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**PART 1 OF SCHEDULE 12**

**CONCESSIONAIRE'S ENVIRONMENTAL OBLIGATIONS**

**1. GENERAL**

- 1.1 Subject to the provisions of section 8.13 [Environmental Obligations of the Province and the Concessionaire] of this Agreement, the Concessionaire will satisfy and perform the following environmental obligations.
- 1.2 Throughout the Contract Period, the Concessionaire is responsible for managing environmental issues associated with the Project, and for complying with and taking into account the commitments, responsibilities and information set forth in each of this Schedule 12, Annex 2 [DFO Initial Authorization], Annex 3 [Water Act Approval], and Annex 4 [NWPAs Approvals], each of which is attached hereto, and with all provisions relating to environmental matters set out in this Agreement (being the Concessionaire's Environmental Obligations).
- 1.3 To the extent that additional activities are identified elsewhere in the Concessionaire's Environmental Obligations as being the responsibility of the Concessionaire, the Concessionaire must also comply with and be responsible for those additional activities.
- 1.4 The provisions of this Schedule 12 are subject to the provisions of Section 35 [Change in Law] and any other express responsibility of the Province provided for in the Concession Agreement including in respect of Permits, Licences and Approvals.

**2. FISHERIES ACT AUTHORIZATION**

- 2.1 Fisheries and Oceans Canada ("DFO") was provided with a project design based on a number of reports set out in a letter from DFO dated September 2004 ("DFO Letter"). The DFO Letter is DFO's response and a copy is attached as Annex 1 to this Schedule.
- 2.2 The Province has obtained the initial authorization pursuant to the *Fisheries Act* from DFO for the west and east causeway fills and for the Project generally (the "DFO Initial Authorization"), a copy of which is attached as Annex 2 to this Schedule.
- 2.3 Without limiting the generality of the foregoing, the Concessionaire must comply with and perform all obligations set out in the DFO Initial Authorization, including all mitigation and compensation measures, and the reclamation of the west and east causeways, other than those obligations set out in Part 2, and will be responsible for the activities set forth in the DFO Initial Authorization, (including any amendments to the DFO Initial Authorization from time to time that become necessary as a result of the Concessionaire's design, any Concessionaire Change or otherwise) and must ensure satisfaction of any commitments and responsibilities set forth in the DFO Initial Authorization (together with any amendments resulting from the Concessionaire's design, any Concessionaire Change or otherwise).

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2.4. Any changes to the DFO Initial Authorization which are required as a result of the Concessionaire's design or any Concessionaire Change will be at the cost and risk of Concessionaire, whether or not the application for the change is made by the Province or the Concessionaire.

**3. WATER ACT APPROVAL**

3.1 Without limiting the generality of the foregoing, the Concessionaire must comply with and perform all obligations set out in the Water Act Approval dated July 5, 2004 issued by Land and Water British Columbia Inc., a copy of which is attached as Annex 3 to this Schedule ("Water Act Approval") and will be responsible for the activities set forth in the Water Act Approval, (including any amendments to the Water Act Approval from time to time that become necessary as a result of any change in the Concessionaire's design from the Province's design) and must ensure satisfaction of any commitments and responsibilities set forth in the Water Act Approval (together with any amendments resulting from the Concessionaire's design or any Concessionaire Change).

3.2 Any changes to the Water Act Approval which are required as a result of the Concessionaire's design or any Concessionaire Change will be at the cost and risk of Concessionaire, whether or not the application for the change is made by the Province or the Concessionaire.

**4. NAVIGABLE WATERS PROTECTION ACT APPROVAL**

4.1 Without limiting the generality of the foregoing, the Concessionaire must comply with and perform all obligations set out in the Navigable Waters Protection Act Approvals dated March 29, 1956, November 1, 1982, August 15, 2002 and April 8, 2005 ("NWPA Approvals"), copies of which are attached as Annex 4 to this Schedule, and will be responsible for the activities set forth in the NWPA Approvals, (including any amendments to the NWPA Approvals from time to time that become necessary as a result of any change in the Concessionaire's design from the Province's design or any Concessionaire Change) and must ensure satisfaction of any commitments and responsibilities set forth in the NWPA Approvals (together with any amendments resulting from any change in the Concessionaire's design from the Province's design or any Concessionaire Change).

