, on the Stockpile Sites, in a state of repair and condition at least equivalent to the state of repair and condition of such improvements at the commencement of the Term or at the time that the improvements were made, whichever is later, and to the same extent as would a prudent and careful owner in occupation, reasonable wear and tear only excepted; and
- (r) repair any improvements, save for any BCBC Improvements, on the Stockpile Sites in accordance with directives as may be issued by the Province from time to time.

Province's Covenants

4.01 The Province will:

- (a) advise the Contractor from time to time of the identity of those persons authorized by the Province to enter upon and use any of the Stockpile Sites;
- (b) within 30 days after the Commencement Date, provide the Contractor with an inventory (showing quantities and locations) of all stockpiles of Material at the Stockpile Sites as at the Commencement Date;
- (c) within 7 days of each Anniversary Date and of the Expiry Date, provide the Contractor with a report showing the quantity of Material removed during the preceding Contract Year from each Stockpile Site by the Province or persons authorized by the Province (other than the Contractor); and
- (d) not, without the consent of the Contractor, remove or authorize other persons to remove Material from the Contractor's Stockpiles.

Termination

5.01 The Province may, in its sole discretion, delete any of Stockpile Sites from this

Stockpile License by giving to the Contractor at least **30** days written notice of the deletion and sections 5.02, 5.03. and 5.04, of this Stockpile License will apply to any deleted Stockpile Site as if this Agreement had been terminated or had expired in respect of that Stockpile Site as of the effective date of deletion.

- 5.02** On the expiration or earlier termination of this Agreement, the Contractor will
- (a) cease occupation of the Stockpile Sites; and
 - (b) remove all buildings, machinery, plant equipment, apparatus and any other improvements or fixtures of the Contractor at the Stockpile Sites.
- 5.03** Any buildings, machinery, plant equipment, apparatus and any other improvements or fixtures of the Contractor remaining at the Stockpile Sites later than 30 days after expiration or termination of this Agreement:
- (a) will be absolutely forfeited to and become the property of the Province; and
 - (b) may be removed from the Stockpile Sites by the Province and the Contractor will pay to the Province, on demand, all expenses incurred by the Province, including the costs of removal.
- 5.04** If, on the expiration or termination of this Agreement, the Contractor has not made arrangements with the prior written approval of the Province to transfer the Contractor's rights in respect of Material in the Contractor's Stockpiles to the highway maintenance contractor retained by the Province to replace the Contractor, then the Province will:
- (a) arrange for a quantity survey of all processed Material (excluding processing by-products) in the Contractor's Stockpiles to be undertaken by a person reasonably qualified to do so in the opinion of the Province; and
 - (b) make a payment to the Contractor of \$1.75 per cubic metre of such Material in the Contractor's Stockpiles based on the quantity survey undertaken pursuant to subsection 5.04(a) provided that the Material is in accordance with the Province's specifications.

Interpretation

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

APPENDIX "I" (TO STOCKPILE LICENSE)

STOCKPILE NO.	STOCKPILE NAME
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