
PART 9 OF SCHEDULE 5

FORM OF INDEPENDENT CERTIFIER CONTRACT

The following is the form of Independent Certifier Contract agreed upon between the Province and the Concessionaire to be executed by the Province, the Concessionaire and the Independent Certifier following the Closing Date. The Province and the Concessionaire acknowledge that the Independent Certifier Contract remains subject to modification following review by the Independent Certifier with any such modifications to be agreed by each of the Province, the Concessionaire and the Agent acting reasonably.

THIS CONTRACT is made as of the ● day of ●, 2005

AMONG

**HER MAJESTY THE QUEEN IN RIGHT OF THE
PROVINCE OF BRITISH COLUMBIA**, as represented by the
MINISTER OF TRANSPORTATION

(the "Province");

AND

**OKANAGAN LAKE CONCESSION LIMITED
PARTNERSHIP** (reg. no. 05-0399237), a limited partnership
registered under the laws of British Columbia

(the "Concessionaire");

AND

●, a ● incorporated under the laws of ●

(the "Independent Certifier").

WHEREAS:

A. The Province, BC Transportation Financing Authority and the Concessionaire (the Province and the Concessionaire being herein collectively and individually referred to as the "CA Parties") have entered into the Concession Agreement.

B. Pursuant to the terms of the Concession Agreement, the CA Parties wish to appoint the Independent Certifier, and the Independent Certifier wishes to accept such appointment, to perform certain services in connection with the Concession Agreement.

C. The CA Parties and the Independent Certifier wish to enter into this Contract in order to record the terms upon which the Independent Certifier shall perform such services.

NOW THEREFORE in consideration of the mutual promises and agreements of the CA Parties and the Independent Certifier herein expressed and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the CA Parties and the Independent Certifier covenant and agree as follows:

1. DEFINITIONS

1.1 Definitions

In this Contract including the recitals and Appendices, unless the context indicates a contrary intention, terms which are defined in the Concession Agreement (and not otherwise defined in this Contract) shall have the meanings given to them in the Concession Agreement and the following terms shall have the following meanings:

- (a) “Concession Agreement” means the agreement entitled “Okanagan Lake New Crossing Concession Agreement” made between the Province, BC Transportation Financing Authority and the Concessionaire and dated as of the ● day of ●, 2005, as the same may be amended from time to time.
- (b) “Contract” means this Contract, as the same may be amended from time to time.
- (c) “Contract Material” means all material:
 - (i) provided to the Independent Certifier or created or required to be created by any CA Party; and
 - (ii) provided by or created or required to be created by the Independent Certifier as part of, or for the purpose of, performing the Functions, including documents, equipment, reports, technical information, plans, charts, drawings, calculations, tables, schedules and data (stored and recorded by any means).
- (d) “Fee” means the fees payable by the CA Parties to the Independent Certifier for the Functions, as such fees are specified and made payable in Appendix B.
- (e) “Functions” means:
 - (i) all of the functions and obligations conferred on and to be performed by the Independent Certifier under the Concession Agreement;

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- (ii) all of the functions and obligations conferred on and to be performed by the Independent Certifier under this Contract, including the functions described in Appendix A to this Contract; and
 - (iii) all other things or tasks which the Independent Certifier must do to comply with its obligations and discharge its duties under this Contract and to comply with the obligations and discharge the duties of the Independent Certifier under the Concession Agreement.
- (f) “Functions Variation” is any change to the Functions.
- (g) “Intellectual Property” means any and all intellectual property rights throughout the world, whether subsisting now or in the future, including rights of any kind in inventions, patents, copyright, trademarks, service marks, industrial designs, integrated circuit topography rights, applications for registration of any of the foregoing, and know-how, trade secrets, confidential information and trade or business names.
- (h) “CA Parties” has the meaning given in recital A hereto.