4.2 Any changes to the NWPA Approvals which are required as a result of the Concessionaire's design or any Concessionaire Change will be at the cost and risk of the Concessionaire, whether or not the application for the change is made by the Province or the Concessionaire.

**5. ADDITIONAL PERMITS AND APPROVALS**

5.1 The Concessionaire is required to obtain all additional Permits, Licences and Approvals which relate to, or are required in connection with, the Project, unless otherwise indicated in this Agreement.

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**6. RESPONSIBILITY FOR ACTIVITIES**

6.1 Unless the responsibility for the activity is identified as a Province commitment, where the responsibility for the activity is not specifically identified in the Concessionaire's Environmental Obligations as a Concessionaire commitment, the Concessionaire will be responsible for complying (and will cause all of its employees, agents, contractors and subcontractors of any tier and employees of any of them to comply) with the relevant commitment should it undertake or cause to be undertaken any work or activity that causes the commitment or responsibility to come into effect or apply.

**7. GUIDELINES AND POLICIES**

7.1 Without prejudice or limitation to the foregoing paragraphs but subject to the limitations set out in Sections 8.13 [Environmental Obligations of the Province and the Concessionaire] or 8.18 [Environmental Matters] of this Agreement, the Concessionaire will ensure that the Project complies with all Laws and Regulations that may apply during the Contract Period.

**8. DESIGN AND CONSTRUCTION**

8.1 Without prejudice or limitation to the foregoing paragraphs but subject to the limitations set out in Sections 3.5 [Permits, Licences and Approvals], 8.13 [Environmental Obligations of the Province and the Concessionaire] and 8.18 [Environmental Matters] of this Agreement, the Concessionaire must construct, fabricate and erect the Works and carry out the Decommissioning in full compliance with the Concessionaire's Environmental Obligations, and by taking into account, the following:

- 8.1.1 Applicable Environmental Laws, Permits, Licenses and Approvals, and relevant requirements under any other applicable Laws and Regulations;
- 8.1.2 The DFO Initial Authorization for the Project (attached as Annex 2 hereto), including its conditions and the Screening Recommendation and Decision Summary (available in the Data Room), and any amendments;
- 8.1.3 The Water Act Approval for the Project (attached as Annex 3 hereto), including its conditions, and any amendments;
- 8.1.4 The NWPA Approvals (attached as Annex 4 hereto), including their conditions and any amendments.

**9. ENVIRONMENTAL MANAGEMENT RESPONSIBILITIES**

9.1 The Concessionaire must have available at all times during the Contract Period a multi-disciplinary team of qualified environmental specialists responsible for managing and monitoring all environmental issues associated with the Project.

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- 9.2 The Concessionaire is required to:
- 9.2.1 Identify and obtain, prior to commencing construction, at its own cost, all necessary Permits, Licences, and Approvals including any amendments to the DFO Initial Authorization, Water Act Approval or NWPA Approvals or other authorisations that may be required under subsection 35(2) of the *Fisheries Act*, R.S.C. 1985, c. F-14 or other Environmental Laws for construction of the Project, unless otherwise specified in this Agreement.
  - 9.2.2 Comply with, update and keep current the Environmental Protection Plan (attached hereto as Annex 5). The Concessionaire must submit all updates and changes to the Environmental Protection Plan to the Province in accordance with the Review Procedure.
  - 9.2.3 Implement and maintain an Environmental Quality Management Plan pursuant to Section 23 [Quality Management] and Schedule 6 [Quality Management] of this Agreement.
  - 9.2.4 Establish and maintain working relationships with regulatory agencies and stakeholders.
  - 9.2.5 Address all environmental issues associated with the Project.
  - 9.2.6 Conduct environmental monitoring, as reasonably required, in respect of the Works during construction of the Works and after construction is completed.
  - 9.2.7 Finalize design and construct all compensation works for the Project, in accordance with the DFO Initial Authorization, as may be amended, unless otherwise identified herein.
  - 9.2.8 The Concessionaire is responsible for all fisheries compensation post-construction monitoring, including post construction monitoring of the fisheries compensation in accordance with the terms of the DFO Initial Authorization, or as may be amended.
  - 9.2.9 Restore and revegetate once construction is completed to the satisfaction of the Province, acting reasonably.

