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**SCHEDULE 1**

**DEFINITIONS AND INTERPRETATION**

**1. Definitions**

In this Agreement (including the recitals and Schedules), unless the context otherwise requires, the following expressions have the following meanings:

"A- Rating" means a rating of A- given by A.M Best Company to insurance companies to measure their financial strengths, or any other substitute for the rating of A- agreed between the Province and the Concessionaire pursuant to Section 20.11.13.

"Additional Permitted Borrowing" means, on any date, the amount equal to any amount of principal outstanding under the Senior Funding Agreements in excess of the amount of principal scheduled under the Senior Funding Agreements (as at the date of this Agreement) to be outstanding at that date other than pursuant to any rescheduling of the repayment of the Senior Debt agreed to between the Concessionaire and the Senior Funders, but only to the extent that:

- (a) this amount is less than or equal to the Additional Permitted Borrowing Limit; and
- (b) in respect of any Additional Permitted Borrowing, the Agent is not in material breach of its obligations under Section 2.6.1 of the Direct Agreement as it applies to such Additional Permitted Borrowing,

and provided further that any such excess amount of principal advanced as financing for any Eligible Change, Concessionaire Change, Subsequent Scheme or Improvement or additional work the Concessionaire is required to carry out from time to time in accordance with the terms of this Agreement or otherwise agreed by the Province pursuant to the provisions of this Agreement will not be counted as Additional Permitted Borrowing.

"Additional Permitted Borrowing Limit" means an amount equal to:

- (a) 10% of the Original Senior Commitment for any Additional Permitted Borrowing during the period from the date of this Agreement to the date on which the amount outstanding under the Senior Funding Agreements is reduced to 50% or less of the Original Senior Commitment; and thereafter
- (b) the higher of:
  - (i) 5% of the Original Senior Commitment; and

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- (ii) the amount of any Additional Permitted Borrowing outstanding on the last day of the period referred to in paragraph (a) above,

or such higher amounts as the Province may agree.

“Additional Works” means any change, improvement or addition made or proposed to be made to the design, layout or structure of the Project Facilities or any part thereof at any time after issue of the Completion Certificate (but excluding any Subsequent Scheme or Improvement).

“Adjacent Areas” means, subject to Section 8.6 [Acquisition of Land by Concessionaire] and Section 8.8 [Boundaries of Land], the areas shown or identified either as “Adjacent Areas” or “Temporary Adjacent Areas” on the date hereof on the drawing attached to and identified as Part 5 of Schedule 4 [Adjacent Areas] which do not form part of the Site but upon which part of the Undertakings are to be carried out, provided that each part of the Temporary Adjacent Areas will cease to be part of the Adjacent Areas from the date upon which they are turned over to the relevant Public Authority in accordance with the provisions of this Agreement.

“Adjusted Estimated Fair Value” means the Estimated Fair Value, adjusted as follows:

- (a) the aggregate of the following amounts will be deducted from the Estimated Fair Value:
- (i) the Post Termination Service Amounts (if a positive number);
  - (ii) the Bid Costs; and
  - (iii) amounts that the Province is entitled to set-off or deduct in accordance with Section 33.9 [Set-Off];
- (b) the aggregate of the following amounts will be added to the Estimated Fair Value:
- (i) all credit balances on any bank accounts held by or on behalf of the Concessionaire on the date that the Estimated Fair Value is calculated;
  - (ii) any insurance proceeds and other amounts owing to the Concessionaire (and which the Concessionaire is entitled to retain), to the extent not included in paragraph (b)(i); and
  - (iii) the Post Termination Service Amounts (if a negative number),

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to the extent that:

- (iv) the amounts referred to in paragraphs (b)(i), (ii) and (iii) have not been directly taken into account in calculating the Estimated Fair Value; and
- (v) the Province has received such amounts in accordance with this Agreement.

“Adjusted Highest Qualifying Bid Price” means the Highest Qualifying Bid Price, adjusted as follows:

- (a) the aggregate of the following amounts will be deducted from the Highest Qualifying Bid Price:
  - (i) any Post Termination Service Amounts actually paid by the Province to the Concessionaire to date;
  - (ii) the Bid Costs; and
  - (iii) amounts that the Province is entitled to set-off or deduct in accordance with Section 33.9 [Set-Off];
- (b) the aggregate of the following amounts will be added to the Highest Qualifying Bid Price:
  - (i) all credit balances on any bank accounts held by or on behalf of the Concessionaire on the date that the highest priced Qualifying Bid is received;
  - (ii) any insurance proceeds and other amounts owing to the Concessionaire, to the extent not included in paragraph (b)(i); and
  - (iii) the Post Termination Service Amounts (if a negative number),

to the extent that:

- (iv) the amounts referred to in paragraphs (b)(i), (ii) and (iii) have not been directly taken into account in that Qualifying Bid; and
- (v) the Province has received such amounts in accordance with this Agreement.

“Affiliate” means, in respect of any person or partnership (including the Concessionaire), a person that “controls”, is “controlled by” or under “common control with” such person or partnership in question, and for purposes of this definition, the term “control”

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(including with correlative meanings, the terms “controlled by” and under “common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of the person or partnership, whether through the ownership of voting securities, partnership interests, by contract or otherwise, and, without limiting the foregoing, in the case of the Contractor and the Operator, includes each of the shareholders of the Contractor and the Operator and any person that is an “affiliate” of a shareholder of the Contractor or the Operator as that term is defined in the *Business Corporations Act*, S.B.C. 2002, c. 57 as at the date of this Agreement and, in the case of the Concessionaire, includes each of the Unitholders of the Concessionaire, the Contractor and the Operator and any person that is an “affiliate” of a Unitholder of the Concessionaire, the Contractor or the Operator as that term is defined in the said *Business Corporations Act* as at the date of this Agreement. Notwithstanding the provisions of Section 2.6 of this Schedule 1, this definition will not be changed in the event of an amendment to the definition of “affiliate” contained in the said *Business Corporations Act* following the date of this Agreement.

“Agent” means any bank, trustee or other financial institution appointed by the Senior Funders to act in that capacity and such substitute as may be appointed from time to time in accordance with the Direct Agreement and notified to the Province in writing.

“Allowable Capital Expenditure” means the Capital Expenditure incurred by the Concessionaire as a consequence of a Relevant Works Change in Law, which will be calculated taking into account, inter alia, Section 35.2 [Mitigation].

"Allowable Service Loads" means for each of the Existing Anchors the greater of:

- (a) 70% of the value given in Table O; and
- (b) the actual service load established for that Existing Anchor in accordance with any test carried out by the Concessionaire pursuant to section 3.4.7 of Part 1 of Schedule 5 [Construction Output Specifications],

and for any anchor that replaces any of the Existing Anchors pursuant to Section 17.1.1, the actual service load established for that anchor at the time of its installation.

“Alternative Concept” has the meaning given in paragraph 1 of Section B of Part 3 of Schedule 5 [Design and Certification Procedure].

“Annual Percentage Increase” has the meaning given in Section 20.11.11.

“Annual Reconciliation Notice” has the meaning given in Section 32.2.2.

“Annual Report” has the meaning given in paragraph 1.6 of Part 2 of Schedule 15 [Reports].

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“APB Distribution” means, for the period during which any Additional Permitted Borrowing subsists, an amount equal to the aggregate of all Distributions made during that period up to an amount equal to the principal of the Additional Permitted Borrowing on the first day of that period.

“Approval” has the meaning given in Section 47.2 [Reasonableness].

“Asset Condition Retentions” means retentions from the Performance Payments made in accordance with Part 6 of Schedule 10 [Payment Retentions].

“Asset Preservation Performance Measures” means the Asset Preservation Performance Measures referred to in the O&M Output Specifications.

“Assets” means all assets and rights required to enable the Province or a successor contractor or concessionaire to own, operate, maintain and rehabilitate the Project Facilities in accordance with this Agreement, including:

- (a) land and buildings;
- (b) equipment and machinery;
- (c) Design Data;
- (d) books and records (including operating and maintenance manuals, health and safety manuals and other know-how);
- (e) spare parts, tools and other assets (together with any warranties in respect of assets being transferred);
- (f) revenues and any other contractual rights; and
- (g) intellectual property rights;

but excluding any assets and rights owned by the Province or BCTFA.

“Audit Team” has the meaning given in paragraph 2.1 of Section A of Part 3 of Schedule 5 [Design and Certification Procedure].

“Availability/Performance Deductions” means the aggregate of the Unavailability Deductions and the Performance Deductions.

“Availability/Performance Deductions Warning Notice” has the meaning given in Section 26.3.1.

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“BAFO Instructions” means the BAFO Instructions issued in respect of the Project on January 31, 2005, as amended.

“Base Annual Premiums” has the meaning given in Section 20.11.10.1.

“Base Initial Premiums” has the meaning given in Section 20.11.5.1.

“Base Senior Debt Termination Amount” means, subject to Section 2.3.4, the aggregate of:

- (a) all amounts outstanding at the Termination Date (including interest and Default Interest accrued as at that date and all costs and expenses payable to the Senior Funders under the Senior Funding Agreements in respect of costs and expenses actually incurred by the Senior Funders in enforcing the Senior Funding Agreements) from the Concessionaire to the Senior Funders under the Senior Funding Agreements including in respect of Permitted Borrowing; and
- (b) all amounts (including Hedge Termination Amounts and other breakage costs and any premiums on redemption of bonds, notes or other evidence of indebtedness) payable by the Concessionaire to the Senior Funders as a result of or relating to a prepayment under the Senior Funding Agreements including in respect of Permitted Borrowing, subject to the Concessionaire and the Senior Funders mitigating all such costs to the extent reasonably possible (the Province acknowledging that that standard market make whole provisions and Hedge Termination Amounts are not capable of mitigation),

LESS, to the extent it is a positive amount, the aggregate of (without double-counting in relation to the calculation of the Base Senior Debt Termination Amount or the amounts below):

- (c) all credit balances on any bank accounts held by or on behalf of the Concessionaire on the Termination Date to the extent that such credit balances are available to the Funders for application against amounts outstanding under the Funding Agreements;
- (d) [not used]
- (e) all amounts, including Hedge Termination Amounts and other breakage costs, payable by the Senior Funders or others to the Concessionaire as a result of prepayment of amounts outstanding under the Senior Funding Agreements including in respect of Permitted Borrowing;
- (f) any Additional Permitted Borrowing and any interest and Default Interest on such Additional Permitted Borrowing; and

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- (g) all other amounts received by the Senior Funders on or after the Termination Date and before the date on which any compensation is payable by the Province to the Concessionaire as a result of enforcing any other rights they may have.

"Best Management Practices for Highway Maintenance Activities" means the document entitled "Best Management Practices for Highway Maintenance Activities, Final Draft" and dated July 2004 included in the Data Room, as amended, supplemented or replaced from time to time.

"Bid Costs" means the reasonable and proper costs of the Province incurred in carrying out the Bidding Process and/or in connection with any calculation of the Estimated Fair Value.

"Bidding Process" means the process by which the Province requests bid proposals from any parties interested in entering into a New Agreement and evaluates the responses from those interested parties with a view to entering into a New Agreement with a New Concessionaire in accordance with Section 44.2.3.

"Bidding Process Monitor" has the meaning given in Section 44.2.3.5.

"Business Opportunities" has the meaning given in Section 1.8 [Business Opportunities].

"Calculated Service Loads" means the loads calculated by the Designer as being the maximum loads that the Existing Anchors will be subject to both during construction of the New Crossing, the Decommissioning and following Completion.

"Capital Cost Increase" has the meaning given in Part 1 of Schedule 13 [Definitions].

"Capital Expenditure" means capital expenditure as interpreted in accordance with Canadian generally accepted accounting principles.

"Capital Works" means all works for the maintenance, repair or rehabilitation of the Project Facilities (but excluding any Routine Maintenance) that are necessary to ensure that the Project Facilities, the Site and the Adjacent Areas are maintained, repaired and rehabilitated throughout the Contract Period in accordance with the O&M Output Specifications and the O&M Requirements and that the Project Facilities are, at the End of Term, in the condition specified in the End of Term Requirements.

"Causeway Contractor" means the contractor under the Causeway Fill and Preload Contract.

"Causeway Defect" has the meaning given in Section 17.6.1.

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“Causeway Fill” includes the causeway fill at the east and west approaches to the New Crossing as defined by Drawing Nos. 1458-101, -102, -104, -105, -106, -107, -112, -113, -114, -115, -116, and -117 which form part of the tender package for Project No. 77870 - Westside Road No. 172 Realignment and West and East Approach Causeway Fill and Preload works. The drawings are contained in Section 4.2.1 of the Data Room.

“Causeway Fill and Preload” means the works which have been or are to be carried out pursuant to, and as described, in under the Causeway Fill and Preload Contract.

“Causeway Fill and Preload Contract” means the contract dated February 10, 2005 between the Province and the Causeway Contractor for the supply and installation of causeway fill and preload at the west and east approaches to the New Crossing.

“Certificate” means any certificate to be issued pursuant to this Agreement and, in particular:

- (a) “Alternative Concept Certificate” means a certificate in the form set out in Annex 1(9) to Part 3 of Schedule 5 [Design and Certification Procedure];
- (b) “Assessment Certificate (Structures)” means a certificate in the form set out in Annex 1(18) to Part 3 of Schedule 5 [Design and Certification Procedure];
- (c) “Completion Certificate” means a certificate in the form set out in Annex 1(14) to Part 3 of Schedule 5 [Design and Certification Procedure];
- (d) “Concessionaire Change Certificate” means a certificate in the form set out in Annex 1(7) to Part 3 of Schedule 5 [Design and Certification Procedure];
- (e) “Concessionaire’s Completion Certificate” means a certificate in the form set out in Annex 1(13) to Part 3 of Schedule 5 [Design and Certification Procedure];
- (f) “Concessionaire’s Substantial Completion Certificate” means a certificate in the form set out in Annex 1(11) to Part 3 of Schedule 5 [Design and Certification Procedure];
- (g) “Construction Certificate” means a certificate in the form set out in Annex 1(10) to Part 3 of Schedule 5 [Design and Certification Procedure];
- (h) “Design Certificate (General)” means a certificate in the form set out in Annex 1(1) to Part 3 of Schedule 5 [Design and Certification Procedure];
- (i) “Design Certificate (Geotechnical)” means a certificate in the form set out in Annex 1(2) to Part 3 of Schedule 5 [Design and Certification Procedure];



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- (j) “Design Certificate (Structures)” means a certificate in the form set out in Annex 1(3) to Part 3 of Schedule 5 [Design and Certification Procedure];
  - (k) “End of Term Certificate” means a certificate in the form set out in Annex 1(17) to Part 3 of Schedule 5 [Design and Certification Procedure];
  - (l) “Province Change Certificate” means a certificate in the form set out in Annex 1(8) to Part 3 of Schedule 5 [Design and Certification Procedure];
  - (m) “Renewal Certificate” means a certificate in the form set out in Annex 1(15) to Part 3 of Schedule 5 [Design and Certification Procedure];
  - (n) [not used]
  - (o) “Road Safety Audit Certificate (Stage 1)” means a certificate in the form set out in Annex 1(4) to Part 3 of Schedule 5 [Design and Certification Procedure];
  - (p) “Road Safety Audit Certificate (Stage 2)” means a certificate in the form set out in Annex 1(5) to Part 3 of Schedule 5 [Design and Certification Procedure];
  - (q) “Road Safety Audit Certificate (Stage 3)” means a certificate in the form set out in Annex 1(6) to Part 3 of Schedule 5 [Design and Certification Procedure]; and
  - (r) “Substantial Completion Certificate” means a certificate in the form set out in Annex 1(12) to Part 3 of Schedule 5 [Design and Certification Procedure].

