

SCHEDULE "13"

GRAVEL LICENSE

1. Definitions

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

- (a) "Contractor's Stockpiles" means:
 - (i) all stockpiles of Granular Material and Pit-Run from the Gravel Pits whether processed by or for the Contractor, or stockpiled by or for the Contractor, from or with Pit-Run from the Gravel Pits; and
 - (ii) all stockpiles of Granular Material located at the Gravel Pits processed by or for the previous highway maintenance contractor or the Province and which have been sold to or transferred for the use of the Contractor;
- (b) "Gravel Fee" means the fee for Pit-Run and Granular Material as set forth in Appendix "B" attached to this Gravel License;
- (c) "Gravel Pits" means those gravel pits and quarries described in Appendix "A" attached to this Gravel License;
- (d) "Code" means the Health, Safety and Reclamation Code for Mines in British Columbia established pursuant to the Mines Act;
- (e) "Mines Act" means the *Mines Act*, R.S.B.C. 1996, c. 293;
- (f) "Province Improvements" means any premises or building equipment on or in the Gravel Pits at the Commencement Date, or as provided in a written notice from the Province to the Contractor;
- (g) "Subsisting Rights" means:
 - (i) all subsisting grants to or rights of any person made or acquired under the *Land Act*, R.S.B.C. 1996, c. 245, *Coal Act*, S.B.C. 2004, c. 15, the *Forest Act*, R.S.B.C. 1996, c. 157, the *Mineral Tenure Act*, R.S.B.C. 1996, c. 292, or any extension or renewal of the same, whether or not the Contractor has actual notice of them;
 - (ii) any prior dispositions made pursuant to the *Land Act*, R.S.B.C. 1996, c. 245;
 - (iii) the exceptions and reservations of rights, interests, privileges and titles referred to in section 50 of the *Land Act*; and
 - (iv) rights reserved to the Province under section 219 of the *Land Title Act*, R.S.B.C. 1996, c. 250, if applicable.

2. Limits on License

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

2.2 This Gravel License is subject to all Subsisting Rights.

2.3 The Contractor acknowledges and agrees with the Province that:

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

3. Contractor's Covenants

3.1 The Contractor shall:

- (a) accept the Gravel Pits in their present condition and on an "as is" basis in all respects;
- (b) only use Pit-Run and Granular Material removed from the Gravel Pits for the purpose of performing its obligations under this Agreement;
- (c) not remove Pit-Run and Granular Material from the Gravel Pits except from locations or stockpiles on the Gravel Pits approved by the Province or from the Contractor's Stockpiles;
- (d) clearly mark and segregate each of the Contractor's Stockpiles from other stockpiles on the Gravel Pits, in a manner satisfactory to the Province;
- (e) conduct its operations at the Gravel Pits in accordance with, and comply with, observe and abide by:
 - (i) the Mines Act and the Code;
 - (ii) the Standard Specifications for Highway Construction;
 - (iii) any applicable "pit development plan" or "gravel management plan" as may be established, introduced or amended by the Province from time to time by notice in writing from the Province to the Contractor;
 - (iv) any directives issued by the Province in respect of environmental protection or preservation arising from the Contractor's occupation or use of the Gravel Pits; and
 - (v) all other laws, bylaws, orders, directions, ordinances and regulations of any competent governmental authority in any way affecting the Gravel Pits, improvements on the Gravel Pits, and their use;
- (f) when directed by the Province, pay for the cost of clearing, grubbing, site preparation and pit development to access Pit Run and Granular Materials;

- (g) not place or maintain any improvements on any of the Gravel Pits without the prior written consent of the Province;
- (h) make and keep each of the Gravel Pits in a safe, clean and sanitary condition satisfactory to the Province and, unless otherwise specified by notice in writing by the Province to the Contractor, make and keep any improvements at the Gravel Pits in a safe, clean and sanitary condition satisfactory to the Province;
- (i) unless otherwise directed by the Province, at all times keep and maintain any Province Improvements on the Gravel Pits in a state of repair and condition at least equivalent to the state of repair and condition of such improvements at the commencement of the Term, or at the time the improvements were made, whichever is later, and to the standard of a prudent and careful owner in occupation, reasonable wear and tear the only exception;
- (j) repair any improvements on the Gravel Pits in accordance with directives as may be issued by the Province from time to time;
- (k) permit the authorized representatives of the Province to enter on any of the Gravel Pits at any time, for any purpose;
- (l) provide drainage control measures at the Gravel Pits, as required by the Province;
- (m) except with respect to the Contractor's Stockpiles, not interfere with the operations of other parties authorized by the Province to enter on and use the Gravel Pits, and coordinate its operations at the Gravel Pits with the operations of such other parties, to avoid any interference with each other's rights in respect of the Gravel Pits;
- (n) pay and discharge when due, all applicable taxes, levies, charges and assessments now or hereafter assessed, levied or charged which relate to the Gravel Pits or any improvements on the Gravel Pits, provided that if the Contractor does not pay or discharge the taxes, levies, charges or assessments as required, the Province shall have the right to pay or discharge such amounts and to recover same forthwith from the Contractor, unless the Contractor has not paid or discharged such taxes, levies, charges or assessments when required, solely because the Contractor is, in good faith, contesting payment of same and the Contractor is permitted by law to withhold payment during such contestation, and provided further that such contestation does not in any way render any of the Gravel Pits subject to seizure. Any such contestation (including, for greater certainty, any taxes, levies, charges and assessments for which the contestation is not successful and/or that result from the contestation) shall be at the sole cost and expense of the Contractor.
- (o) not commit or suffer any willful or voluntary waste, spoil or destruction of the Gravel Pits, the Pit-Run or Granular Material or do or cause or permit to be done on the Gravel Pits anything that may be or become a nuisance or annoyance to the owners or occupiers of adjoining land other than as expressly authorized under this Gravel License;
- (p) not remove Granular Material from the Gravel Pits until the quantity survey report in respect of such Granular Material has been delivered to the Province pursuant to section 6.3 of this Schedule, and section 15.12 of this Agreement;
- (q) not remove Granular Material from the Gravel Pits for storing or stockpiling outside the Gravel Pits without the prior approval of the Province;
- (r) not remove Pit-Run from the Gravel Pits for processing outside the Gravel Pits without the prior approval of the Province;