**10. AREAS OF MAXIMUM ENVIRONMENTAL IMPACT**

- 10.1 The Concessionaire will keep environmental impacts within the magnitude and extent identified in the DFO Letter, as the same may be modified from time to time and approved by the appropriate environmental agency from time to time as a result of changes to the design by the Concessionaire from the Province's design. Within the area of Lake Okanagan, the maximum areas of environmental impact are:

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<b>Proposed impacts to Fish and Fish Habitat</b>	<b>Area</b>
West end – causeway fill above high water level over maintained habitat	450 m <sup>2</sup>
West end – causeway fill below high water level over rip rap	1,275 m <sup>2</sup>
West end – causeway fill below high water level over marsh habitat	1,400 m <sup>2</sup>
West end – causeway fill below high water level over pondweed habitat	4,175 m <sup>2</sup>
West end – causeway fill below high water level over sandy habitat	900 m <sup>2</sup>
West end – causeway fill below high water level over milfoil habitat	3,350 m <sup>2</sup>
East end – causeway fill above high water level over maintained habitat	825 m <sup>2</sup>
East end – causeway fill below high water level over sandy habitat	1,250 m <sup>2</sup>
East end – causeway fill below high water level over milfoil habitat	2,175 m <sup>2</sup>
6 pontoons sunk in very deep water (to a maximum of 4,050 aq. Metres)	4,050 m <sup>2</sup>
Graving dock (one of 3 proposed sites)	Up to 2,600 m <sup>2</sup>
Total	22,450 m <sup>2</sup>

**11. ENVIRONMENTAL DESIGN**

11.1 The landscape and site restoration design for the Project is to be to the satisfaction of the Province, acting reasonably, including being consistent with the Province's landscape and restoration design for Kelowna Park, drawings Nos. 1458-190, 1458-191, 1458-192, 1458-193 and 1458-194 from the Province's design, the DFO Initial Authorization, the Water Act Approval, and the NWPAs Approvals, or any amendments thereto.

11.2 Without limiting the foregoing paragraph, the Concessionaire is required to:

11.2.1 Obtain any amendments to the DFO Initial Authorization or additional authorizations from DFO under subsection 35(2) of the *Fisheries Act*, R.S.C. 1985, c. F-14, for any Harmful Alteration, Disruption or Destruction of fish habitat ("HADDs").

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- 11.2.2 Offset any HADDs with compensation that is acceptable to DFO.
  - 11.2.3 Comply with all post-construction monitoring requirements prescribed by DFO.
  - 11.2.4 Finalize the design of all fisheries compensation for the Works.

**12. CONSTRUCTION**

- 12.1 The Concessionaire must comply with the Environmental Protection Plan [Annex 5], all Permits, Licences and Approvals, the DFO Initial Authorization, Water Act Approval, the NWPA Approvals and applicable Guidelines and Policies for all construction, and in particular when constructing in the vicinity of archaeological, vegetation and wildlife, recreation, and fisheries constraints and when constructing in the vicinity of any other sensitive environmental sites identified during the Contract Period.