“Change in Capital Costs” has the meaning given in Part 1 of Schedule 13 [Definitions].

“Change in Control” has the meaning given in Section 45.3.3.

“Change in Law” means the coming into effect of :

- (a) any new Laws and Regulations after April 15, 2005; or
- (b) any modification (including repeal) of any Laws and Regulations existing on April 15, 2005 where such modification comes into effect after April 15, 2005, including any judgment of a relevant court of law which changes binding precedent in British Columbia,

(but excluding in each such case any lawful requirements of any Governmental Authority (unless resulting from a Change in Law)), provided that any such new Laws and Regulations or modification of existing Laws and Regulations that:

- (c) arises from or is in any way connected to or has substantially the same effect as any statute, law, regulation, by-law, rule, code, ordinance, judgment, decree, writ,

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administrative interpretation, guideline, policy, injunction, order or other requirement which as of April 15, 2005:

- (i) had been introduced as a Bill in the Legislative Assembly of British Columbia or the Parliament of Canada or in a draft statutory instrument published by a Governmental Authority; or
- (ii) had been published in the Canada Gazette or in a draft bill as part of a Governmental Authority discussion or consultation paper; or
- (d) relates to the application for, coming into effect, terms, implementation, repeal, revocation or otherwise of any Permit Relating to Land or any Permit, Licence or Approval,

will not constitute a Change in Law.

“Change in Recurrent Costs” has the meaning given in Part 1 of Schedule 13 [Definitions].

“Change in Revenues” has the meaning given in Part 1 of Schedule 13 [Definitions].

“Checking Team” has the meaning given in paragraph 2.3 of Section A of Part 3 of Schedule 5 [Design and Certification Procedure].

“Claim” means any claim (including claims for death and personal injury or property damage), demand, liability, damage, loss, proceeding, suit, action or cause of action and all costs and expenses relating thereto, including legal fees on a full indemnity basis (and “Claims” will be construed accordingly).

“Closure” means any partial or total closure, stoppage, obstruction, blockage or other restriction or interference (howsoever arising) impeding the flow of traffic on or affecting the ability of the public to pass and re-pass over a highway of whatever duration including for greater certainty:

- (a) any closure, stoppage, obstruction, blockage, restriction or interference required for any works by a Relevant Authority or for any inspection, investigation or survey (whether carried out by the Concessionaire, the Province, the Minister, any other Relevant Authority or any other person);
- (b) any closure, stoppage, obstruction, blockage, restriction or interference resulting from an accident, vehicle breakdown, illegal parking, emergency or other incident;

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- (c) any closure, stoppage, obstruction, blockage, restriction or interference instigated by the Police, instigated for health and safety or emergency reasons or resulting from Protesters or Trespassers;
  - (d) any mobile closure, stoppage, obstruction, blockage, restriction or interference; and
  - (e) any closure, stoppage, obstruction, blockage restriction or interference materially affecting the ability to use that highway or such part thereof in a safe manner resulting from the build up of snow or ice or from any other natural event physically affecting the highway,

provided that traffic congestion or slow moving traffic will not by itself be considered to be a Closure (including where the same results from speed restrictions properly imposed from time to time as a result of adverse weather conditions or seasonal restrictions for the time being affecting the highway but excluding where the standard of construction and/or condition of the highway has contributed to the need for such speed restrictions).

“Collateral Agreement” means a collateral agreement in the form set out in Schedule 22 [Collateral Agreements].

“Commencement Date” means the date of this Agreement.

“Comparable Bridges” means bridges determined by the Province in its absolute and unfettered discretion to be comparable to the New Crossing.

“Comparable Controlled Access Highways” means “controlled access highways”, as defined in the *Transportation Act*, that the Province determines in the Province’s absolute and unfettered discretion to be comparable to the Concession Highway.

“Compensable Change in Law” means a Relevant Change in Law, a Relevant Works Change in Law, a Withholding Change in Law, a Materials Change in Law or a PST Change in Law.

“Compensable Loss” has the meaning given in Part 1 of Schedule 13 [Definitions].

“Compensation Date” means either:

- (a) if Section 44.2.3 applies, the earlier of:
  - (i) the date that the New Agreement is entered into; and
  - (ii) the date on which the Province pays the Adjusted Highest Qualifying Bid Price to the Concessionaire; or

- (b) if Section 44.2.4 applies, the date that the Adjusted Estimated Fair Value has been agreed or determined in accordance with the provisions of this Agreement.

“Compensation Event” means any of the following:

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“Completion” means with respect to the Works and Decommissioning the satisfactory full and final completion of the Works and the Decommissioning in accordance with the Construction Output Specifications, the Construction Requirements and all other relevant applicable standards or specifications referred to or set out in this Agreement, as confirmed by the issue of all relevant Certificates (including road safety audits Certificates) and supporting documentation under the Design and Certification Procedure, and “Completed” or “Complete” have a corresponding meaning.

“Completion Date” means the date on which the Completion Certificate is issued.

“Completion Longstop Date” means the date falling 24 months from the Substantial Completion Date.

“concession agreement” has the meaning given in the *Transportation Investment Act*.

“Concession Highway” means the New Highway.

“Concession Highway Encumbrances” means any Encumbrances with respect to the Site and/or the Adjacent Areas existing as of the Commencement Date or which the Province and/or BCTFA may grant in accordance with the terms of this Agreement, or which may be granted by the Concessionaire pursuant to its exercise of the Delegated Rights, Powers and Functions, or the discharge of its Delegated Obligations, from and after the Commencement Date, as such Encumbrances may be renewed, modified, extended or replaced from time to time, and will include those Encumbrances attached or referred to in Part 7 of Schedule 4 [Concession Highway Encumbrances].

“Concessionaire Change” means a variation in the design, quality or scope of the Works or any provision relating to the Decommissioning initiated by the Concessionaire in accordance with Section 11.4 [Concessionaire Changes] and, subject to Section 11.4.3, may include additions, deletions, substitutions, alterations in design and/or variations in or to the Construction Output Specifications and/or the Construction Requirements; and, for purposes of Section 11.4.3 and Part 3 of Schedule 13 [Concessionaire Changes], “Concessionaire Change” will be deemed to include an Alternative Concept.

“Concessionaire Proposal Extracts” means the documents attached as Schedule 23 [Concessionaire Proposal Extracts].

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“Concessionaire’s Environmental Obligations” means the Concessionaire’s obligations set forth in Schedule 12 [Concessionaire’s Environmental Obligations].

“Concessionaire’s Representative” means the person appointed by the Concessionaire pursuant to Section 22.2 [Concessionaire’s Representative] or such substitute as may be appointed by the Concessionaire pursuant to Section 22.3 [Change of Representatives].

“Concessionaire Termination Event” means any of the events set out in Section 41.1 [Concessionaire Termination Events].

“Confidential Information” has the meaning given in Section 50.1 [Confidential Information].

“Connecting Roads” means the lengths of existing highway described in Part 3 of Schedule 4 [Connecting Roads] which provide access to the Concession Highway and any highways constructed in the future which provide access to the Concession Highway and for which the Province is the highway authority.

“Construction Insurance End Date” has the meaning given in Section 20.1.1.1.

“Construction Quality Management Plan” means the Construction Quality Management Plan referred to and described in Section 23.1.3.3.

“Construction Output Specifications” means the minimum performance specifications and requirements set out or identified or referred to in Part 1 of Schedule 5 [Construction Output Specifications] as amended from time to time by any Province Change or any Concessionaire Change to which the Province’s Representative has consented pursuant to Section 11.4.3, and all provisions of the Environmental Authorization relating to or prescribing standards, specifications, procedures, restrictions or other requirements in connection with the design and construction of the Works or the design and completion of the Decommissioning.

“Construction Plant” means plant, materials and equipment used or to be used by the Contractor in the construction of the Project Facilities but does not include Plant.

“Construction Requirements” means the standards, specifications, procedures and other requirements for design and construction set out or identified or referred to in Part 2 of Schedule 5 [Construction Requirements], as amended from time to time by any Concessionaire Change or Alternative Concept .

“Construction Staging Plan” means the plan of the same name to be developed by the Concessionaire following the Commencement Date pursuant to Section 3.19 of Part 1 of Schedule 5.

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“Contamination” means the presence of any Hazardous Substance in the environment, except Hazardous Substances present in the environment in concentrations below permissible levels as set by applicable Laws and Regulations. If Contamination is present in soil, sediment, surface water or ground water, then the soil, sediment, surface water or groundwater, as the case may be, containing the Contamination will also be deemed for the purposes of this Agreement to be Contamination.

“Contracting Affiliate” means any Affiliate of the Concessionaire which performs any function in connection with this Agreement or the Undertakings or is a party to any Project Document (including, for greater certainty, any Unitholder).

“Contract Period” means the period commencing on the Commencement Date and expiring on the End of Term or on such other date as may be the Termination Date.

“Contract Year” means:

- (a) in respect of a year prior to the Substantial Completion Date, a period of 12 months, with first Contract Year starting on the Commencement Date and ending 12 months from the Commencement Date (the “First Contract Year”), with the exception of the last such Contract Year, which will commence on the last anniversary of the Commencement Date and end on the day immediately preceding the Substantial Completion Date (the “Last Contract Year”); and
- (b) in respect of a year on or after the Substantial Completion Date, a period of 12 months, with the first such Contract Year starting on the Substantial Completion Date and ending 12 months from the Substantial Completion Date, with the exception of the last Contract Year, which will commence on the last anniversary of the Substantial Completion Date and end on the Expiry Date (the “Last Contract Year”).

“Contractor” means a joint venture known as "WRB Bridge Group" consisting of (1) SNC-Lavalin Constructors (Pacific) Inc. and (2) CMIR OKB Holdings Ltd. or such substitute as may be appointed by the Concessionaire for the time being in accordance with Section 45.4.1 or 45.4.2.

“Court” means any court of competent jurisdiction.

“CPI” means the latest available Consumer Price Index (all items) for British Columbia as published by Statistics Canada from time to time, or, if such Consumer Price Index ceases to be available for any reason, such other replacement index as the Province may designate, acting reasonably.

"Credit Agreement" means the agreement so titled of even date herewith between the Concessionaire, the Senior Funders and the Agent.

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“Cumulative Allowable Capital Expenditure” means the cumulative amount of the Allowable Capital Expenditure from time to time during the Contract Period.

“Data Room” means the secure website established prior to the date of this Agreement containing materials, documents and data in respect of the Project; for disclosure purposes under this Agreement, shall be deemed to include the content of the said secure website, as at March 21, 2005, has been copied onto a computer hard drive and three identical copies of such computer hard drive have been distributed (one to the Concessionaire and two to the Province).

"Declaration of Sourcing" means any declaration from the Concessionaire provided to the Province on or before the date of this Agreement setting out any specific materials it is proposing to source from a country, other than Canada, and the name of that country.

“Decommissioning” means the works required in accordance with the Construction Output Specifications and the Construction Requirements for the demolition, removal and disposal of the Existing Bridge, remediation of the east approach causeway and certain land in the City of Kelowna park and construction of lake bed impact habitat compensation on the west approach causeway.

“Decommissioning Plan” means the plan of the same name to be developed by the Concessionaire pursuant to section 2 of Part 1 of Schedule 5 [Construction Output Specifications].

“Deemed New Agreement” means an agreement on the same terms and conditions as this Agreement, as at the Termination Date, but with the following amendments:

- (a) if this Agreement is terminated prior to the Completion Date, then each of the Substantial Completion Longstop Date (if Substantial Completion of the Works has not yet been achieved) and the Completion Longstop Date will be extended by a period sufficient to allow a New Concessionaire (had one been appointed) to achieve Substantial Completion of the Works prior to such extended Substantial Completion Longstop Date and Completion of the Works and the Decommissioning prior to such extended Completion Longstop Date;
- (b) any accrued Availability/Performance Deductions will be disregarded for purposes of Sections 26.3 [Warning Notices], 26.4 [Increased Monitoring] and 40.1.7 and any accrued Warning Notices will be cancelled; and
- (c) the term of such agreement will be for a period equal to the term from the Termination Date to the End of Term.

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“Default Interest” means any increased interest that is payable to the Senior Funders or which accrued as a result of any payment due to the Senior Funders not being made on the date on which it is due.

“Default Interest Rate” means simple interest at an annual rate equal to **DELETED** over the Interest Rate.

“Default Notice” has the meaning given in Section 26.1.2.

“Default Warning Notice” has the meaning given in Section 26.3.2.

“Defective Equipment” has the meaning given in Section B of Part 7 of Schedule 10 [Monitoring and Measurement].

“Delay Period” has the meaning given in Section 12.6.7.

“Delegated Obligations” means the obligations identified in Part 1 of Schedule 19 [Delegated Obligations] as they relate to the Project Facilities, the Site and the Adjacent Areas (including, for greater certainty, the Works).

“Delegated Rights, Powers and Functions” means the rights, powers and functions identified in Part 2 of Schedule 19 [Delegated Rights, Powers and Functions] as they relate to the Project Facilities, the Site and the Adjacent Areas (including, for greater certainty, the Works).

“Demolition Plan” means the plan of the same name to be developed by the Concessionaire following the Commencement Date pursuant to Section 3.19 of Part 1 of Schedule 5 [Construction Output Specifications].

“Design” means the preliminary design of the Works set out in Schedule 23 [Concessionaire Proposal Extracts].

“Design and Certification Procedure” means the procedure set out in Part 3 of Schedule 5 [Design and Certification Procedure].

“Design Data” means all calculations, designs, design or construction information, standards, specifications, plans, drawings, graphs, sketches, models and other materials, including all eye readable or computer or other machine readable data and including all design submissions required under the Technical Specifications, used, prepared or to be prepared by or on behalf of the Concessionaire (and/or any of the Concessionaire’s agents, employees, contractors or subcontractors of any tier) or the Province relating to the Decommissioning or the design or construction of the Works or any Concessionaire Change, Province Change, Additional Works, Subsequent Scheme or Improvement or the operation, maintenance, rehabilitation or improvement of the Project Facilities.



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“Design Quality Management Plan” means the Design Quality Management Plan referred to and described in Section 23.1.3.2.

“Design Subcontract” means the subcontract so titled of even date herewith between the Contractor and the Designer in respect of, inter alia, the design of the Works.

“Design-Build Contract” means the design-build contract of even date herewith between the Concessionaire and the Contractor in respect of, inter alia, the design and construction of the Works.

“Designer” means Buckland & Taylor Ltd. or such substitute as may be appointed for the time being in accordance with Sections 45.4.1 or 45.4.2, in each case being a firm employing duly qualified and experienced professional engineers registered in British Columbia.

“Design Team” has the meaning given in paragraph 2.5 of Section A of Part 3 of Schedule 5 [Design and Certification Procedure].