2. INTERPRETATION

2.1 Interpretation

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

- (a) the headings and sub-headings and references to them in this Contract are for convenience of reference only, do not constitute a part of this Contract, and shall not be taken into consideration in the interpretation or construction of, or affect the meaning of, this Contract;
- (b) the words “herein”, “hereto”, hereof, and “hereunder” and other words of like import refer to this Contract as a whole and not to the particular provision in which such word may be used;
- (c) all references to Sections are references to Sections of this Contract unless otherwise indicated;
- (d) words importing the singular include the plural and vice versa;
- (e) words importing a particular gender include all genders;
- (f) references to any contract, document, standard, principle or other instrument include (subject to all relevant approvals and any other provision of this Contract

or the Concession Agreement expressly concerning such contract, document, standard, principle or other instrument or amendments thereto) a reference to that contract, document, standard, principle or instrument as amended, supplemented, substituted, novated or assigned;

- (g) “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;
- (h) all monetary amounts are expressed in Canadian Dollars;
- (i) whenever the terms “will” or “shall” are used in this Contract they are to be construed and interpreted as synonymous and are to be read as “shall”;
- (j) the words “includes” or “including” are to be construed as being without limitation;
- (k) general words are not given a restrictive meaning:
 - (i) 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
 - (ii) by reason of the fact that they are followed by particular examples intended to be embraced by those general words;
- (l) 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;
- (m) 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; and
- (n) the words of this Contract are to be given their natural meaning. The CA Parties and the Independent Certifier have had the opportunity to take legal advice on this Contract and no term is, therefore, to be construed contra proferentem.

2.2 Obligations and Exercise of Rights by CA Parties

- 2.2.1 All obligations of the CA Parties under this Contract are and will be several and not joint or joint and several.
- 2.2.2 Except as specifically provided for in this Contract, including pursuant to Section 10.5, the rights of the CA Parties under this Contract will be jointly exercised by the CA Parties.

3. ROLE OF THE INDEPENDENT CERTIFIER

3.1 Engagement

The CA Parties hereby appoint the Independent Certifier, and the Independent Certifier hereby accepts such appointment, to carry out the Functions in accordance with this Contract and the provisions of the Concession Agreement. The Independent Certifier shall perform the Functions in accordance with this Contract and the provisions of the Concession Agreement.

3.2 Qualifications and Standard of Skill, Care and Diligence

The Independent Certifier represents and warrants to the CA Parties that:

- (a) it has and will continue to have all requisite professional qualifications, skill, knowledge and expertise;
- (b) it holds and will continue to hold all requisite permits, licences, consents and authorizations; and
- (c) it has and will continue to have all requisite expertise, qualifications, facilities, materials and equipment in addition to those referred to in paragraphs (a) and (b) above,

required to undertake and perform the Functions and its obligations under this Contract in accordance with the terms of this Contract and the Concession Agreement. The Independent Certifier shall exercise and ensure that all of its staff members engaged in the performance of the Functions exercise the standard of skill, care and diligence in the performance of the Functions that would be expected of an expert professional experienced in providing services in the nature of the Functions for projects similar to the Project.

3.3 Duty of Independent Judgement

- 3.3.1 In performing the Functions, the Independent Certifier must:

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- (a) act impartially, honestly and independently in representing the interests of both CA Parties in accordance with the terms of the Concession Agreement and this Contract;
 - (b) act reasonably and professionally;
 - (c) act in a timely manner:
 - (i) in accordance with the times prescribed in this Contract and in the Concession Agreement; or
 - (ii) where no times are prescribed, within a reasonable time so as to enable the CA Parties to exercise their rights and perform their respective obligations under the Concession Agreement; and
 - (d) act in accordance with the joint directions of the CA Parties provided that the directions are not inconsistent with the other terms of this Contract or the terms of the Concession Agreement and do not vary or prejudice the Independent Certifier's authority or responsibilities or the exercise by the Independent Certifier of its professional judgement under this Contract.

3.3.2 Although the Independent Certifier may take account of any opinions or representations made by the CA Parties, the Independent Certifier shall not be bound to comply with any opinions or representations made by either of them in connection with any matter on which the Independent Certifier is required to exercise its professional judgement.

3.3.3 The Independent Certifier acknowledges that the CA Parties may rely on the Functions, including determinations, findings and certifications made by the Independent Certifier, and accordingly the Independent Certifier, without limiting its obligations under Section 3.2, will use its best skill and judgment in performing the Functions.

3.4 Authority to Act

The Independent Certifier:

- (a) is an independent consultant and is not, and must not purport to be, a partner, joint venturer or agent of any CA Party;
- (b) has no authority to give any directions to a CA Party or its officers, directors, members, employees, contractors, consultants or agents; and
- (c) has no authority to waive or alter any terms of the Concession Agreement, nor to discharge or release a party from any of its obligations under the Concession Agreement unless jointly agreed by the CA Parties in writing.