- (s) pay for the cost of the supply to, or use and consumption on, the Gravel Pits of electricity, gas, water and other utilities provided that the cost of such utilities is determined by separate metering;
- (t) not operate any Gravel Pit in a manner which shall contaminate remaining Pit-Run and Granular Material nor leave any Gravel Pit in a condition which shall limit its future use;
- (u) not waste any portion of the products of crushers or screening plants that can be used, and shall stockpile or use any such product as directed by the Province; and
- (v) not dump or dispose of any items in the Gravel Pits.

4. Province's Covenants

4.1 The Province:

- (a) shall advise the Contractor from time to time of the identity of those persons authorized by the Province to enter on and use any of the Gravel Pits;
- (b) may, in its sole discretion, undertake surveys for verification of quantities information submitted by the Contractor;
- (c) shall, within 30 days after the Commencement Date, provide the Contractor with a report (showing quantities and locations) of all stockpiles of Granular Material at the Gravel Pits as of the Commencement Date; and
- (d) shall not, without the consent of the Contractor, remove or authorize other persons to remove Granular Material from the Contractor's Stockpiles.

5. Gravel Fee

- 5.1 In consideration of the License granted by the Province to the Contractor in this Gravel License, the Contractor shall pay the Gravel Fee to the Province in accordance with Appendix B to this Schedule.

6. Records and Reports

- 6.1 The Contractor shall maintain books of account and records in accordance with sections 15.2(a) and (d) of this Agreement and shall permit the Province, its servants and agents to copy or audit such books of accounts and records pursuant to section 15.2(f) of this Agreement.
- 6.2 The Contractor shall supply to the Province such information relating to removal of Granular Material from the Gravel Pits as the Province may reasonably require.
- 6.3 The Contractor shall provide to the Province the quantity survey reports with respect to the processing of Granular Material, in accordance with section 15.12 of this Agreement, the detailed statements with respect to the removal of Pit-Run from a Gravel Pit, in accordance with section 15.13 of this Agreement, and the independent quantity surveys confirming the quantity of Pit-Run and Granular Material removed from each Gravel Pit, in accordance with section 15.14 of this Agreement.
- 6.4 Any independent quantity survey provided to the Province pursuant to section 15.14 of this Agreement shall be reconciled against the quantity survey reports and the detailed statements provided pursuant to section 15.12 and 15.13, respectively, of this Agreement, and in the event of any discrepancies, at the sole discretion of the Province, the independent quantity shall prevail, and the Gravel Fee owing shall be adjusted in accordance with the Province's calculation.

6.5 The Contractor shall provide to the Province the Sand and Gravel Operations Notice of Work (Form H1258) and Routine Pit Operations Safety Checklist (Form H1276) pursuant to section 15.15 of this Agreement.

7. Termination

7.1 If the Contractor breaches or fails to observe or perform any material covenant or agreement under this License, that is to be observed or performed, then the Contractor shall be in default under this License.

7.2 If the default in section 7.1 of this Schedule remains unremedied for any period in excess of five (5) days after notice of such default has been given by the Province to the Contractor, or if a Gravel Pit is deserted or abandoned for sixty (60) consecutive days, then the Province may, at its option and without prejudice to its other remedies, terminate this Gravel License upon giving written notice of termination to the Contractor and thereafter, this Gravel License is immediately forfeited and void.

7.3 On the expiration or termination of this Gravel License, the Contractor shall:

- (a) cease occupation of the Gravel Pits; and
- (b) at sole cost and expense, remove all buildings, machinery, plant, equipment and apparatus and any other improvements or fixtures owned or leased by the Contractor located at the Gravel Pits.

7.4 Any buildings, machinery, plant equipment and apparatus and other improvements and fixtures owned or leased by the Contractor remaining at the Gravel Pits later than 30 days after expiration or termination of this Gravel License:

- (a) shall be absolutely forfeited to, and become the property of, the Province; and
- (b) may be removed from the Gravel Pits by the Province at the Contractor's sole cost and expense.