“Detailed Design” means the detailed design to be developed from the preliminary design shown in the Construction Requirements in respect of each part of the Works and the Decommissioning so as to allow construction of that part in accordance with the Construction Requirements and so as to fulfill and satisfy the requirements of the Construction Output Specifications.

“DFO” means the Department of Fisheries and Oceans Canada.

“DFO Initial Authorization” has the meaning given in Schedule 12 [Concessionaire’s Environmental Obligations].

“Direct Agreement” means the agreement between the Province, the Agent (on behalf of the Senior Funders) and the Concessionaire in the form set out in Part 2 of Schedule 2 [Form of Direct Agreement].

“Disclosed Data” has the meaning given in Section 38.2.1.

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“Dispute” means a difference or dispute of whatever nature between the Parties or any of them arising under, out of or in connection with this Agreement (including a dispute as to any question of interpretation of this Agreement or any question as to whether a Party has acted or exercised its discretion reasonably where required to do so under the terms of this Agreement).

“Disputes Resolution Procedure” means the procedure referred to in Section 52 [Disputes Resolution Procedure] and set out in Schedule 16 [Disputes Resolution Procedure] and, for greater certainty, any reference to a determination or resolution thereunder or pursuant thereto shall mean the final determination or resolution made thereunder or pursuant thereto.

“Distribution” means whether in cash or in kind, any:

- (a) partner distribution to Unitholders or other distribution in respect of Units;
- (b) reduction of capital, redemption or purchase of Units or any other reorganization or variation to partnership capital, to the extent that any payment or other transfer of assets is made to a Relevant Person as a direct result of the same;
- (c) [not used]
- (d) payment, loan, contractual arrangement or transfer of assets or rights, in each case to the extent made or entered into after the date of this Agreement and not in the ordinary course of business and on reasonable commercial terms;
- (e) the receipt of any other benefit which is not received in the ordinary course of business and on reasonable commercial terms; or
- (f) any other payment to any Relevant Person howsoever arising and whether made pursuant to the terms of an agreement or otherwise or by way of gift or in respect of any class of Units or other securities of or interests in the Concessionaire if, in any such case, such payment would not have been made were it not for the occurrence of any Refinancing,

and where any such Distribution is not in cash, the equivalent cash value of such Distribution will be calculated.

“DVD” means the digital video disc containing material, documents and data relating to the Project which has been made available to the Concessionaire.

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“Eligible Change” means any of the following:

- (a) a Province Change; and
- (b) any Compensation Event.

“Eligible Force Majeure” means any of the following events (including the effects or consequences thereof):

**DELETED**

“Employee Termination Payments” means termination payments which are required under applicable Laws and Regulations to be made to employees of the Concessionaire reasonably and properly incurred by the Concessionaire arising as a result of termination of this Agreement (provided that the Concessionaire will take all reasonable steps to mitigate such termination payments) and provided that in calculating such amount no account will be taken of any liabilities and obligations of the Concessionaire arising out of:

- (a) contracts of employment or other agreements entered into by the Concessionaire to the extent that such contracts of employment or agreements were not entered into exclusively in connection with the Project; or
- (b) contracts of employment or other agreements entered into by the Concessionaire to the extent that such contracts of employment or agreements were not entered into in the ordinary course of business and on commercial arm’s length terms.

“enactment” has the meaning given to it in the *Interpretation Act*, R.S.B.C. 1996, c. 238.

“Encumbrance” means any Rights in respect of land, including any easement, right-of-way, restrictive covenant, encroachment, lease, licence or permit to use or occupy, and any mortgage, charge, pledge, lien, assignment, option, right to acquire, right of pre-emption, security interest, trust arrangement and any other equity or preferential right or any agreement to create any of them, including claims of the Worker’s Compensation Board, Canada Revenue Agency, Employment Standards Branch and other Governmental Authorities.

“End of Term” means the date falling 30 years from the Commencement Date.

“End of Term Inspection” has the meaning given in Section 19.6.1.

“End of Term Requirements” means the requirements set out or identified or referred to in Part 4 of Schedule 5 [End of Term Requirements], as amended from time to time by any Province Change.

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“Enhanced Service Period” means the period commencing immediately after the expiry of the Original Service Period and ending on, and includes, the last day of the Contract Period.

“Environmental Authorizations” means all Permits, Licences and Approvals required by Environmental Laws in order to perform the Concessionaire’s obligations pursuant to this Agreement.

“Environmental Laws” means all Laws and Regulations relating to the protection of the environment, environmental assessment, plant, animal or human health, including occupational health, management of waste and safety and transportation of dangerous goods.

“Environmental Protection Plan” means the environmental protection plan referred to in paragraph 9.2.2 of Part 1 of Schedule 12 [Concessionaire’s Environmental Obligations].

“Environmental Quality Management Plan” means the Environmental Quality Management Plan referred to and described in Section 23.1.3.6.

“Equity” means the aggregate of funds contributed by the Relevant Persons in return for Units in the Concessionaire.

“Equity IRR” means the projected before tax percentage internal rate of return to the Relevant Persons over the full term of this Agreement, taking into account the aggregate of all Equity invested by the Relevant Persons and of all Distributions made and projected to be made in the Financial Model.

“Estimated Fair Value” means the amount determined in accordance with Section 44.2.4 that a third party would pay to the Province as the market value of a Deemed New Agreement.

“Event of Default” has the meaning given in Section 40.1 [Events of Default].

“Excepted Closure” means any of the following:

- (a) a Lane Closure that is responded to and rectified in the manner and within the time periods provided for response and rectification in the Technical Requirements except that the time period for rectification for purposes of this definition will be extended by the period of any relevant failure to act in a timely manner by a Relevant Authority;
- (b) a Lane Closure caused by, and for so long as required by, the Province or another Relevant Authority (including to allow access by emergency services vehicles) for any reason not as a result of the actions or omissions of the Concessionaire or any

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of its agents, contractors or subcontractors of any tier or employees of any of them;

- (c) a Lane Closure resulting from a Compensation Event or a Province Change;
- (d) a Lane Closure as a result of general public events (such as, for example, parades, marathons and similar events) specified by the Province and of the duration required by the Province; and
- (e) a Lane Closure in special circumstances (to be reviewed on a case-by-case basis) that is consented to by the Province (either prospectively or retrospectively) in its absolute and unfettered discretion.

“Exempt Refinancing” means:

- (a) any Refinancing that was fully taken into account in the calculation of the Performance Payments;
- (b) a change in taxation or change in accounting treatment pursuant to changes in Laws and Regulations or Canadian generally accepted accounting principles;
- (c) the exercise of rights, waivers, consents and similar actions which relate to day to day administrative and supervisory matters that are in respect of:
  - (i) breach of representations and warranties or undertakings;
  - (ii) movement of monies between the Project Accounts in accordance with the terms of the Senior Funding Agreements as at the date of this Agreement;
  - (iii) late or non-provision of information or consents;
  - (iv) amendments to subcontracts;
  - (v) approval of revised technical and economic assumptions for financial model runs (to the extent required for forecasts under the Funding Agreements);
  - (vi) restrictions imposed by the Senior Funders on the dates at which the financing provided by the Senior Funders under the Senior Funding Agreements can be advanced to the Concessionaire under the Senior Funding Agreements and/or amounts released from the Construction Escrow Account during the Loan Availability Period, each as defined in the Senior Funding Agreements, and which are given as a result of any failure by the Concessionaire to ensure that the Works and the

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Decommissioning are performed in accordance with the Works Schedule and which are notified in writing by the Concessionaire or the Senior Funders to the Province prior to being given;

- (vii) changes to milestones for drawdown and/or amounts released from the Construction Escrow Account during the Loan Availability Period set out in the Senior Funding Agreements and which are given as a result of any failure by the Concessionaire to ensure that the Works and the Decommissioning are performed in accordance with the Works Schedule and which are notified in writing by the Concessionaire or the Senior Funders to the Province prior to being given;
- (viii) failure by the Concessionaire to obtain any consents from Governmental Authorities required by the Senior Funding Agreements; or
- (ix) voting by the Senior Funders and the voting arrangements between the Senior Funders in respect of the levels of approval required by them under the Senior Funding Agreements;
- (d) any amendment, variation or supplement of any agreement approved by the Province as part of any Eligible Change under this Agreement;
- (e) any sale of shares in the Concessionaire by the its partners or securitization of the existing rights and/or interests attaching to units in the Concessionaire;
- (f) [not used]; or
- (g) any Qualifying Bank Transaction.

"Existing Anchors" means the anchors, the anchor chains, the lower link bars and the lower anchor cables existing as at the date of this Agreement and being used to anchor the Existing Bridge.

"Existing Bridge" means:

- (a) the existing bridge known as the "Okanagan Lake Bridge" including all of pontoons, lift span works, superstructures, substructures, decking, anchors, cables, floatation devices, railings, signals, signs, wires and all attachments; and
- (b) the existing causeways and roadways that adjoin the existing bridge and which include all ancillary structures within and adjacent to the existing causeways and roadways, including the pedestrian tunnel, stairways, sign bridges and drainage works,

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which forms part of the Existing Highway

“Existing Contamination” means any Contamination which affects the Project Facilities, the Existing Highway, the Site, the Adjacent Areas or the Graving Dock Site or is situated in, on, under or over any of them at the Site Occupation Date (or, if earlier in the case of the Graving Dock Site, the date of occupation of the Graving Dock Site).

“Existing Highway” means (subject to Section 13.3A [Kelowna Land]) those lengths of highway as described in Part 1 of Schedule 4 [Existing Highway] and whose existing causeways and roads are shown on the drawing attached to and identified as Part 1 of Schedule 4 [Existing Highway].

“Expiry Date” means the End of Term or such other date as shall be the Termination Date, whichever is earlier.

“Expropriation Laws” means all Laws and Regulations authorizing the expropriation or other compulsory acquisition of land or Rights in respect of land, including, the *Transportation Act*, *Ministry of Transportation and Highways Act*, the *Highway Act*, the *Transportation Investment Act* and the *Expropriation Act*.

“Expropriation Order” means any order or other process of any Court or other relevant body or authority pursuant to an Expropriation Law effecting the expropriation or other compulsory acquisition of any land or Rights in respect of land forming part of the Site or the Adjacent Areas.

“Extraordinary Traffic” has the meaning ascribed to “extraordinary traffic” in the *Transportation Act*.

“Fair Value” means the amount at which an asset or liability would be exchanged in an arms length transaction between informed and willing parties, other than in a forced or liquidation sale.

“Financial Base Case” means the Financial Model attached as Part 1 of Schedule 2 [Financial Base Case] and certified by a suitably qualified and experienced financial model reviewer, according to Canadian Generally Accepted Assurance Standards as determined by the Canadian Institute of Chartered Accountants, as being true and correct results of the final Financial Model. The Financial Base Case will include the following on an annual and semi-annual basis from the date of this Agreement until the End of Term:

- (a) statement of income and retained earnings;
- (b) cash flow statements;

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- (c) balance sheets;
  - (d) debt schedules providing details of amortization, interest and other information as appropriate on the debt instruments; and
  - (e) O&M Insurance Coverages.

“Financial Base Case Equity IRR” means **DELETED**

“Financial Base Case Project IRR” means **DELETED**

“Financial Base Date” means June 30, 2005.

“Financial Close” means the date on which this Agreement becomes unconditional.

“Financial Model” means the computer spreadsheet model for the Project incorporating statements of the Concessionaire’s cash flows including all expenditures, revenues, financing and taxation of the Undertakings together with the statement of income and retained earnings and balance sheets for the Concessionaire throughout the Contract Period, accompanied by details of all assumptions, calculations and methodology used in their compilation and any other documentation necessary or desirable to operate the model, all embodied in the Concessionaire’s financial model software together with the assumptions used, the cell logic network for the financial model software and any



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accompanying documentation necessary to operate the financial model, contained on tape, disk or other electronic storage medium.

“Financial Terms” means the financial terms set out in the Funding Agreements.

“First Contract Year” has the meaning given in the definition of “Contract Year”.

“First Nation” means an aboriginal governing body however organized and established by aboriginal people within their traditional territory.

“First Nation Claim” means a Claim advanced by a First Nation relating to aboriginal rights or title or related issues but excludes any claim by a First Nation arising primarily as a result of any negligent or wrongful act or omission of the Concessionaire or any of its agents, contractors or subcontractors of any tier or employees of any of them or the Concessionaire or any of its agents, contractors or subcontractors of any tier or employees of any of them acting outside of the scope of this Agreement.

“Fiscal Year” means the period from April 1 to March 31 (inclusive) in any year.

“Five Year Management Plan” means the Five Year Management Plan referred to in Section 14.8 [Management Plans], as submitted and updated from time to time without objection by the Province’s Representative in accordance with the Review Procedure.

“Force Majeure” means any of the following events or circumstances (including the effects or consequences thereof):

**DELETED**

“Force Majeure Termination Sum” has the meaning given in Section 44.3.2.

“Forest Act” means the *Forest Act*, R.S.B.C. 1996, c. 157.

“Forest Practices Code of British Columbia Act” means the *Forest Practices Code of British Columbia Act*, R.S.B.C. 1996, c. 159.

“*Freedom of Information and Protection of Privacy Act*” means the *Freedom of Information and Protection of Privacy Act*, R.S.B.C. 1996, c. 165.

“Funders” means all or any of the persons who provide financing or funding in respect of the Undertakings under the Funding Agreements including Sun Life Assurance Company of Canada and Ontario Teachers Pension Plan Board and, where the context so permits, prospective financiers or funders.

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“Funding Agreements” means all or any of the agreements or instruments entered into or to be entered into by the Concessionaire or any of its Affiliates relating to the financing of the Undertakings, including:

- (a) all or any of the Senior Funding Agreements, including any amendments or supplements thereto, and any agreements or instruments entered into by the Concessionaire or any of its Affiliates to raise additional or substitute finance or financial facilities of any form or relating to the rescheduling of its indebtedness or the re-financing of the Project; and
- (b) all or any agreements or instruments entered into by the Concessionaire or any of its Affiliates for the purpose of facilitating the hedging of any exposure to interest rate fluctuations under any of the agreements or instruments referred to in (a) above, including any amendments or supplements thereto, and any agreements or instruments entered into by the Concessionaire or any of its Affiliates to effect additional or substitute interest rate hedging arrangements;

in each case provided they have been entered into in accordance with this Agreement.

“Good Industry Practice” means the exercise of that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a person, skilled and experienced in the design, construction, operation, maintenance and rehabilitation of roads similar in type to the Concession Highway and in the decommissioning of bridges similar in type to the Existing Bridge, seeking in good faith to comply with all applicable Laws and Regulations and the same contractual obligations as the contractual obligations of the Concessionaire under this Agreement and under the same or similar circumstances and conditions.

“Governmental Authority” means any federal, provincial, territorial, regional, municipal or local governmental authority, quasi-governmental authority, court, government or self-regulatory organization, commission, board, tribunal, organization, or any regulatory, administrative or other agency, or any political or other subdivision, department or branch of any of the foregoing, having legal jurisdiction in any way over or in respect of any aspect of the performance of this Agreement, the Project Facilities, the Site, the Adjacent Areas and the Graving Dock Site or any part thereof or any aspect of the Undertakings.

“Graving Dock Construction Facility” means the Temporary Works to be constructed by the Concessionaire at the Graving Dock Site in connection with the Works.