3.5 Knowledge of the CA Parties' Requirements

The Independent Certifier represents and warrants to the CA Parties that:

- (a) it has reviewed the Concession Agreement and informed and will be deemed to have informed itself fully of the requirements of the Concession Agreement as they relate to the performance of the Functions and as to the nature of the Works and Decommissioning provided for under the Concession Agreement;
- (b) it has informed or will inform itself fully of, and will be deemed to have informed itself fully of, all Laws and Regulations and Legal Requirements that relate to or may apply in respect of the performance of the Functions and the terms of this Contract;
- (c) it will inform itself fully of the requirements of such other documents and materials as may become relevant from time to time to the performance of the Functions;
- (d) without limiting Sections 3.5(a) to 3.5(c), inclusive, it has and will be deemed to have informed itself fully of all time limits and other requirements for any Function which the Independent Certifier carries out under the Concession Agreement and this Contract;
- (e) it has and will be deemed to have informed itself fully of the work necessary for the performance of the Functions and the means of access to, communication with and facilities at the Project Facilities, the Site and the Adjacent Areas and the Graving Dock Site including restrictions on any such access or protocols that are required; and
- (f) it has satisfied itself as to the correctness and sufficiency of its proposal for the Functions and that the Fee covers the cost of complying with all of the obligations under this Contract and of all matters and things necessary for the due and proper performance and completion of the Functions.

3.6 Co-ordination and Information by Independent Certifier

The Independent Certifier must:

- (a) fully co-operate in good faith with the CA Parties;
- (b) carefully co-ordinate the Functions with the work and services performed by the CA Parties;

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- (c) without limiting its obligations under Sections 3.3 and 3.6(b), perform the Functions so as to avoid unreasonably interfering with, disrupting or delaying the work and services performed by the CA Parties; and
 - (d) provide copies to all CA Parties of all reports, communications, certificates and other documentation that it provides to any CA Party.

3.7 Ability to Fulfill Terms of Contract; Conflict of Interest

The Independent Certifier represents and warrants to the CA Parties that:

- (a) it has no knowledge of any fact, circumstance or condition that adversely affects or, so far as it can foresee, might adversely affect its ability to perform the Functions in accordance with and to fulfill the terms of this Contract; and
- (b) at the date of signing this Contract, no actual or perceived conflict of interest exists or is likely to arise in the performance of the Functions or any of its other obligations under this Contract.

The Independent Certifier shall not (and shall at all time have and maintain in place practices and procedures to ensure that it does not) perform services for or provide advice to any other person or engage in any other activity that may or does give rise to any actual or perceived conflict of interest in the performance of the Functions or any of its other obligations under this Contract. Without prejudice to the foregoing, if during the term of this Contract any such actual or perceived conflict or risk of actual or perceived conflict of interest arises, the Independent Certifier will notify the CA Parties immediately in writing of that conflict or risk of conflict including full particulars of all relevant facts and circumstances with respect thereto and, without limiting any other rights or remedies of the CA Parties, will forthwith provide each of the CA Parties with such further information relating thereto as it may request and take such steps as may be required by each of the CA Parties to avoid or mitigate that conflict or risk.

3.8 Independent Certifier Personnel

3.8.1 The Independent Certifier represents and warrants to the CA Parties that it has and will continue to have expert and professional staff who are competent, experienced and qualified to perform, and who hold all requisite licences and other professional qualifications necessary to perform, the Functions in accordance with the terms of this Contract and the Concession Agreement.

3.8.2 Subject to Section 3.8.3, the Independent Certifier shall use the partners, directors or employees described in Appendix C hereto in connection with the performance of the Functions and such persons' services shall be available for so long as may be necessary to ensure the proper performance by the Independent Certifier of the Functions. Such

persons shall have full authority to act on behalf of and bind the Independent Certifier for all purposes in connection with this Contract.

- 3.8.3 None of the persons listed in Appendix C shall be removed or replaced unless he/she ceases to work as a partner in or director or employee of the Independent Certifier due to circumstances beyond the control of the Independent Certifier or he/she is unable to work because of death or illness. The Independent Certifier shall notify the CA Parties of any such circumstances and shall be responsible for finding a replacement who shall previously have been approved in writing by the CA Parties.