**13. WATER**

- 13.1 The Concessionaire must:
  - 13.1.1 Carry out the Works in a manner that complies with the Environmental Protection Plan, DFO Initial Authorization, Water Act Approval and the NWPA Approvals and protects and maintains surface and groundwater resources, both within and outside the Site and Adjacent Areas, including drinking water supplies.
  - 13.1.2 Be responsible for planning, scheduling and performing the Works in such a manner that the quality of water flowing from the Site, the Off-Site Facilities, the Temporary Off-Site Facilities and the Graving Dock Construction Facility is, at all times, acceptable to all relevant environmental agencies, and take immediate action to correct any deficiency in water quality.
  - 13.1.3 The Concessionaire is responsible for conducting water quality field sampling during construction, as described in the Environmental Protection Plan.
  - 13.1.4 Should the water quality monitoring program indicate that water quality has deteriorated, directly or indirectly, as a result of the Works or the Decommissioning, the Concessionaire is responsible for all costs associated with implementing measures to identify the source of the problem and re-establishing the ambient water quality condition.

**14. NOISE AND AIR**

- 14.1 The Concessionaire will comply with the Environmental Protection Plan.

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**15. ARCHAEOLOGY**

15.1 The Concessionaire is responsible for:

15.1.1 Any archaeological impact assessments as may be required in addition to those carried out by the Province prior to the date of this Agreement.

15.1.2 All tasks associated with managing any archaeological resources as required by the *Heritage Conservation Act* and any other applicable Laws and Regulations or Legal Requirements.

**16. OPERATION, MAINTENANCE AND REHABILITATION**

16.1 The Concessionaire will develop, maintain, and implement an Environmental Management Plan, which clearly outlines, subject to Section 8.13 [Environmental Obligations of the Province and the Concessionaire] of this Agreement, the responsibilities of the Concessionaire throughout the operation, maintenance and rehabilitation phases of the Project.

16.2 The Environmental Management Plan shall comply with all of the Concessionaire's Environmental Obligations.

16.3 The Environmental Management Plan will be expanded and updated throughout the life of the Contract Period to reflect the work scheduling, site conditions, environmental constraints and weather that is current at the time.

16.4 Without limiting the foregoing, the Environmental Management Plan will include, but will not be limited to, the following:

16.4.1 Post-construction monitoring and maintenance of fish and wildlife habitat compensation and enhancement sites.

16.4.2 Water quality monitoring and mitigation.

16.4.3 Spill contingency planning and response.

16.4.4 Other environmental issues that may arise as a result of routine operation, maintenance and rehabilitation activities, in respect of the Concession Highway.

16.5 The Concessionaire will submit the Environmental Management Plan to the Province's Representative pursuant to Part 2 of Schedule 8 [Review Procedure] prior to the Concessionaire submitting the Environmental Management Plan to the appropriate environmental agency for acceptance. The Concessionaire is fully responsible for developing an Environmental Management Plan that is acceptable to all environmental agencies.

- 16.6 The Concessionaire is fully responsible for any referrals to relevant environmental agencies which may be necessary or desirable at any time and from time to time during the Contract Period and for satisfying any requirements imposed by any such agency.
- 16.7 Without limiting the generality of the foregoing, the Concessionaire must comply with the *Canadian Environmental Protection Act*, 1999, c.33 and the Code of Practice for the Environmental Management of Road Salts ("Road Salt Code"), which includes:
- 16.7.1 developing a salt management plan;
  - 16.7.2 carrying out best management practices as required by the Road Salt Code of practice and in accordance with the Transportation Association of Canada Syntheses of Best Practices Road Salt Management ("Best Practices");
  - 16.7.3 any additional or other requirements, subsequent changes to, or replacements of, the Road Salt Code or Best Practices; and
  - 16.7.4 the Concessionaire must submit all road salt related plans, best management practices or other documents or programs required to be prepared by the Concessionaire to the Province in accordance with the Review Procedure.

**PART 2 OF SCHEDULE 12**  
**OTHER ENVIRONMENTAL OBLIGATIONS**

**1. FISHERIES ACT AUTHORIZATION**

The obligations set out below and contained in the DFO Initial Authorization are not the obligations of the Concessionaire:

- 1.1 the one time payment of \$100,000 towards restoration of Mission Creek at Cassorso Road as detailed in Okanagan Lake Action Plan, and referred to in the DFO Letter; and
- 1.2 the salvage and relocation of existing pondweed and bulrush habitat units referred to in the DFO Letter.