“Graving Dock Construction Facility Plan” means the plan of the same name to be developed by the Concessionaire following the Commencement Date pursuant to the Option to Lease.

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“Graving Dock Lease” has the meaning given in Section 8.6A.3.1.

“Graving Dock Site” means the site which is the subject of the Option to Lease referred to in Section 8.6A [Graving Dock Site].

“GST” means the tax payable and imposed pursuant to Part IX of the *Excise Tax Act* (Canada), but excludes the harmonized sales tax by deeming, for the purposes of this Agreement, that there are no participating provinces listed in Schedule VIII of that Act.

“Hazardous Substance” means any solid, liquid, gas, odour, heat, radiation or other substance, material or emission the storage, manufacture, disposal, treatment, generation, transportation, remediation, use or Release of which into the environment is prohibited, controlled or regulated under any Environmental Laws, including those defined as or included in the definitions of “dangerous goods”, “deleterious substance”, “hazardous substances”, “hazardous wastes”, “hazardous materials”, “extremely hazardous wastes”, “restricted hazardous waste”, “toxic substances”, “special waste”, “waste” or words of similar import under any applicable Environmental Laws, including the *Canadian Environmental Protection Act*, S.C. 1999, c. 33, the *Fisheries Act*, R.S. 1985, c. F-14, the *Transportation of Dangerous Goods Act*, S.C. 1992, c. 34, the *Canada Water Act*, R.S. 1985, c. C-11 and the *Environmental Management Act*, S.B.C. 2003, c. 53.

“Hedging Agreements” means any agreements referred to in paragraph (b) of the definition of “Funding Agreements”.

“Hedge Termination Amounts” means the net amount (if any) payable under the Hedging Agreements on termination of the interest rate hedging transaction(s) entered into under the Hedging Agreements.

“Highest Qualifying Bid Price” means the price offered by the Qualifying Bidder (if any) with the highest bid price.

“highway” means a highway as defined in the *Transportation Investment Act*.

“*Highway Act*” means the *Highway Act*, R.S.B.C. 1996, c. 188.

“Highway Asset Preservation Performance Measures” means the specifications of the same name set out in Annex 1 of Part 1 of Schedule 7 [O&M Output Specifications], as amended, supplemented or replaced from time to time.

“Highway Corridor Management Specifications” means the specifications of the same name set out in Annex 2 of Part 1 of Schedule 7 [O&M Output Specifications], as amended, supplemented or replaced from time to time.

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“Highway Maintenance Specifications” means the specifications of the same name set out in Annex 3 of Part 1 of Schedule 7 [O&M Output Specifications], as amended, supplemented or replaced from time to time.

“Improvement” means any change, improvement or addition proposed by the Concessionaire to be made to the design, layout or structure of the Project Facilities or any part thereof at any time after issue of the Completion Certificate which does not involve or require any variation to any of the Technical Requirements (unless the Province’s Representative, in its absolute and unfettered discretion, has consented to the variation) and which can be lawfully accomplished by the Concessionaire without obtaining planning permission or any Expropriation Order or other New Permit under the *Transportation Act* or otherwise.

“Independent Certifier” means the person from time to time appointed the Independent Certifier pursuant to the Independent Certifier Contract and as may be permitted pursuant to this Agreement.

“Independent Certifier Contract” means the contract to be entered into between the Concessionaire, the Province and the Independent Certifier in substantially the form attached hereto as Part 9 of Schedule 5 [Form of Independent Certifier Contract].

“Indirect Loss” has the meaning given in Section 39.7 [Limits On Liability].

“Initial Premium Indication” has the meaning given in Section 20.11.11.

“Initial Inspection” has the meaning given in Section 19.2.1.

“Insurance Adjustment Date” has the meaning given in Section 20.11.6.

“Insurance Proceeds” has the meaning given in Section 20.7.1.2.

“Intellectual Property” means all current and future legal and equitable interests in registered or unregistered trade marks, service marks, patents, registered designs, utility marks, applications for any of the foregoing, copyrights, unauthorized extraction and/or re-utilisation rights, unregistered designs, inventions, confidential information, know-how or other intellectual property rights arising in connection with or relating in any way to the performance of the Undertakings.

“Interested Parties” means those persons who may be affected by the carrying out of the Works or Undertakings or who are duly authorized by a Legal Requirement to review or otherwise take an interest in the Works or any other aspect of the Undertakings, including the Relevant Authorities.

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“Interest Rate” means a rate of interest per annum equivalent to the prime rate announced by Royal Bank of Canada which is current on the date upon which the amount bearing interest first became due (such interest to accrue daily on the basis of a 365 day year and to be compounded semi-annually). The prime rate of Royal Bank of Canada is the annual rate of interest announced by that bank from time to time as being a reference rate then in effect for determining interest rates on commercial loans made in Canadian currency in Canada. In the event of any variation in such prime rate being announced while such amount remains outstanding, the interest payable will be correspondingly varied from the date of each such variation.

“ISO 9001:2000 Standard” means ISO 9001:2000 International Standard for Quality Management Systems, as revised and updated from time to time, or, if such Standard ceases to be available for any reason, such other replacement standard as the Province may designate, acting reasonably.

“Kelowna Agreement” means the agreement dated May 28, 2004 between the Province and the City of Kelowna contained in Schedule 6 of the RFP.

“Kelowna Agreement Works” means the works to be carried out by or on behalf of the City of Kelowna on Highway 97 and/or on highways within the City of Kelowna in compliance by the City of Kelowna of its obligations under the Kelowna Agreement.

“Kelowna Land” means the land shown or identified as such on the date hereof on the drawing set out in Part 8 of Schedule 4 [Site].

“Key Performance Measures” means the Key Performance Measures referred to in the O&M Output Specifications.

“Land Title Act” means the *Land Title Act*, R.S.B.C. 1996, c. 250.

“Lane Availability Payment” means the payment calculated in accordance with Part 3 of Schedule 10 [Lane Availability Payment].

“Lane Closure” means any Closure affecting the use by traffic of a lane or lanes within the Concession Highway.

“Last Contract Year” has the meaning given in the definition of “Contract Year”.

“Laws and Regulations” means all Permits, Licenses and Approvals (other than consents and agreements from any third parties that are not Governmental Authorities) and all statutes, laws, regulations, bylaws, rules, codes (including design and building codes), standards (including ISO standards), ordinances, judgments, decrees, writs, administrative interpretations, injunctions or orders of any Governmental Authority with

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which a Party is legally obligated to comply, including the common law and the law of equity.

“Legal Requirement” means a legal requirement under any Laws and Regulations or any lawful requirement of any Governmental Authority which has jurisdiction with regard to the Project Facilities, the Site, the Adjacent Areas and the Graving Dock Site or any part thereof or any of the Undertakings or whose systems may be affected by the conduct of any of the Undertakings.

“Liaison Procedures” means the procedures set out in Schedule 17 [Liaison Procedures] or to be developed pursuant to this Agreement in accordance with that Schedule, as the case may be.

“Licence” means the licence or sublicense granted or caused to be granted to the Concessionaire under Section 8.1 [Access for Concessionaire over the Site and Adjacent Areas].

“Licence Commencement Date” means the date which is the earlier of:

- (a) December 31, 2005; and
- (b) 10 Working Days after the date upon which the Concessionaire gives written notice to the Province that it requires access to the Site to commence physical work on the Site provided that in no event will the Concessionaire provide such notice to the Province any earlier than December 1, 2005.

“Liquid Market” means that there are sufficient willing parties (being at least two parties, each of whom is capable of being a Qualifying Bidder) in the market for agreements for the provision of services (where such agreements are the same as or similar to this Agreement and/or provide for the delivery of services or any material component of services similar to those required under this Agreement) for a price that, through the rebidding process in Section 44.2.3, is likely to be a reliable indicator of Fair Value for the New Agreement, provided that any vehicle controlled and established by the Senior Funders specifically for the purposes of this Project and to which this Agreement may be novated will be disregarded in assessing whether there are sufficient willing bidders in the market for such purposes.

“Local Area Specifications” means the specifications of the same name set out in Annex 4 of Part 1 of Schedule 7 [O&M Output Specifications], as amended, supplemented or replaced at the absolute and unfettered discretion of the Province by notice to the Concessionaire from time to time.

“Loss” means any loss, damage, liability, cost, expense (including legal and other professional charges and expenses on a full indemnity basis), charge, fine, penalty or

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assessment howsoever arising whether under statute, contract, common law, equity, in connection with judgments, proceedings, internal costs or demands or otherwise and whether direct, indirect or consequential (including, for greater certainty, those in connection with any criminal or quasi criminal proceedings) (but for greater certainty not including any loss to the general economic standing of the Province as a whole or of any particular region of the Province) (and “Losses” will be construed accordingly).

“Lowest Annual Premium” has the meaning given in Section 20.11.9.

“Lowest Initial Premium” has the meaning given in Section 20.11.4.

“Management Plans” means the plans to be produced in accordance with Section 14.8 [Management Plans], as updated from time to time.

“Marine Users” means those individuals using the navigation channel under the New Crossing or through the Existing Bridge.

“Market Value” means the value of the consideration payable by the New Concessionaire to the Province in consideration for the entering into of the New Agreement.

“Market Value Deduction Amount” means for any Payment Period or part of a Payment Period, an amount equal to the total Availability/Performance Deductions made in the Payment Period immediately preceding the Termination Date, less an amount equal to such Availability/Performance Deductions resulting from or attributable to circumstances existing at the Termination Date but which have subsequently been rectified whether as a result of the Province incurring Rectification Costs or otherwise.

"Materials Change in Law" means a Change in Law that directly affects the price that the Concessionaire pays for any materials that it uses in undertaking the O&M Requirements.

“Maximum Performance Payment” means the Performance Payment at any time without taking into account any Availability/Performance Deductions. The Maximum Performance Payment for any period will be the total of the amounts payable during that period on account of components of the Performance Payment without taking into account any Availability/Performance Deductions.

“Measure” means, in respect of the traffic passing a Measurement Point during a period, to count the number of vehicles comprising such traffic and to determine the classification of each such vehicle in accordance with the provisions of Section B of Part 7 of Schedule 10 [Monitoring and Measurement], and “Measurement” and “Measured” will be construed accordingly.

“Measuring Equipment” has the meaning given in Section B of Part 7 of Schedule 10 [Monitoring and Measurement].

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“Measurement Limits of Accuracy” has the meaning given in Section B of Part 7 of Schedule 10 [Monitoring and Measurement].

“Measurement Point” means any point designated as such pursuant to Section B of Part 7 of Schedule 10 [Monitoring and Measurement].

“Minister” means the member of the Executive Council of the Province who is charged from time to time with the administration of the *Transportation Investment Act* and the *Transportation Act*, and includes the Minister’s deputy and any person authorized to act for or on behalf of either of them with respect to any matter under or contemplated in this Agreement.

“Ministry” or “MOT” means the ministry of the Province headed by the Minister and known as the “Ministry of Transportation”.

“Ministry of Forests Protocol Agreement” means the Protocol Agreement Between the Ministry of Forests and the Ministry of Transportation and Highways signed by the Deputy Minister of Forests on September 9, 1992 and by the Deputy Minister of Transportation and Highways on August 8, 1992, as supplemented by the unsigned draft Protocol Agreement between the Ministry of Forests and the Ministry of Transportation dated March 19, 2002, and as further amended, supplemented or replaced from time to time (including pursuant to any pending amendment, supplement or replacement disclosed in the Data Room).

“*Ministry of Transportation and Highways Act*” means the *Ministry of Transportation and Highways Act*, R.S.B.C. 1996, c. 311.

“Ministry’s Standards” means all standards and specifications issued by the Ministry in respect of the design, construction, operation, maintenance and/or rehabilitation of concession highways which are identified or referred to in Part 1 of Schedule 5 [Construction Output Specifications] and Part 1 of Schedule 7 [O&M Output Specifications] or elsewhere in this Agreement, including:

- (a) Highway Asset Preservation Performance Measures;
- (b) Highway Corridor Management Specifications;
- (c) Highway Maintenance Specifications; and
- (d) Local Area Specifications.

“Monthly Report” has the meaning given in paragraph 1.5 of Part 2 of Schedule 15 [Reports].



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“Monthly Retention” has the meaning given in Section 19.7.2.

“MOT Section Contract” means the contract to be entered into by the Province and the MOT Section Contractor for the performance of the MOT Section Works, as amended from time to time.

“MOT Section Contractor” means the contractor who enters into the MOT Section Contract with the Province.

“MOT Section Works” means the works to be done to upgrade the west approach along Highway 97 to the New Crossing, which includes but is not limited to, a full movement interchange at the Campbell Road intersection in conformance with the Ministry’s current design, construction and quality management practices, internal roads as required to facilitate access by Westbank First Nation to their properties and to highway access locations, widening of Highway 97 from 26+60 to approximately 340 metres south of Westside Road, upgrade of the Westside Road intersection to include advanced left turn signal phasing and optimization of the overall signal phasing and any other minor works required to facilitate the functionality of the roadway and its operation.

“Motor Vehicle” has the meaning ascribed to “motor vehicles” in the *Motor Vehicle Act*.

“Motor Vehicle Act” means the *Motor Vehicle Act*, R.S.B.C. 1996, c. 318.

“Net Present Value” means the aggregate of the discounted values, calculated as of the estimated date of the Refinancing, of each of the relevant projected Distributions, in each case discounted using the Threshold Equity IRR.

“New Agreement” means an agreement on the same terms and conditions as this Agreement at the Termination Date, but with the following amendments:

- (a) if this Agreement is terminated prior to the Completion Date, then each of the Substantial Completion Longstop Date (if Substantial Completion of the Works has not yet been achieved) and the Completion Longstop Date will be extended by a period sufficient to allow a New Concessionaire to achieve Substantial Completion of the Works prior to such extended Substantial Completion Longstop Date and Completion prior to such extended Completion Longstop Date;
- (b) any accrued Availability/Performance Deductions will be disregarded for purposes of Sections 26.3 [Warning Notices], 26.4 [Increased Monitoring] and 40.1.7 and any accrued Warning Notices will be cancelled;
- (c) the term of such agreement will be equal to the term from the Termination Date until the End of Term; and

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(d) any other amendments which do not adversely affect the Concessionaire.

“New Concessionaire” means the person who has entered into or will enter into the New Agreement with the Province.

“New Crossing” means:

- (a) the structure constructed or to be constructed by the Concessionaire pursuant to the Construction Output Specifications and the Construction Requirements, including all travel lanes, sidewalks, pathways, shoulders, fixtures, retaining walls, appurtenances and attachments;
- (b) the causeways and roadways that adjoin the structure and which include all ancillary structures within and adjacent to the causeways and roadways, including the pedestrian tunnel, stairways, sign bridges and drainage works,

which forms part of the New Highway.

“New Crossing Erection Plan” means the plan of the same name to be developed by the Concessionaire after the Commencement Date pursuant to Section 3.19 of Part 1 of Schedule 5.

“New Highway” means (subject to Section 8.8 [Boundaries of Land], Section 13.3A [Kelowna Land], Section 36.1.2 with respect to Additional Works, paragraph 7 of Part 1 of Schedule 14 [Subsequent Schemes] and paragraph 3 of Part 2 of Schedule 14 [Improvements]) those lengths of highway as described in Part 2 of Schedule 4 [New Highway] located in the areas shown on the drawing attached to and identified as Part 2 of Schedule 4 [New Highway] and constructed or modified or to be constructed or modified by the Concessionaire pursuant to this Agreement.