4. ROLE OF THE CA PARTIES

4.1 Assistance

The CA Parties agree to co-operate with and provide reasonable assistance to the Independent Certifier to enable the Independent Certifier to carry out its obligations under this Contract.

4.2 Instructions in Writing

All instructions to the Independent Certifier by the CA Parties shall be given in writing.

4.3 Information and Services

Each of the CA Parties shall make available to the Independent Certifier, as soon as practicable from time to time, all information, documents and particulars necessary for the Independent Certifier to carry out the Functions, including such information, documents and particulars required in order for the Independent Certifier to determine whether Substantial Completion or Completion has occurred, and shall provide copies of all such information, documents and particulars provided by it to the Independent Certifier to the other CA Party. Each CA Party hereby consents to the other CA Party disclosing to the Independent Certifier any Confidential Information in connection with or for the purpose of enabling the Independent Certifier to carry out the Functions (which Confidential Information disclosed to the Independent Certifier shall, for greater certainty, form part of the Contract Material).

4.4 Additional Information

If any information, documents or particulars are reasonably required to enable the Independent Certifier to perform the Functions and have not been provided by the CA Parties, then:

- (a) the Independent Certifier must give notice in writing to the Concessionaire's Representative or the Province's Representative, as the case may be, of the details of the information, documents or particulars demonstrating the need and the reasons why they are required; and

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- (b) the Concessionaire or the Province, as the case may be, must arrange the provision of the required information, documents or particulars.

4.5 Right to Enter and Inspect

Upon giving reasonable notice to the Province's Representative and the Concessionaire's Representative, the Independent Certifier (and any person authorized by it) may enter upon and inspect the Works, the Decommissioning and the Project Facilities, the Site, the Adjacent Areas and the Graving Dock Site or any part or parts thereof at any reasonable time in connection with the exercise or performance or proposed exercise or performance of rights or obligations under this Contract, subject to:

- (a) observance of the reasonable rules of the Concessionaire as to safety and security for the Works, the Decommissioning and the Project Facilities, the Site, the Adjacent Areas and the Graving Dock Site;
- (b) not causing unreasonable delay to the carrying out of the Works or the Decommissioning by reason of its presence at the Project Facilities, the Site, the Adjacent Areas and the Graving Dock Site; and
- (c) not causing any damage to the Works or the Project Facilities, the Site, the Adjacent Areas or the Graving Dock Site.

4.6 CA Parties Not Relieved

Neither CA Party shall be relieved from performing or observing its obligations, or from any other liabilities, under the Concession Agreement as a result of either the appointment of, or any act or omission by, the Independent Certifier.

4.7 CA Parties not Liable

On no account will either CA Party be liable to the other CA Party for any act or omission of the Independent Certifier whether under or purportedly under a provision of the Concession Agreement, this Contract or otherwise, provided that any such act or omission shall not extinguish, relieve, limit or qualify the nature or extent of any right or remedy of either CA Party against, or any obligation or liability of either CA Party to, the other CA Party which would have existed regardless of such act or omission.

5. QUALITY

5.1 Quality Project Plan

The Independent Certifier must:

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- (a) develop and implement a quality project plan identifying the processes and outcomes of the Functions that complies with all requirements of the Independent Certifier's quality assurance accreditation, and is otherwise satisfactory to each of the Province's Representative and the Concessionaire's Representative;
 - (b) within 14 days after the date of this Contract, provide such quality project plan to each of the Province's Representative and the Concessionaire's Representative;
 - (c) provided it is satisfactory to each of the Province's Representative and the Concessionaire's Representative, implement such quality project plan; and
 - (d) if such quality project plan is not satisfactory to either the Province's Representative or the Concessionaire's Representative, within 7 days after receiving notice thereof from either CA Party to that effect, revise and resubmit the quality project plan to each of the Province's Representative and the Concessionaire's Representative, and, once it is satisfactory to each of the Province's Representative and the Concessionaire's Representative, implement such quality project plan as so revised.