7.5 If, on the expiration or termination of the Gravel License, the Contractor has not obtained the prior written consent of the Province to transfer the Contractor's rights in respect of the Granular Material in the Contractor's Stockpiles to the highway maintenance contractor retained by the Province to replace the Contractor, the Province shall:

- (a) arrange for a quantity survey of all Granular Material (excluding processing by-products) in the Contractor's Stockpiles, to be undertaken by a person reasonably qualified to do so, in the sole discretion of the Province; and
- (b) make a payment to the Contractor of \$2 per cubic metre of such Granular Material in the Contractor's Stockpiles that is in accordance with the Province's specifications, based on the quantity survey undertaken pursuant to section 7.5(a) of this Schedule.

8. Removal of Gravel Pit

8.1 The Province may, in its sole discretion, without liability or compensation to the Contractor, delete any of the Gravel Pits from this Gravel License by giving to the Contractor at least 30 days' written notice of the deletion and sections 7.3, 7.4 and 7.5 of this Schedule shall apply to any deleted Gravel Pit as if this Gravel License had been terminated or had expired in respect of that Gravel Pit as of the effective date of deletion.

8.2 In the event a Gravel Pit is spent and no longer operational at any time during the Term, the Province may invoke section 8.1 of this Schedule.

9. Contact Person

- 9.1 Prior to the commencement of work or operations at a Gravel Pit, the Contractor shall provide to the (District) Operations Manager, the name of a person, or persons who the Contractor proposes to act as the pit manager; provided that such person or persons shall not be permitted to act as the pit manager unless approved, in writing, by the Province.
- 9.2 The Contractor shall only propose a person to act as pit manager, if such person:
- (a) possesses the qualifications established by the Mines Act and/or the Code; and
 - (b) attends the Gravel Pits daily, when the pit or quarry is in operation.
- 9.3 The Province may, in its sole discretion, upon written notice to the Contractor, resume the role of pit manager at any point during the Term.

10. Interpretation

- 10.1 Unless the context otherwise requires, any reference to "this Gravel License" means this Gravel License and all of the appendices to it.
- 10.2 The headings or captions in this Gravel License are inserted for convenience only and do not form a part of this Gravel License and in no way define, limit, alter or enlarge the scope or meaning of any provision of this Gravel License.
- 10.3 Each appendix attached to this Gravel License is an integral part of this Gravel License as if set out at length in the body of this Gravel License.
- 10.4 If any provision of this Gravel License or the application thereof to any person or circumstance is invalid or unenforceable to any extent, the remainder of this Gravel License 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.
- 10.5 All provisions of this Gravel License in favor 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 Gravel License.
- 10.6 No waiver by either party of a breach or default by the other party in the observance, performance or compliance of any of its obligations under this Gravel License 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.
- 10.7 Time shall be of the essence of this Gravel License.

APPENDIX "A" (TO SCHEDULE 13)

1. **Gravel Pits** Subject to any deletions made by the Province under section 8.1 of this Schedule, or subject to mutual agreement of the parties, the Gravel Pits are the gravel pits identified in this Appendix "A" to this Schedule.

| Pit Name | Pit Number | Pit Type | Easting | Northing | Latitude | Longitude | Pit Location | Notes |
|----------|------------|----------|---------|----------|----------|-----------|--------------|-------|
| @ | @ | @ | @ | @ | @ | @ | @ | @ |

APPENDIX "B" (TO SCHEDULE 13)

Gravel Fee

1. The Contractor shall pay to the Province a Gravel Fee at the applicable rate established for the Gravel Pits as set out in section 2 of this Appendix "B" to this Schedule, based on the quantity of Granular Material and Pit-Run from the Gravel Pits stockpiled at or removed from the Gravel Pits, in accordance with the following provisions:
 - (a) in the case of Granular Material processed by or for the Contractor from a Gravel Pit during a particular Contract Month, such fees shall be paid by set off against any sums due and owing by the Province to the Contractor under this Agreement after the delivery of the quantity survey report for such Granular Material in accordance with section 15.12 of this Agreement;
 - (b) in the case of any Pit-Run removed by or for the Contractor from Gravel Pits and used in unprocessed form for the purposes of this Agreement during a particular Contract Month, such fees shall be paid by set off against any sums due and owing by the Province to the Contractor under this Agreement after the delivery of the detailed statement(s) for such Pit-Run in accordance with section 15.13 of this Agreement; and
 - (c) the monthly fees and accounts shall be reconciled with the independent quantity survey required in accordance with section 15.14 of this Agreement.
2. The rate used to calculate the Gravel Fee for the Gravel Pits listed in Appendix "A" to this Schedule is \$1.75/m³.
3. All fees required to be paid by the Contractor to the Province under this Gravel License are exclusive of GST and all other applicable taxes. Provincial Sales Tax is not an applicable tax to the Gravel Fee and thus the Province shall not collect nor remit Provincial Sales Tax to the Ministry of Finance as a result.