“New Permit” means any planning approval or authorization (including any permission, approval or authorization in respect of any reserved matter in any Permit Relating to Land or other New Permit), Expropriation Order or any other order, certificate, approval, revocation, consent or variation of any existing order, statutory instrument or other subordinate legislation made in respect of the Project Facilities, the Site and the Adjacent Areas or any part thereof in accordance with the terms of this Agreement.

“No Default Interest Rate” means the non-default interest rate provided for in the Senior Funding Agreements.

“Nonconformity Reports” has the meaning given in paragraph 1 of Schedule 6 [Quality Management].

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“Non-Excusable Event”, in relation to an event of Force Majeure or Eligible Force Majeure, means:

- (a) any act, omission or default by the Party affected by the event of Force Majeure or Eligible Force Majeure or any of its employees, agents, contractors or subcontractors of any tier or the employees of any of them or any other person for whom that Party is in law or under the terms of this Agreement responsible;
- (b) lack or insufficiency of funds or failure to make payment of moneys or to provide required security on the part of the affected Party; or
- (c) any strike, lock-out, go-slow, labour dispute or other labour action or protest caused by or attributable to any act (including any pricing or other practice or method of operation) or omission of the Concessionaire or any person for whom the Concessionaire is in law or under the terms of this Agreement responsible (including the Contractor and the Operator and their respective contractors and subcontractors of any tier).

“Notice” has the meaning given in Section 46.1 [Requirement for Writing].

“Notice Date” means the later of the Termination Date and (if applicable) the date that the Adjusted Estimated Fair Value is agreed or determined pursuant to Section 44.2.4.

“NWWPA Approvals” has the meaning given in Schedule 12 [Concessionaire’s Environmental Obligations].

“O&M Insurances” has the meaning given in Section 20.11.1.

“O&M Output Specifications” means the minimum performance specification and requirements set out or identified or referred to in Part 1 of Schedule 7 [O&M Output Specifications] as amended from time to time by any Province Change and all provisions of the Environmental Authorization relating to or prescribing standards, specifications, procedures, restrictions or other requirements in connection with the operation, maintenance and rehabilitation of the Project Facilities, the Site and the Adjacent Areas.

“O&M Requirements” means the standards, specifications, procedures and other requirements for the operation, maintenance and rehabilitation of the Project Facilities set out or identified or referred to in Part 2 of Schedule 7 [O&M Requirements], as amended from time to time in accordance with Section 14.2 [O&M Requirements].

“Occupational Health and Safety Regulations” means the *Occupational Health and Safety Regulation*, B.C. Reg. 296/97 made pursuant to the *Workers Compensation Act*.

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“Off-Site Facilities” means (subject to paragraph 7 of Part 1 of Schedule 14 [Subsequent Schemes] and paragraph 3 of Part 2 of Schedule 14 [Improvements]), those parts of the Permanent Works (if any) located on the Adjacent Areas, but excluding any parts thereof which are excluded from this definition from time to time in accordance with Section 13.3 [Temporary Off-Site Facilities].

“Off-Site Works” means those parts of the Works which are to be carried out by the Concessionaire in respect of the Off-Site Facilities.

“Operating and Maintenance Contract” means the contract so titled [of even date herewith] between the Concessionaire and the Operator for the operation, maintenance and rehabilitation of the Project Facilities.

“Operation, Maintenance and Rehabilitation Quality Management Plan” means the Operating, Maintenance and Rehabilitation Quality Management Plan referred to and described in Section 23.1.3.4.

“Operator” means SNC-Lavalin Profac Services Inc. or such substitute as may be appointed by the Concessionaire for the time being in accordance with Section 45.4.1 or 45.4.2.

“Original Senior Commitment” means the amount committed under the Senior Funding Agreements as at the date of this Agreement (as adjusted to take into account any additional financing provided by the Senior Funders for any Eligible Change).

“Original Service Period” means the period commencing on the Commencement Date and expiring on the Substantial Completion Date.

“Owner” means Riverside Forest Products Limited (Incorporation No. BC0705344) of 820 Guy Street, Kelowna, British Columbia, V1Y 7R5.

“Payment Mechanism” means the standards, specifications, special provisions, directives, codes, policies, procedures, manuals, guidelines and processes of the Province that apply to the payment of Performance Payments, as set out in Schedule 10 [Payments].

“Payment Periods” means the payment periods for payment of components of the Performance Payment in accordance with Schedule 10 [Payments], and “Payment Period” means any of the Payment Periods.

“Performance Deductions” means the deductions provided for in Part 8 of Schedule 10 [Performance Deductions].

“Performance Measures” has the meaning given in Schedule 6 [Quality Management].

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“Performance Payment” has the meaning given in Section 32.1.1.

"Performance Securities" means all instruments providing security to the Concessionaire, the Contractor or the Operator as specified in the security package required by the Senior Funders.

“Permanent Works” means the works having a permanent function (regardless of the length of the design life of such works) which are to be designed, constructed and completed by the Concessionaire in accordance with the Construction Output Specifications and the Construction Requirements.

“Permits, Licences and Approvals” means all permissions, consents, approvals, certificates, permits, licences, statutory agreements and authorizations required by Laws and Regulations, and all necessary consents, approvals and agreements from any third parties (including development approvals and consents, approvals and agreements required under Permits relating to Land and Concession Highway Encumbrances), required to perform the Undertakings in accordance with this Agreement, and includes all conditions thereof.

“Permits Relating to Land” means the planning permissions, approvals or authorizations, Expropriation Orders and other orders, certificates, statutory instruments, statutory right of way plans and other subordinate legislation identified in Part 4 of Schedule 4 [Permits Relating to Land], as the same may be amended, modified, varied or superseded by any New Permit, and any New Permit and, where the context so requires, means any of the individual permissions, approvals or authorizations, orders, certificates, instruments, right of way plans and subordinate legislation comprising the Permits Relating to Land.

“Permitted Borrowing” means, without double counting, any:

- (a) advance to the Concessionaire under the Senior Funding Agreements including any advance in relation to any amount of principal advanced as financing for any of the items referred to in the proviso at the end of the definition of “Additional Permitted Borrowing”;
- (b) Additional Permitted Borrowing;
- (c) [not used]
- (d) interest payable on any amounts outstanding under the Senior Funding Agreements; and
- (e) other amounts accrued or payable under the terms of the Senior Funding Agreements, including (i) all costs and expenses payable to the Senior Funders under the Senior Funding Agreements in respect of costs and expenses actually

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incurred by the Senior Funders in enforcing the Senior Funding Agreements, (ii) all amounts (including Hedge Termination Amounts and other breakage costs and any premiums on redemption of bonds, notes or other evidence of indebtedness) payable by the Concessionaire to the Senior Funders as a result of or relating to a prepayment under the Senior Funding Agreements including in respect of Permitted Borrowing, subject to the Concessionaire and the Senior Funders mitigating all such costs to the extent reasonably possible (the Province acknowledging that standard market make-whole provisions and Hedge Termination Amounts are not capable of mitigation), and (iii) all indemnities of the Concessionaire under the Senior Funding Agreements in respect of taxes, increased costs or otherwise, but only to the extent that such other amounts would be payable by the Concessionaire under the initial Senior Funding Agreements without regard to any subsequent amendment after the date of this Agreement (other than an amendment made with the prior consent of the Province in accordance with Section 2.3.4),

except where the amount referred to in paragraphs (a) to (d) above is or is being used to fund a payment of Default Interest on any Additional Permitted Borrowing.

“Plant” means plant, materials, machinery, equipment and apparatus intended to form or forming part of the Project Facilities.

“Police” includes a Police Constable, the RCMP and any other provincial, federal, regional or municipal police force, police department or other law enforcement body and any related governing body (as the case may be).

“Police Constable” includes:

- (a) a member of a police force or police department having territorial jurisdiction over or in respect of the Project Facilities, the Site, the Adjacent Areas and/or the Graving Dock Site or any part or parts thereof from time to time; and
- (b) any other official who has the powers of a constable or a peace officer while engaged in law enforcement duties when those duties are exercised in relation to a matter in connection with, or which incidentally affects the operation of, the Project Facilities, the Site, the Adjacent Areas and/or the Graving Dock Site or any part or parts thereof from time to time.

“Post Termination Service Amount” means, for the purposes of Section 44.2.3, for the whole or any part of a Payment Period for the period from the Termination Date to the Compensation Date, an amount equal to the Maximum Performance Payment which would have been payable for that Payment Period or part thereof under this Agreement had this Agreement not been terminated, less an amount equal to the aggregate of:

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- (a) the Market Value Deduction Amount for that Payment Period;
  - (b) the Rectification Costs incurred by the Province in that Payment Period; and
  - (c) (where relevant), the amount by which the Post Termination Service Amount for the previous Payment Period was negative.

“Preload” means the portion of fill designated on Drawings 1458-104 and -105 which is placed on top of the Causeway Fill to accelerate the settlement of the underlying soils and limit the long-term post-construction settlements.

“Pre-Refinancing Equity IRR” means the nominal Equity IRR calculated immediately prior to the Refinancing.

“Privacy Legislation” means any Laws and Regulations from time to time applicable in British Columbia relating to or governing the collection, storage, use or disclosure of personal information, including the *Freedom of Information and Protection of Privacy Act*, the *Transportation Investment Act*, the *Personal Information Protection Act*, S.B.C. 2003, c. 63 and (if and to the extent applicable in British Columbia) the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5.

“Prohibited Acts Termination Sum” has the meaning given in Section 44.4.2.

“Project” means the design and construction of the Works, the Decommissioning, the operation, maintenance and rehabilitation of the Project Facilities, the Site and the Adjacent Areas and the conduct of any other Undertakings during the Contract Period and the financing of such activities.

“Project Accounts” means accounts referred to in and required to be established under the Senior Funding Agreements.

“Project Documents” means the documents referred to in Section 2.3.1 as the same may be amended or varied from time to time in accordance with Sections 2.3.2, 2.3.2B, 2.3.3 and 45.4 [Subcontracting] and any other document delivered pursuant to Section 2.3.7 and which complies with the provisions of Sections 2.3.2, 2.3.2B, 2.3.3 and 45.4 [Subcontracting].

“Project Facilities” means the Concession Highway and the Off-Site Facilities (including the Works), and any Works not otherwise included in the Concession Highway and Off-Site Facilities.

“Project Schedule” means the schedule for the design, construction, completion, commissioning and testing of the Works and the design and completion of the

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Decommissioning appearing in Schedule 3 [Project Schedule] (as amended from time to time in accordance with this Agreement).

“Proposal” has the meaning given in paragraph 1 of Section A of Part 3 of Schedule 5 [Design and Certification Procedure].

“Proposed Substitute Concessionaire” has the meaning given in the Direct Agreement.

“Protest Action” means any civil disobedience or protest action, including any action taken or threatened to be taken by any person or persons protesting or demonstrating against the carrying out of any part of the Undertakings (including the construction of the Works) or against the construction and/or operation of highways in general, which directly or indirectly materially adversely affects performance of the Undertakings including any action or threatened action which results in increases in the cost of performing the Undertakings (including increased security costs) and/or delays in performing the Undertakings.

“Protester” means any person engaged in Protest Action.

“Provider System” has the meaning given in Section 16.5.1.

“Province Change” means:

- (a) a variation in the design, quality or scope of the Works or the Decommissioning;
- (b) a variation in the quality or scope of the Undertakings (other than as referred to in paragraph (a) above);
- (c) a variation in the Technical Requirements (other than as referred to in paragraphs (a) or (b) above or a change in the Construction Requirements, the Five Year Management Plan, the O&M Requirements, the Traffic Management Requirements, the Concessionaire Proposal Extracts, the Records Management Protocol or the privacy code referred to in Section 14.9 [Privacy Code]);
- (d) a variation in the scope of insurance coverages (for greater certainty excluding adjustments to policy limits) pursuant to paragraph 3.1(f) of Part 1 of Schedule 11 [Insurance Requirements];
- (e) any Additional Works;
- (f) any Relevant Change in Law; or



- (g) any other event which, by the terms of this Agreement, is deemed to be a Province Change or in respect of which the provisions of Part 2 of Schedule 13 [Province Change] are stated to be applicable;

initiated by the Province's Representative in accordance with Part 2 of Schedule 13 [Province Changes] and may in any such case include additions, deletions, substitutions, alterations in design and/or variations in or to any of the Technical Requirements (other than the Construction Requirements, the Five Year Management Plan, the O&M Requirements, the Traffic Management Requirements, the Concessionaire Proposal Extracts, the Records Management Protocol or the privacy code referred to in Section 14.9 [Privacy Code]) (including adding highways or portions thereof to, or removing highways or portions thereof from, the Project Facilities, Site and the Adjacent Areas for any purpose including in connection with or as a result of construction projects, municipal boundary adjustments, development and subdivision approvals and changes in classification of any highway or part thereof).

"Province Change Confirmation" has the meaning given in Paragraph 6.1.1.2 of Part 2 of Schedule 13 [Province Changes].

"Province Default Termination Sum" has the meaning given in Section 44.1.2.

"Province Permits, Licences and Approvals" means the Permits, Licences and Approvals obtained by the Province identified in paragraph 2 of Part 5 of Schedule 5 [List of Permits, Licences and Approvals].

"Province's Design" means the indicative design for a potential New Crossing prepared on behalf of the Province and included in the Disclosed Data.

"Province's Representative" means Stanley R. Cowdell, or such substitute as may be appointed by the Province pursuant to Section 22.3 [Change of Representatives].

"PST" means the tax that is imposed pursuant to the *Social Service Tax Act* (British Columbia).

"PST Change in Law" means any Change in Law that results in a change in the rate of PST.

"Public Authority" means any authority or other public body (including for greater certainty, where applicable, the Province, BCTFA or a municipality) to whom any Temporary Off-Site Facilities are to be turned over as contemplated in Section 13.3 [Temporary Off-Site Facilities].

"Qualifying Bank" means a lending institution that is a bank listed in Schedule I, II or III of the *Bank Act* (Canada) or a bank, life insurance company or pension fund or fund

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managed by a professional fund manager that controls funds in excess of \$500,000,000.00, or any entity (whether a corporation, partnership, trust or otherwise) that is engaged in making, purchasing, holding or otherwise investing in bank loans and similar extensions of credit in the ordinary course of its business and is administered or managed by a Funder or an Affiliate of such Funder, provided such institution, fund, fund manager or other entity is not a Restricted Person.

“Qualifying Bank Transaction” means:

- (a) the disposition by a Senior Funder of any of its rights or interests in the Senior Funding Agreements to a Qualifying Bank;
- (b) the grant by a Senior Funder to a Qualifying Bank of any rights of participation in respect of the Senior Funding Agreements; or
- (c) the grant by a Senior Funder to a Qualifying Bank of any other form of benefit or interest in either the Senior Funding Agreements or the revenues or assets of the Concessionaire, whether by way of security or otherwise.

“Qualifying Bid” means a bid proposal submitted by a Qualifying Bidder that meets all of the qualification criteria notified under Section 44.2.3.3.