5.2 Quality Project Plan not to Relieve Independent Certifier

The Independent Certifier will not be relieved of any responsibilities or obligations in respect of the performance of the Functions and will remain solely responsible for them notwithstanding:

- (a) the obligation of the Independent Certifier to develop and implement a quality project plan; or
- (b) any comment or direction upon, review or acceptance of, approval to proceed with or request to vary any part of the quality project plan by either the Province's Representative or the Concessionaire's Representative.

6. SUSPENSION

6.1 Notice

The Functions (or any part thereof) may be suspended at any time by the CA Parties:

- (a) if the Independent Certifier fails to comply with its obligations under this Contract, immediately by the CA Parties giving joint notice in writing to the Independent Certifier; or
- (b) in any other case, by the CA Parties giving seven days joint notice in writing to the Independent Certifier.

6.2 Costs of Suspension

The Independent Certifier will:

- (a) subject to the Independent Certifier complying with Section 9, be entitled to recover the extra costs incurred by the Independent Certifier by reason of a suspension directed under Section 6.1(b) valued as a Functions Variation under Section 9; and
- (b) have no entitlement to be paid any costs, expenses, losses or damages arising from a suspension under Section 6.1(a).

6.3 Recommencement

The Independent Certifier must immediately recommence the carrying out of the Functions (or any part thereof) on receipt of a joint written notice from the CA Parties requiring it to do so.

7. **INSURANCE AND LIABILITY**

7.1 Independent Certifier's Professional Indemnity Insurance

[NTD - The following insurance is subject to confirmation by the Risk Management Branch of the Province and the Concessionaire's insurance consultant.]

7.1.1 The Independent Certifier must have and maintain in place:

- (a) professional errors and omissions insurance:
 - (i) in the amount of \$• million per claim and in the aggregate, a deductible of not more than \$• per claim and from an insurer and on terms satisfactory to each of the CA Parties;
 - (ii) with a term and extended reporting period from the date of this Contract until the expiration of 4 years from the cessation of the Functions; and
 - (iii) covering liability which the Independent Certifier might incur as a result of a breach by it of its obligations or any breach of a duty owed by the Independent Certifier in a professional capacity to the CA Parties, or either of them, under or in connection with this Contract or the provision of the Functions; and
- (b) comprehensive general liability insurance in the amount of \$• million per claim and in the aggregate, no deductible for personal injury or bodily injury, a deductible of not more than \$• per occurrence for property damage, and from an insurer and on terms and conditions satisfactory to each of the CA Parties.

7.1.2 The Independent Certifier must provide copies of its insurance policies and renewals to each of the CA Parties (or as either of them may direct) upon request.

7.2 Workers' Compensation Insurance

The Independent Certifier must, at its own cost, insure its liability (including its common law liability) as required under any applicable workers compensation statute or regulation in relation to its employees engaged in the performance of the Functions.

8. PAYMENT FOR SERVICES

8.1 The Fee

8.1.1 In consideration of the Independent Certifier performing the Functions in accordance with this Contract, the CA Parties shall pay the Independent Certifier the Fee.

8.1.2 The Fee includes all taxes (except for Goods and Services Tax), disbursements and expenses (including accommodation, car hire, equipment and travel expenses), overheads and profit to perform the Functions.

8.2 Payment of Fee

The CA Parties shall each pay one-half of the Fee to the Independent Certifier in accordance with the payment schedule specified in Appendix B. The obligation of each CA Party to pay its one-half of the Fee to the Independent Certifier is a several obligation and not subject to joint or joint and several liability, and neither CA Party shall have any liability whatsoever for the non-payment by the other CA Party of any fees or costs payable by such other CA Party under this Contract.

8.3 Appropriation

The Independent Certifier acknowledges that it is aware of the provisions of subsection 28(2) of the *Financial Administration Act*, R.S.B.C. 1996, c. 138.

9. FUNCTIONS VARIATIONS

9.1 Notice of Functions Variation

9.1.1 If the Independent Certifier believes, other than in the case of a "Functions Variation Order" under Section 9.3, that any direction by the CA Parties constitutes or involves a Functions Variation, it must:

- (a) within 7 days after receiving the direction and before commencing work on the subject matter of the direction, give notice to the CA Parties that it considers the direction constitutes or involves a Functions Variation; and

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- (b) within 21 days after giving the notice under Section 9.1.1(a), submit a written claim to each of the Province's Representative and the Concessionaire's Representative which includes detailed particulars of the claim, the amount of the claim and how it was calculated.

9.1.2 Regardless of whether the Independent Certifier considers that such a direction constitutes or involves a Functions Variation, the Independent Certifier must continue to perform the Functions in accordance with this Contract and all directions, including any direction in respect of which notice has been given under this Section.

9.2 No Adjustment

If the Independent Certifier fails to comply with Section 9.1, the Fee will not be adjusted as a result of the relevant direction.

9.3 Functions Variation Procedure

9.3.1 The Province's Representative and the Concessionaire's Representative may jointly issue a document titled "Functions Variation Price Request" to the Independent Certifier which will set out details of a proposed Functions Variation which the CA Parties are considering.

9.3.2 Within 7 days after the receipt of a "Functions Variation Price Request", the Independent Certifier must provide each of the Province's Representative and the Concessionaire's Representative with a written notice in which the Independent Certifier sets out the effect which the proposed Functions Variation will have on the Fee.

9.3.3 Each of the Province's Representative and the Concessionaire's Representative may then jointly direct the Independent Certifier to carry out a Functions Variation by written document titled "Functions Variation Order" which will state either that:

- (a) the Fee is adjusted as set out in the Independent Certifier's notice; or
(b) the adjustment (if any) to the Fee will be determined under Section 9.4.

9.4 Cost of Functions Variation

9.4.1 Subject to Section 9.2, the Fee will be adjusted for all Functions Variations or suspensions under Section 6.1(b) carried out by the Independent Certifier by:

- (a) the amount (if any) stated in the "Functions Variation Order" in accordance with Section 9.3.3;
(b) if Section 9.4.1(a) is not applicable, an amount determined pursuant to the fee schedule for Functions Variations in Appendix B; or

- (c) where such rates or prices are not applicable, a reasonable amount to be agreed between the CA Parties and the Independent Certifier or, failing agreement, determined by the Province's Representative and the Concessionaire's Representative jointly.

9.4.2 Any reductions in the Fee shall be calculated on the same basis as any increases.

10. TERM AND TERMINATION

10.1 Term

Subject to earlier termination, this Contract will commence [*insert Commencement Date*] and continue in full force until:

- (a) 60 days after Completion; or
- (b) such later date as may be mutually agreed between the CA Parties and the Independent Certifier.

10.2 Notice of Breach

If the Independent Certifier commits a breach of this Contract, the CA Parties may give written notice to the Independent Certifier:

- (a) specifying the breach; and
- (b) directing its rectification in the period specified in the notice being a period not less than 7 days from the date of service of the notice.

10.3 Termination for Breach

If the Independent Certifier fails to rectify the breach within the period specified in the notice issued under Section 10.2, the CA Parties may, without prejudice to any other rights of the CA Parties or either of them, immediately terminate this Contract.

10.4 Termination for Financial Difficulty

The CA Parties may, without prejudice to any other rights which the CA Parties or either of them may have, terminate this Contract immediately if:

- (a) events have occurred or circumstances exist which, in the opinion of the CA Parties, may result in or have resulted in insolvency or the control of the Independent Certifier passing to another body or corporation; or

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- (b) the Independent Certifier has communications with its creditors with a view to entering into, or enters into, any form of compromise, arrangement or moratorium of any debts whether formal or informal, with its creditors.

10.5 Termination for Convenience

Notwithstanding anything to the contrary in this Contract, either the CA Parties acting jointly, or the Province by itself, may at any time terminate this Contract upon 30 days written notice to the Independent Certifier.

10.6 Independent Certifier's Rights upon Termination for Convenience

Upon a termination under Section 10.5, the Independent Certifier will:

- (a) be entitled to be reimbursed by the CA Parties for the value of the Functions performed by it to the date of termination; and
- (b) not be entitled to any damages or other compensation in respect of the termination and (without limitation) any amount in respect of:
- (i) the lost opportunity to earn a profit in respect of the Functions not performed at the date of termination; and
- (ii) any lost opportunity to recover overheads from the turnover which would have been generated under this Contract but for it being terminated.