“Qualifying Bidder” means a bidder who, to the reasonable satisfaction of the Province:

- (a) has the legal capacity, power and authority to become a party to and perform the obligations of the Concessionaire under this Agreement; and
- (b) has the technical competence, experience and financial standing and the technical and financial resources (including employees with appropriate qualifications, experience and technical competence, committed financial resources, and contracts) sufficient to enable it to perform the obligations of the Concessionaire under this Agreement.

“Qualifying Refinancing” means any Refinancing that will give rise to a Refinancing Gain greater than zero that is not an Exempt Refinancing.

“Quality Audit” has the meaning given in paragraph 1 of Schedule 6 [Quality Management].

“Quality Audit Plans” has the meaning given in paragraph 1 of Schedule 6 [Quality Management].

“Quality Documentation” has the meaning given in paragraph 1 of Schedule 6 [Quality Management].

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“Quality Management Plan” has the meaning given in paragraph 1 of Schedule 6 [Quality Management].

“Quality Management Representative” means the person so appointed in accordance with Section 23.5 [Quality Management Representative].

“Quality Management System” has the meaning given in paragraph 1 of Schedule 6 [Quality Management].

“Quality Manual” has the meaning given in paragraph 1 of Schedule 6 [Quality Management].

“Quality Records” has the meaning given in paragraph 1 of Schedule 6 [Quality Management].

“Quarter” means a period of three calendar months beginning on April 1, July 1, October 1 or January 1.

“RCMP” means the Royal Canadian Mounted Police.

“Records Management Protocol” means the Records Management Protocol referred to in Section 25.4.1, as submitted and updated from time to time without objection by the Province’s Representative in accordance with the Review Procedure.

“Recurrent Cost Increase” has the meaning given in Part 1 of Schedule 13 [Definitions].

“Rectification Costs” means an amount equal to the reasonable and proper costs incurred by the Province in a particular Payment Period or part of a Payment Period in performing or procuring the performance of the Undertakings including any costs incurred by the Province in rectifying or mitigating the consequences of any default by the Concessionaire under this Agreement.

“Refinancing” means:

- (a) any amendment, variation, novation, supplement or replacement of any Funding Agreement;
- (b) the exercise of any right, or the grant of any waiver or consent, under any Funding Agreement;
- (c) the disposition of any rights or interests in, or the creation of any rights of participation in respect of, the Funding Agreements or the creation or granting of any other form of benefit or interest in either the Funding Agreements or the

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contracts, revenues or assets of the Concessionaire whether by way of security or otherwise; or

- (d) any other arrangement put in place by the Concessionaire or another person which has an effect which is similar to any of (a) to (c) above or which has the effect of limiting the Concessionaire's ability to carry out any of (a) to (c) above.

“Refinancing Gain” means an amount equal to the greater of zero and  $[(A - B) - C]$ , where:

A = the Net Present Value of the Distributions projected immediately prior to the Refinancing (taking into account the effect of the Refinancing and using the Financial Base Case as updated (including as to the performance of the Project) so as to be current immediately prior to the Refinancing) to be made to each Relevant Person over the remaining term of this Agreement following the Refinancing;

B = the Net Present Value of the Distributions projected immediately prior to the Refinancing (but without taking into account the effect of the Refinancing and using the Financial Base Case as updated (including as to the performance of the Project) so as to be current immediately prior to the Refinancing) to be made to each Relevant Person over the remaining term of this Agreement following the Refinancing; and

C = any adjustment required to raise the Pre-Refinancing Equity IRR to the Threshold Equity IRR.

“Reinstatement Plan” has the meaning given in Section 20.6B.3.

“Reinstatement Works” has the meaning given in Section 20.6B.3.

“Release” includes any spill, leak, deposit, pumping, pouring, emission, discharge, injection, escape, leaching, migration, disposal, abandoning, emptying, spray, seep, throw, place, exhaust, injection, infuse, introduce and dumping of a Hazardous Substance.

“Relevant Authority” means any entity whose authority is or may be required for the carrying out of all or any part of the Undertakings or which has any authority or right in respect of the Project Facilities, the Site, the Adjacent Areas and/or the Graving Dock Site or any part thereof under any Laws and Regulations.

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“Relevant Change in Law” means any Change in Law which specifically applies to:

- (a) the Project and not to other highway projects whose design, construction, financing and operation are procured on a basis similar to the Project;
- (b) the Concessionaire and not to other persons;
- (c) persons that have contracted with the Province, a municipality or other statutory or public body to provide services similar to those contemplated under this Agreement (whether in relation to highways or other public infrastructure assets); and/or
- (d) the design, construction, finance and/or operation of highways or the holding of shares or other evidences of ownership in persons whose principal business is providing services the same as or similar to the Undertakings, and if compliance with such Relevant Change in Law would require a variation (as applicable) in the design, quality or scope of the Works, the Decommissioning or the Undertakings (other than the Works).

“Relevant Lawful Requirement” means any notice, requirement, measure or order of any regulatory body or court (or other body to whose jurisdiction in the matter the Parties are subject) which would require or reasonably necessitate the carrying out of works upon the Project Facilities, the Site, the Adjacent Areas or the Graving Dock Site for the removal, treatment or other remediation of Contamination.

“Relevant Person” means a Unitholder and any of its Affiliates.

“Relevant Property” means any property which is not within the boundary of the Site and the Adjacent Areas or the Graving Dock Site which is affected by any Contamination in, on or under the Project Facilities, the Site, the Adjacent Areas or the Graving Dock Site (as the case may be) or any migration or leaching of Contamination from the Project Facilities, the Site, the Adjacent Areas or the Graving Dock Site (as the case may be).

“Relevant Works Change in Law” means a Change in Law, (other than (i) a Relevant Change in Law, or (ii) a Change in Law relating to Taxes or any change in Taxes which is not a Relevant Change in Law) which impacts the Concessionaire’s Capital Expenditure performing the Works or the Decommissioning or causes the Concessionaire to incur Capital Expenditure to perform any other works after the Completion Date affecting the Project Facilities (being any work of alteration, addition, demolition or extension or variation in the quality or function of the Project Facilities) which are not Capital Works (and for greater certainty works that the Concessionaire has not included in the O&M Requirements but subsequently are required under the O&M Specifications following a Change in Law shall not constitute Capital Works for this purpose) or works which the Concessionaire would otherwise be required to perform under this Agreement.

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“Remedial Period” has the meaning given in Section 26.1.2.

“Remediation Amount” has the meaning given in Section 19.6.7.

“Renewal Amount” means the cost of carrying out the Renewal Works as agreed or determined in accordance with Section 19 [End of Term].

“Renewal Schedule” means the schedule for the carrying out of the Renewal Works over the remainder of the Contract Period following the Initial Inspection, as agreed or determined in accordance with Section 19 [End of Term], as such schedule may be revised or amended at any time in accordance with Section 19 [End of Term].

“Renewal Works” means the Capital Works or other works of renewal, reconstruction, repair or rehabilitation required, as agreed or determined at any time in accordance with Section 19 [End of Term], to be carried out in order to ensure that the Project Facilities will, on the End of Term, satisfy the End of Term Requirements.

“Report” means any report given in accordance with Section 24.1 [Required Reports].

“Requirements of Interested Parties” means the lawful requirements of Interested Parties, whether established pursuant to Legal Requirements or the provisions of this Agreement, as disclosed or described in the Disclosed Data.

“Restricted Person” means any person who, or any member of a group of persons acting together, any one of which:

- (a) has, directly or indirectly, its principal or controlling office in a country that is subject to any economic or political sanctions imposed by Canada for reasons other than its trade or economic policies;
- (b) has as any part of its business the illegal manufacture, sale, distribution or promotion of narcotics substances or arms, or is or has been involved in terrorism;
- (c) in the case of an individual, he or she (or, in the case of a legal entity, any of the members of its board of directors or its senior executive) has been sentenced to imprisonment or otherwise given a custodial sentence, other than a suspended sentence, for any criminal offence, other than minor traffic offences, less than five years prior to the effective date of any proposed transfer of shares to such person, or he or she is an illegal immigrant or is not a Canadian citizen, permanent resident and does not hold a working permit in Canada;
- (d) has as its primary business the acquisition of distressed assets or investments in companies or organizations which are or are believed to be insolvent or in a financial standstill situation or potentially insolvent;

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- (e) is subject to a claim of the Province or any other Governmental Authority under any proceedings (including regulatory proceedings) which have been concluded or are pending at the time of any proposed transfer and which (in respect of any such pending claim, if it were to be successful) would, in the view of the Province, in either case, be reasonably likely to materially affect the performance by the Concessionaire of its obligations under this Agreement; or
- (f) has been convicted of an offence under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, S.C. 2000, c.17, or has been convicted of the commission of a money laundering offence or a terrorist activity financing offence under the *Criminal Code*, R.S.C. 1985, c. C-46, as amended.

“Retention Account” means the deposit account to be established in the name of the Province in accordance with Section 19.7.1.

“Revenue Loss” has the meaning given in Part 1 of Schedule 13 [Definitions].

“Review Procedure” means the procedure whereby submissions are made to the Province’s Representative as set out in Part 2 of Schedule 8 [Review Procedure].

“Reviewer” means any person employed by the Concessionaire in accordance with Section 30 of Section A of Part 3 of Schedule 5 [Design and Certification Procedure] to check a Structure categorized as a Category III Structure under paragraph 26 of that Section or such substitute as may be appointed by the Concessionaire for the time being in accordance with Section 45.4.1 or 45.4.2.

“Revised Senior Debt Termination Amount” means, subject to Section 2.3.4, the aggregate of:

- (a) all amounts outstanding at the Termination Date (including interest and Default Interest accrued as at that date and all costs and expenses payable to the Senior Funders under the Senior Funding Agreements in respect of costs and expenses actually incurred by the Senior Funders in enforcing the Senior Funding Agreements) from the Concessionaire to the Senior Funders under the Senior Funding Agreements including in respect of Permitted Borrowing, other than any such amounts that are in respect of Additional Permitted Borrowing;
- (b) all amounts of Additional Permitted Borrowing (including interest but excluding Default Interest) outstanding at the Termination Date, including such Additional Permitted Borrowing accrued to that date; and
- (c) all amounts (including Hedge Termination Amounts and other breakage costs and any premiums on redemption of bonds, notes or other evidence of indebtedness) payable by the Concessionaire to the Senior Funders as a result of or relating to a

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prepayment under the Senior Funding Agreements including in respect of Permitted Borrowing, subject to the Concessionaire and the Senior Funders mitigating all such costs to the extent reasonably possible (the Province acknowledging that that standard market make whole provisions and Hedge Termination Amounts are not capable of mitigation),

LESS, to the extent it is a positive amount, the aggregate of (without double-counting in relation to the calculation of the Revised Senior Debt Termination Amount or the amounts below):

- (d) all credit balances on any bank accounts held by or on behalf of the Concessionaire on the Termination Date to the extent that such credit balances are available to the Funders for application against amounts outstanding under the Funding Agreements;
- (e) [not used]
- (f) all amounts, including Hedge Termination Amounts and other breakage costs, payable by the Senior Funders or others to the Concessionaire as a result of prepayment of amounts outstanding under the Senior Funding Agreements including in respect of Permitted Borrowing;
- (g) all other amounts received by the Senior Funders on or after the Termination Date and before the date on which any compensation is payable by the Province to the Concessionaire as a result of enforcing any other rights they may have; and
- (h) all APB Distributions since the last date on which there were no Additional Permitted Borrowings.

“RFP” means the Request for Proposals issued in respect of the Project on May 31, 2004, as amended.

“RFQ” means the Request for Qualifications issued in respect of the Project on December 31, 2003, as amended.

“Rights in respect of land” means any right over or in respect of or otherwise relating in any way to land (including foreshore and land covered with water), whether temporary, revocable, legal, contractual, equitable or otherwise of whatever nature.

“Routine Maintenance” means work which is short term or cyclical in nature and necessary to keep the Project Facilities, the Site and the Adjacent Areas in good and safe working order and state of repair and maintenance, including minor repairs and maintenance to all elements of the Project Facilities, the Site and the Adjacent Areas,



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cleaning, median, shoulder and horticultural maintenance and Winter Maintenance and inspections and surveys associated with any of the foregoing.

“Safety Performance Payment” has the meaning given in Schedule 10 [Payments].

“Schedule of Lane Closures” means a Schedule of Lane Closures submitted by the Concessionaire under Section 15.3.1 (or any revision thereof or amendment thereto submitted under Section 15.3.2 or Section 15.3.3) indicating the period or periods during which the Concessionaire plans to effect or otherwise reasonably foresees any Lane Closure (including any Lane Closure in respect of any works by any Relevant Authority) in respect of the Concession Highway.

“Scheduled Closure” means any Lane Closure in accordance with the schedule of Lane Closures included in the Traffic Management Requirements or any Lane Closure included in a Schedule of Lane Closures to which there has been no objection in accordance with the Review Procedure.

“Scheduled Completion Date” means July 1, 2009.

“Scheduled Substantial Completion Date” means July 1, 2008

“Second Inspection” has the meaning given in Section 19.4.1.

“Senior Debt” means the financing provided by the Senior Funders to the Concessionaire pursuant to and in accordance with the Senior Funding Agreements.

“Senior Funders” means all or any of the persons who provide financing or funding in respect of the Project under the Senior Funding Agreements.

“Senior Funding Agreements” means the Credit Agreement, the promissory notes specified in section 2.6 of the Credit Agreement and all collateral documents specified in section 4.1.1 of the Credit Agreement as at the date of this Agreement or as amended in accordance with Section 2.3.3.

“Significant Appointment” means the appointment of a contractor or subcontractor which could reasonably be considered significant whether as a consequence of the value of the appointment, the materiality of the part of the Undertakings being contracted or subcontracted or because of the level of importance of the appointment to the carrying out of the Undertakings in accordance with this Agreement (including for greater certainty any appointment the termination of which without replacement could reasonably be expected to materially adversely affect the performance by the Concessionaire, the Contractor and/or the Operator, as the case may be, of its respective obligations under this Agreement, the Design-Build Contract or the Operating and Maintenance Contract, respectively), or where the appointment (including for this

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purpose a failure to appoint) would have the potential to materially prejudice the Province's rights and entitlements under this Agreement (including for greater certainty the effectiveness of enforcing such rights and entitlements).

“Site” means, subject to Section 8.6 [Acquisition of Land by Concessionaire] and Section 8.8 [Boundaries of Land] and Section 13.3A [Kelowna Land], the land (including foreshore and land covered with water) spaces and waterways and other areas shown or identified as such on the date hereof on the drawings attached to and identified as Part 8 of Schedule 4 [Site].

“Site Materials” means all materials, including soil, aggregates, gravel, rocks, coal, minerals or other deposits, excavated, arising or produced in connection with the carrying out of the Undertakings on the Site and the Adjacent Areas.

“Site Occupation Date” means the date on which the Concessionaire commences physical work on the Site.

“Statutory Decision Maker” means a person to whom a power or right has been conferred by an enactment to make a decision deciding or prescribing:

- (a) the legal rights, powers, privileges, immunities, duties or liabilities of a person; or
- (b) the eligibility of a person to receive or to continue to receive a benefit or licence, whether or not the person is legally entitled to it.

“Step-In Period” has the meaning given in the Direct Agreement.

“Structure” means any (temporary or permanent):

- (a) bridge, tunnel or culvert having an individual span of 3 metres or more or (in respect of a multi-span structure) a cumulative span of 5 metres or more;
- (b) bridge, tunnel or culvert (other than of corrugated metal) having a span of 1.8 metres or more and where the cover to the road surface is less than 1 metre;
- (c) corrugated metal bridge or culvert having a span of 0.9 metres or more (irrespective of cover to the road surface);
- (d) pedestrian or cycle underpass (irrespective of span and cover to the road surface);
- (e) retaining wall, including reinforced earth, anchored earth and cribwall systems with slope between 70° and 90° to the horizontal, where the level of the fill at the back of the wall is greater than 1.5 metre above the finished ground level in front of the wall;

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- (f) environmental or torrent debris barrier; and
  - (g) sign/signal gantry or high mast for lighting, television cameras and catenary lighting systems.

“Subcontractor Breakage Costs” means amounts reasonably and properly payable by the Concessionaire to the Contractor under the terms of the Design-Build Contract and to the Operator under the terms of the Operating and Maintenance Contract to compensate them for Losses sustained as a direct result of the termination of this Agreement, but only to the extent that:

- (a) the Losses are incurred in connection with the Project and in respect of the performance of the Undertakings, including:
  - (i) costs of materials or goods ordered or subcontracts placed that cannot be cancelled without such Losses being incurred;
  - (ii) expenditures reasonably incurred in anticipation of the performance of the Undertakings in the future;
  - (iii) demobilization costs, including the cost of any relocation of equipment used in connection with the Project; and
  - (iv) employee termination payments; and
- (b) the Losses are incurred under arrangements and/or agreements that are consistent with terms that have been entered into in the ordinary course of business and on reasonable commercial terms; and
- (c) the Concessionaire and the Contractor or Operator (as the case may be) has each used its reasonable efforts to mitigate the Losses.

“Subsequent Scheme” means any change, improvement or addition proposed by the Concessionaire to be made to the design, layout or structure of the Project Facilities or any part thereof at any time after issue of the Completion Certificate which does not involve or require any variation to any of the Technical Requirements (unless the Province’s Representative, in its absolute and unfettered discretion, has consented to the variation) and which cannot be lawfully accomplished by the Concessionaire without obtaining planning permission or any Expropriation Order or other New Permit under the *Transportation Act* or otherwise.

“Subsequent Scheme Notice” has the meaning given in paragraph 1.1 of Part 1 of Schedule 14 [Subsequent Schemes].

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“Substantial Completion” means the satisfactory completion, as confirmed by the issue of all relevant Certificates (including road safety audit Certificates) and supporting documentation under the Design and Certification Procedure, of the Works in accordance with the Construction Output Specifications, the Construction Requirements and all other applicable standards and specifications referred to or set out in this Agreement to such extent as is necessary to permit the safe, uninterrupted and unobstructed public use of the entire Concession Highway, including but not limited to:

- (a) paving of all road surfaces;
- (b) completion of all Structures and drainage systems, to such extent as is necessary to permit the safe, uninterrupted and unobstructed public use of the entire Concession Highway;
- (c) full operation of all traffic lighting and signalization to such extent as is necessary to permit the safe, uninterrupted and unobstructed public use of the entire Concession Highway;
- (d) all permanent pavement markings at all intersections and on all major roads;
- (e) installation of all regulatory and guide signing to such extent as is necessary to permit the safe, uninterrupted and unobstructed public use of the entire Concession Highway;
- (f) installation of all median and roadside barrier and other safety devices to such extent as is necessary to permit the safe, uninterrupted and unobstructed public use of the entire Concession Highway;
- (g) except for areas specific to the Decommissioning, completion of all Utility Works;
- (h) except for areas specific to the Decommissioning, completion of all sidewalks,
- (i) except for areas specific to the Decommissioning, all construction staging areas have been returned to their original condition or a condition otherwise acceptable to the Province, to such extent as is necessary to permit the safe, uninterrupted and unobstructed public use of the entire Concession Highway ; and
- (j) except for areas specific to the Decommissioning, all debris, superfluous materials and equipment have been removed from the Site and the Adjacent Areas and the Site and the Adjacent Areas have been satisfactorily cleared and all as-built and other plans, drawings and specifications required in accordance with the Technical Requirements have been delivered to the Province, to such extent as is

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necessary to permit the safe, uninterrupted and unobstructed public use of the entire Concession Highway,

provided that:

- (k) where the Concessionaire plans to close a sidewalk or pedestrian way on a temporary basis during the Decommissioning and provides a mitigation plan for the closure, this plan in itself will not derogate from the Substantial Completion of that sidewalk;
- (l) where the Concessionaire plans traffic control measures, including restrictions on lane use during the Decommissioning, this plan itself will not derogate from Substantial Completion; and
- (m) where the Concessionaire plans the completion of the pedestrian tunnel as soon as practically and economically possible after Substantial Completion but no later than three months after Substantial Completion, this plan itself will not derogate from Substantial Completion,

and “Substantially Completed” or “Substantially Complete” have a corresponding meaning.

“Substantial Completion Date” means the date on which the Substantial Completion Certificate is issued.

“Substantial Completion Longstop Date” means July 1, 2009.

“Suitable Substitute Concessionaire” has the meaning given in the Direct Agreement.

“TAF” has the meaning given in paragraph 2.9 of Section A of Part 3 of Schedule 5 [Design and Certification Procedure].

“Taxes” means any and all taxes, levies, imposts, duties, fees, assessments, deductions or charges whatsoever, imposed, assessed, levied or collected by any Governmental Authority, together with interest thereon and penalties with respect thereto, and includes all PST and GST except where stated to the contrary.

“Technical Appraisal Authority” has the meaning given in paragraph 2.10 of Section A of Part 3 of Schedule 5 [Design and Certification Procedure].

“Technical Requirements” means the Construction Output Specifications, the Construction Requirements, the O&M Output Specifications, the O&M Requirements, the Concessionaire Proposal Extracts, the Five Year Management Plan, the Traffic Management Output Specifications, the Traffic Management Requirements, the Records

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Management Protocol, the privacy code referred to in Section 14.11 [Privacy Code], the End of Term Requirements, the requirements set out in Section 23.1.2 and 23.1.2A in respect of the Concessionaire's Quality Management System, the Ministry's Standards, the Best Management Practices for Highway Maintenance Activities, the Utility Policy Manual and any other standard, specification or technical requirement referred to or set out in this Agreement, in each case as updated, modified or varied from time to time in accordance with the provisions of this Agreement.

"Temporary Adjacent Areas" means, subject to Section 8.8 [Boundaries of Land], those parts of the Adjacent Areas shown or identified as such on the drawing attached to and identified as Part 5 of Schedule 4 [Adjacent Areas] on which the Temporary Off-Site Facilities are located.

"Temporary Construction Area" means, at any time, any area within which any of the Works or any other work in connection with the Undertakings is actively being carried out at such time.

"Temporary Off-Site Facilities" means any part of the Off-Site Facilities which (on Substantial Completion or Completion of any relevant Works in respect thereof) is to be turned over to and operated and maintained by a Public Authority.

"Temporary Works" means all works and things (of a temporary nature) of every kind required in or about the execution and completion of the Permanent Works or of any subsequent capital works in connection with the operation, maintenance, rehabilitation or improvement of the Project Facilities.

"Termination Date" means the date upon which this Agreement terminates.

"Termination Sum" means any compensation payable by the Province to the Concessionaire on an early termination of this Agreement under Section 44 [Compensation on Termination] (excluding the Adjusted Highest Qualifying Bid Price).

"Third Party Contamination" means any Hazardous Substances brought onto the Site or the Adjacent Areas by any person other than the Concessionaire or any of its agents, contractors and subcontractors of any tier, and employees of each of them during the Contract Period.

"Third Party Contractor" means any contractor (including the Causeway Contractor and the MOT Section Contractor), other than the Concessionaire and any of its contractors or subcontractors which has entered into a contract with the Province to carry out work on the Project Facilities, Existing Bridge, Site or the Adjacent Areas or on an area immediately adjacent to the Site.

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“Third Party Facilities” means bus shelters, telephone facilities, Utilities and other public facilities and associated equipment, plant, materials and apparatus installed and operated or to be installed and operated on the Site or the Adjacent Areas by any transit authority, communications provider, Utility Supplier or other third party.

“Threshold Equity IRR” means **DELETED**

“Traffic Data” means the information relating to traffic in the reports submitted pursuant to paragraphs 1 and 2 of Part 2 of Schedule 15 [Reports] and any information relating to traffic obtained by the Province by direct interrogation of any Measuring Equipment.

“Traffic Management Output Specifications” means the minimum performance specifications and requirements for the management of traffic on the Concession Highway set out or identified or referred to in Part 6 of Schedule 5 [Traffic Management Output Specifications], as amended from time to time by any Province Change.

“Traffic Management Plan” means the traffic management plan to be prepared by the Concessionaire referred to in paragraph 1.3.2 of Part 6 of Schedule 5 [Traffic Management Output Specifications].

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“Traffic Management Requirements” means the procedures and other requirements for the management of traffic on the Concession Highway set out or identified or referred to in Part 7 of Schedule 5 [Traffic Management Requirements], as revised from time to time in accordance with Section 11.8.2.

“Traffic Quality Management Plan” means the Traffic Quality Management Plan referred to and described in Section 23.1.3.5.

“Traffic Volume Payment” has the meaning given in Schedule 10 [Payments].

“Transfer Requirements” means the End of Term Requirements which relate to the Temporary Off-Site Facilities (if any).

“*Transportation Act*” means the *Transportation Act*, S.B.C. 2004, c.44.

“*Transportation Investment Act*” means the *Transportation Investment Act*, S.B.C. 2002, c. 65.

“Trespasser” means any person (other than a Protester) not entitled to be on the Site or the Adjacent Areas.

“Unavailability Deductions” means the deductions provided for in paragraph 2 of Part 3 of Schedule 10 [Lane Availability Payment].

“Undertakings” means all activities of or required of the Concessionaire (and/or any of the Concessionaire’s agents, employees, contractors or subcontractors of any tier) in connection with the performance of any obligations of the Concessionaire under this Agreement and the conduct of all works (including the Works and the Decommissioning) and operations of the Concessionaire (including all of the Concessionaire’s agents, consultants, employees, contractors or subcontractors of any tier) on or in relation to the Project Facilities, the Site and the Adjacent Areas.

“Uninsurable” means, in relation to a risk, either that:

- (a) insurance to be put in place by the Concessionaire in respect of that risk is not obtainable after the Completion Date in the international or Canadian insurance markets from insurers with at least an A- Rating; or
- (b) the insurance premium payable or other terms and conditions for insuring that risk with insurers with at least an A- Rating in the international or Canadian insurance markets after the Completion Date from time to time are such that the risk as it may occur in British Columbia is not generally being insured against in the



international or Canadian insurance markets in respect of projects or operations similar to the Project.

“Unitholder” means any person from time to time holding a Unit or Units, including, for greater certainty, the general partner and any limited partner of the Concessionaire.

“Units” means units or other equity interests of any class in the capital of the Concessionaire.

“Users” means users of the Concession Highway.

“Users Satisfaction Payment” has the meaning given in Schedule 10 [Payments].

“Utilities” means privately, publicly or cooperatively owned lines, facilities or systems for transmitting or distributing electricity, data, communications, gas, oil and petroleum products, water and sewage or other similar commodity which serves the public directly or indirectly, including underground, surface and overhead facilities as well as facilities which use common poles, ducts or conduits on a shared basis and all related equipment, apparatus and infrastructure.

“Utility Agreements” means:

<b>Permit No.</b>	<b>Description</b>	<b>Holder</b>	<b>Date</b>
16706	New hydro pole and anchor, relocate and replace pole 171-391 and anchor and install new anchor on existing pole 163-418 on the south east side of Campbell Road No. 182 and on the west side of Highway No. 97 adjacent to Pcl. S, Pcl.O,Pcl.FF, Pcl. GG and Plan M10040, I.R. N0.10 located on the west side of the Existing Bridge	BC Hydro	July 1997
16759	Three power poles with anchors on the West side of Okanagan Highway #97 @ adjacent to Lot 246, CLSR Plan C76836, I.R. #10, ODYD, located in the Campbell Road area.	BC Hydro	August 1997
K-29-264-89	Three (3) Poles and Anchors on Okanagan Highway #97 North of Campbell Road within Plan H-16773 adjacent to I.R.#10.	BC Hydro	May 1989
K-29-342-85	One 45' pole on westerly Okanagan Lake Bridge approach - Highway #97, to service Ministry of Highways building.	BC Hydro	December 1985
18890	Consent to construct, use, and maintain the works comprising of the installation and maintenance of 1-75mm duct from existing Shaw S.V. to existing Telus S.V.and related works on the Southwest side of Okanagan Highway	Shaw	October 2000

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	97 @ Campbell Road		
19552	Consent to construct, use, and maintain the works comprising of one 9m (30') galvanized steel pole, one concrete service vault and, 10m of 50mm conduit on the South side of Okanagan Highway No. 97 at the west end of the Existing Bridge	Shaw	December 2001
K-29-180-88	The works comprising the use, maintenance and installation of 20 metres of television cable at a 1m offset from curb on Okanagan Hwy#97 within DL4945 ODYD.	Shaw	April 1988
K-29-195-84	The works comprising 50mm diameter PVC conduit on Okanagan Highway 97 offset 0.3 metres outside the Okanagan Lake Bridge lane control signal conduit on the north side of the westerly approach from approximately station 269+80 (Proj. No. E-2439) to the west transition span of the Existing Bridge	Shaw	May 1984
K-55-88	The works comprising the installation, use & maintenance of a replacement television cable on the Okanagan Lake Bridge, Hwy 97, Kelowna, B.C. Said cable to be installed 150 mm from underside of guardrail on the outside of the Existing Bridge	Shaw	March 1988
16289	Conduit on Okanagan Lake Bridge No. 1458, within Highway #97 right-of-way and Campbell Road.	BC Telephone	August 1998
15775	One anchor on the south side of Hwy.97 located south of the intersection of Hwy. 97 and Campbell Road.	BC Telephone	April 1996
16289	Conduit on Okanagan Lake Bridge No. 1458, within Highway #97 right-of-way and Campbell Road.	BC Telephone	August 1998
K-29-64-84	The work comprising 295 metres of 200mm Dia. Sanitary Sewer main and 5 manholes on southside of Okanagan Highway #97 between Abbot Street and Pandosy Street in the City of Kelowna.	City of Kelowna	February 1984
K-29-132-82	The works comprising 2" PVC and 3" PVC along and crossing #97 Okanagan Highway (from bridge to Boucherie Road).	Kelowna Cable TV	April 1982
K-29-280-82	The works comprising 2 - 50mm PVC conduit road crossings of Okanagan Highway 97 at Campbell Road and at station 858 +00 of project No. C-1066	Kelowna Cable TV	September 1982

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and any new agreement entered into by the Province or BCTFA after the Commencement Date with a Utility Supplier in connection with the construction, installation, operation, repair, preservation, relocation and/or maintenance of Utilities in, on, under, over or adjacent to any property within the jurisdiction of the Province as highway authority (including the Project Facilities, the Site and the Adjacent Areas), and includes any site or other permits issued thereunder or pursuant thereto.

“Utility Policy Manual” means the Ministry Utility Policy Manual included in the Data Room, as the same may be updated, supplemented or amended from time to time.

“Utility Supplier” means the owner of any Utilities.

“Utility Works” means temporary and permanent installation, protection, removal and relocation works relating to Utilities carried out in connection with or as part of the Works or the Decommissioning or any other works carried out in the course of the Undertakings, including installation, protection, removal and relocation of poles, pole lines, conduits, gas pipes, oil pipes, sewers and tile lines, and related and ancillary works.

“Vehicles” means any Motor Vehicles authorized to travel on a highway.

“Verification” means the process of testing the calibration of any of the Measuring Equipment for the purpose of assessing any error in Measurement, and “Verify” shall be construed accordingly.

“Warning Notice” means either an Availability/Performance Deductions Warning Notice or a Default Warning Notice.

“Water Act Approval” has the meaning given in Schedule 12 [Concessionaire’s Environmental Obligations].

“Withholding Change in Law” means any Change in Law which results in tax being withheld at source on interest payments made by the Concessionaire to the Senior Funders.

“Winter Maintenance” means works in relation to the inhibition of the formation of ice and the removal of snow and ice as set out or described in the O&M Output Specifications and the O&M Requirements and all maintenance works and functions relating thereto in addition to the usual repairs and maintenance of barriers, signs and roadside appurtenances.

“*Workers’ Compensation Act*” means the *Workers’ Compensation Act*, R.S.B.C. 1996, c. 492.

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“Working Day” means a day (other than a Saturday or Sunday) on which banks are open for business in the City of Vancouver.

“Works” means the Permanent Works (including Plant) and any Temporary Works required in accordance with the Construction Output Specifications and the Construction Requirements for the design, construction, testing, completion and commissioning of the New Highway and the Off-Site Facilities.

“Works Schedule” means the detailed schedule as described in Section 2 of Part 1 of Schedule 5 [Construction Output Specifications] for investigations, design, construction, completion, testing, commissioning and related works, based upon the Project Schedule, to be submitted by the Concessionaire in accordance with Section 12.3.1 and any amended or varied version thereof submitted by the Concessionaire in accordance with Section 12.3.2.

## **2. Interpretation**

This Agreement will be interpreted according to the following provisions, save to the extent that the context or the express provisions of this Agreement otherwise require:

- 2.1 the table of contents, headings and sub-headings, marginal notes and references to them in this Agreement are for convenience of reference only, do not constitute a part of this Agreement, and shall not be taken into consideration in the interpretation or construction of, or affect the meaning of, this Agreement;
- 2.2 this Agreement, together with the Direct Agreement and the Collateral Agreements with the Contractor and the Operator and subject to the terms of the *Transportation Investment Act*, including any requirement to obtain approvals under the *Transportation Investment Act*, and such other related agreements as may from time to time be specified as forming part of the concession agreement, constitute the concession agreement for the purposes of and as contemplated in the *Transportation Investment Act*;
- 2.3 all references to Sections and Schedules are references to Sections of and Schedules to this Agreement and all references to Parts, paragraphs, Annexes or Appendices are references to Parts and paragraphs contained in and Annexes and Appendices to the Schedules;
- 2.4 the Schedules to this Agreement (including any Annexes or Appendices thereto) are an integral part of this Agreement and reference to this Agreement includes reference thereto and reference to any Schedule includes reference to any Annex or Appendix thereto;
- 2.5 all references to any agreement, document, standard, principle or other instrument include (subject to all relevant approvals and any other provision of this Agreement expressly concerning such agreement, document, standard, principle or other instrument) a

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- reference to that agreement, document, standard, principle or instrument as amended, supplemented, substituted, novated or assigned;
- 2.6 all references to any statute or statutory provision (including any subordinate legislation) include any statute or statutory provision which amends, extends, consolidates or replaces the same or which has been amended, extended, consolidated or replaced by the same and include any orders, regulations, by-laws, ordinances, orders, codes of practice, instruments or other subordinate legislation made under the relevant statute;
- 2.7 all references to time of day are references to Pacific Standard time or Pacific Daylight Saving time, as the case may be;
- 2.8 the words “herein”, “hereto”, “hereof” and “hereunder” and other words of like import refer to this Agreement as a whole and not to the particular Section, Schedule, Part, paragraph, Annex or Appendix in which such word may be used;
- 2.9 words importing the singular include the plural and vice versa;
- 2.10 words importing a particular gender include all genders;
- 2.11 “person” includes an individual, corporation, partnership, joint venture, association, trust, pension fund, union, government, governmental body, governmental agency, authority, board, tribunal, commission or department and the heirs, beneficiaries, executors, personal or other legal representatives or administrators of an individual, and the receivers and administrators of a corporation;
- 2.12 any reference to a public organization shall be deemed to include a reference to any successor(s) to such public organization or any organization or entity or organizations or entities which has or have taken over the functions or responsibilities of such public organization;
- 2.13 references to “Parties” mean the parties to this Agreement and references to a “Party” mean any one of the parties to this Agreement;
- 2.14 references to drawings are references to drawings appearing in the Schedules hereto;
- 2.15 all monetary amounts are expressed in Canadian Dollars;
- 2.16 references to amounts or sums being “indexed” or “index linked” are references to amounts or sums which have been or are to be adjusted to reflect the effects of inflation as measured by changes in the CPI from the value applicable as at the Financial Base Date. Such adjustment will be calculated by applying the following formula to the amounts or sums to be adjusted:

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$$\text{Adjusted amount or sum} = \text{amount or sum} \times \frac{\text{CPI}_m}{\text{CPI}_{bd}}$$

where  $\text{CPI}_m$  is the most recent published monthly CPI value, and  $\text{CPI}_{bd}$  is the CPI value for the month and year in which the Financial Base Date occurs;

- 2.17 wherever this Agreement obliges the Province to pay any amount to the Concessionaire (including pursuant to Schedule 13 [Changes]) in respect of any costs, expenses, fees, charges, liabilities, Losses, Claims or other sums incurred by the Concessionaire:
- 2.17.1 such obligation will be construed as applying only to so much of such sums as have been properly incurred on an arm's length commercial basis or, where not incurred on an arm's length commercial basis (including where the payment is made to an Affiliate of the Concessionaire), so much of them as are proper and reasonable; and
- 2.17.2 the Concessionaire will, where requested by the Province, provide supporting evidence of such costs, expenses, fees, charges, liabilities, Losses, Claims or other sums;
- 2.18 the Province will not be imputed with knowledge of any fact, matter or thing unless that fact, matter or thing is within the actual knowledge of those of its employees or agents (including the Province's Representative) who have responsibilities in connection with the conduct of the Undertakings or the Project;
- 2.19 without limiting the extent of its actual knowledge, the Concessionaire will for all purposes of this Agreement be deemed to have such knowledge in respect of the Undertakings as is held (or ought reasonably to be held) by all persons involved in carrying out the Undertakings including the Contractor, the Operator and any other contractor or subcontractor of any tier and the agents, employees or workers of any of them;
- 2.20 any references to statutory duties or functions are references to such duties or functions (including powers and discretions) from time to time and include any common law duties and functions (including powers and discretions);
- 2.21 any requirement for any thing or action to be "in accordance with" or "in compliance with" any standard, code or specification or other requirement or stipulation means that such thing or action is to exceed or at least equal that standard, code, specification or other requirement or stipulation;
- 2.22 any reference to anything being "in", "on", "under" or "over" any other thing shall, where the context permits, include the others;

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- 2.23 any reference in this Agreement or any Schedule to any proprietary name in relation to any goods or materials shall be deemed to include the words “or suitable (in the opinion of the Province’s Representative) equivalent”;
- 2.24 “lane” means any delineated traffic lane the design of which complies with the requirements of the Transportation Association of Canada Geometric Design Guide and is suitable for the passage of a unidirectional stream of traffic in accordance with Good Industry Practice, but in any event, for greater certainty, excluding any hard shoulder, bus lane or median;
- 2.25 whenever the terms “will” or “shall” are used in this Agreement they are to be construed and interpreted as synonymous and are to be read as “shall”;
- 2.26 the words “includes” or “including” are to be construed as meaning “includes without limitation” or “including without limitation”;
- 2.27 general words are not given a restrictive meaning:
- 2.27.1 if they are introduced by the word “other”, by reason of the fact that they are preceded by words indicating a particular class of act, matter or thing; or
- 2.27.2 by reason of the fact that they are followed by particular examples intended to be embraced by those general words;
- 2.28 words or abbreviations which have well-known trade meanings are used in accordance with those meanings;
- 2.29 the expression “all reasonable efforts” and expressions of like import, when used in connection with an obligation of the Concessionaire, means taking in good faith and with due diligence all reasonable steps to achieve the objective and to perform the obligation, including doing all that can reasonably be done in the circumstances taking into account the Concessionaire’s obligations hereunder to mitigate delays and additional costs to the Province, and in any event taking no less steps and efforts than those that would be taken by a reasonable and prudent person in comparable circumstances but where the whole of the benefit of the obligation and where all the results of taking such steps and efforts accrued solely to that person’s own benefit;
- 2.30 the expressions “by the Concessionaire” and “by or through the Concessionaire” and expressions of like import are synonymous and mean by the Concessionaire or by anyone employed by or through the Concessionaire, including the Concessionaire and all contractors, subcontractors and suppliers of any tier and their respective officers, employees, consultants and agents;

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- 2.31 the terms “deficiency”, “deficiencies”, “defect” and “defects” include errors, omissions, defects, deficiencies, incompleteness in the performance of the Undertakings and all other failures to fully conform to, meet and satisfy all requirements of this Agreement;
- 2.32 whenever the terms “submit”, “submitted”, “provide”, “deliver” or words of similar import are used in this Agreement to describe or indicate an obligation of the Concessionaire or a requirement to be satisfied or met by the Concessionaire, and whether capitalized or not, Part 2 of Schedule 8 [Review Procedure] will apply;
- 2.33 all capitalized terms used in a Schedule have the meanings given to such terms in this Schedule 1 [Definitions and Interpretation], unless stated otherwise in a particular Schedule in which case such term will have the meaning given to it in that Schedule solely for the purposes of that Schedule;
- 2.34 the language in the Construction Output Specifications, O&M Output Specifications, Traffic Management Output Specifications and other documents comprising this Agreement may in some cases be written in the imperative for brevity. Clauses containing instructions, directions or obligations are directed to the Concessionaire, and are to be construed and interpreted as if the words “the Concessionaire shall without additional compensation” immediately preceded the instructions, directions or obligations;
- 2.35 all accounting and financial terms used herein are, unless otherwise indicated, to be interpreted and applied in accordance with Canadian generally accepted accounting principles, consistently applied;
- 2.36 all of the Concessionaire’s obligations are to be construed as separate obligations owed to the Province and, except and to the extent otherwise expressly provided in this Agreement, to be performed at the Concessionaire’s own cost and expense;
- 2.37 the words of this Agreement are to be given their natural meaning. The Parties have had the opportunity to take legal advice on this Agreement and no term is, therefore, to be construed contra proferentem;
- 2.38 a reference to any right, power, obligation or responsibility of any department, ministry, agency, board, commission, corporation or other entity of any Governmental Authority is to the department, ministry, agency, board, commission, corporation or other entity of the Governmental Authority which, pursuant to Laws and Regulations, has such right, power, obligation or responsibility at the relevant time;
- 2.39 a reference to persons for whom a Party is in law responsible includes that Party’s employees, agents, contractors and subcontractors of any tier, advisors and any other persons for whom that Party is in law responsible or over whom that Party could reasonably be expected to exercise control;



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- 2.40 if the time for doing an act falls or expires on a day that is not a Working Day, the time for doing such act will be extended to the next Working Day;
- 2.41 each provision of this Agreement will be valid and enforceable to the fullest extent permitted by law. If any provision of this Agreement is held to be invalid, unenforceable or illegal to any extent, such provision may be severed and such invalidity, unenforceability or illegality will not prejudice or affect the validity, enforceability and legality of the remaining provisions of this Agreement. If any such provision of this Agreement is held to be invalid, unenforceable or illegal, the Parties will promptly endeavour in good faith to negotiate new provisions to eliminate such invalidity, unenforceability or illegality and to restore this Agreement as nearly as possible to its original intent and effect;
- 2.42 any reference to a road or highway will include in each case, all roadways, hard shoulders, intersections, interchanges, side roads, access roads, pavement, bridges, drainage works, sign bridges and signals, luminaires and other highway and pedestrian structures whether over or under such road or highway, together with all related supporting infrastructure and amenities, including all fences and barriers, curbs, drainage systems including outfalls and storm water retention ponds and treatment facilities, grassed areas, hedges and trees, planted areas, footways, road markings, road traffic signs, road traffic signals, road lighting, communications installations, washrooms and rest areas, picnic sites, pullouts, embankments, cut-and-fills including in the case of the Concession Highway all structures and improvements thereon within the Site;
- 2.43 all releases, waivers of liability and indemnities in this Agreement expressed to be given in favour of a Party are and shall be interpreted as having been given in favour of and may be enforced by that Party and its employees, directors, officers, deputies, delegates, representatives and agents and, without limiting the foregoing, the Party in whose favour any such release, waiver of liability or indemnity is expressed to be given may, at its option and without any obligation to do so, enforce the same as trustee for and on behalf of any of its employees, directors, officers, deputies, delegates, representatives or agents;
- 2.44 wherever a consent or approval of a Party is provided for herein or required hereunder, the Party giving the consent or approval may impose conditions to the consent or approval which conditions may, in the case of a consent or approval which may be granted or withheld in the absolute and unfettered discretion of such Party, be arbitrary or unreasonable but otherwise will be reasonable having regard to the relevant circumstances;
- 2.45 the expression “best efforts”, when used in this Agreement, means taking all steps that a reasonably prudent businessperson in similar circumstances would consider necessary to achieve the relevant end, including, if necessary, pursuing court proceedings; and

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- 2.46 for greater certainty, the Concessionaire has the same rights and obligations under this Agreement with respect to all anchors and other structures and improvements supporting or attached to or intended to support or be attached to the New Highway, whether the same are situated on the Site or on the Adjacent Areas.
- 2.47 No provision of this Agreement is intended to derogate from or be inconsistent with or in conflict with any Laws and Regulations and should not be interpreted in a manner as to result in any derogation, inconsistency or conflict and if any such provision is found by a court of competent jurisdiction to be inconsistent with or in conflict with any Laws and Regulations, the applicable Laws and Regulations will prevail and such provision will be read down or rendered inoperative (either, generally or in such particular situation, as appropriate), to the extent of such conflict or inconsistency, as the case may be, and if any such provision is found by a court of competent jurisdiction to derogate from any Laws and Regulations, then such provision will be read down or rendered inoperative (either, generally or in such particular situation, as appropriate) to the extent of the derogation and for purposes of this Section 2.47, the following will be excluded from the definition of the defined phrase “Laws and Regulations”: “and the law of equity”, “ordinances”, “codes (including design and building codes)”. For greater certainty, this paragraph is not intended to derogate from the provisions of Section 35 of the Concession Agreement [Change in Law].