10.7 Procedure upon Termination

Upon completion of the Independent Certifier's engagement under this Contract or earlier termination of this Contract (whether under Section 10.3, 10.4 or 10.5 or otherwise) the Independent Certifier must:

- (a) co-operate with the CA Parties;
- (b) hand over to the CA Parties all Contract Material and all other information concerning the Project held or prepared by the Independent Certifier; and
- (c) as and when required by the CA Parties, meet with them and such other persons nominated by them with a view to providing them with sufficient information to enable the CA Parties to execute the Project or the persons nominated to provide the Functions.

10.8 Effect of Termination

Except as otherwise expressly provided in this Contract, termination of this Contract shall be without prejudice to any accrued rights and obligations under this Contract as at the date of termination (including the right of the CA Parties to recover damages from the Independent Certifier).

10.9 Survival

Termination of this Contract shall not affect the continuing rights and obligations of the CA Parties and the Independent Certifier under Sections 7, 8, 10.6, 10.7, 10.8, 11, 12.7, 12.8 and this Section or under any other Section which is expressed to survive termination or which is required to give effect to such termination or the consequences of such termination.

11. INDEMNITY

11.1 Indemnity

11.1.1 The Independent Certifier shall indemnify and hold the CA Parties and each of them, and their respective employees, directors, officers, deputies, delegates, representatives and agents, harmless from and against any and all losses, claims, damages, liabilities and costs (including without limitation costs and expenses incurred in retaining another person to act as the Independent Certifier under the Concession Agreement in the event of termination of this Contract pursuant to Section 10.3 or 10.4) incurred or suffered by any of them by reason of, resulting from, in connection with, or arising out of:

- (a) the breach of any representation, warranty, covenant, term, duty or obligation of the Independent Certifier set out in or arising under this Contract or the Concession Agreement; or
- (b) any act or omission of the Independent Certifier in connection with the subject matters of this Contract.

11.1.2 For the purposes of this Section, “costs” includes reasonable lawyers’ fees and expenses, reasonable accountants’ fees and expenses, arbitration costs, court costs and all other reasonable out-of-pocket expenses on a full indemnity basis.

12. GENERAL

12.1 Entire Contract

This Contract and the Concession Agreement constitute the entire Contract between the CA Parties and the Independent Certifier and supersede all communications, arrangements and agreements, either oral or written, made or entered into prior to the date of this Contract between the CA Parties and the Independent Certifier with respect to the subject matter of this Contract.

12.2 Negation of Employment

12.2.1 The Independent Certifier, its officers, directors, members, employees, servants and agents and any other persons engaged by the Independent Certifier in the performance of the Functions, will not by virtue of this Contract or the performance of the Functions become in the service or employment of the CA Parties for any purpose.

12.2.2 The Independent Certifier will be responsible for all matters requisite as employer or otherwise in relation to such officers, directors, members, employees, servants and agents and other persons who are engaged by the Independent Certifier.

12.3 Waiver

Failure by any CA Party or the Independent Certifier to enforce a provision of this Contract will not be construed as a waiver by that CA Party or the Independent Certifier of any right in respect of that provision, or any other provisions of this Contract.

12.4 Notices

12.4.1 Any document which is to be or may be issued or given to or served upon the CA Parties or the Independent Certifier under this Contract will be deemed to have been sufficiently issued or given to or served:

- (a) if it is delivered or sent by commercial courier, upon receipt;
- (b) if it is sent by fax between the hours of 9:00 a.m. and 4:00 p.m. on a Working Day, upon confirmation of a successful transmission by a transmission report received by the sender,

to the addresses set out below:

If to the Concessionaire Okanagan Lake Concession Limited Partnership
c/o 2800 – 666 Burrard Street
Vancouver BC
V6C 2Z7
Facsimile: 604 687 1612
Attention: President

If to the Province Ministry of Transportation
5th Floor, 940 Blanshard Street
Victoria BC V8W 9T5
Facsimile: (250) 387 6431
Attention: Assistant Deputy Minister, Highways

If to the Independent Certifier ●
Address: ●
Fax No.: ●
Attn: ●

12.4.2 Any party may change its address for notice by notice given to the other parties in accordance with this Section.

12.5 Transfer and Assignment

12.5.1 The Independent Certifier:

- (a) must not assign, transfer, mortgage, charge or encumber any right or obligation under this Contract without the prior written consent of the CA Parties, which each CA Party may give or withhold in its absolute and unfettered discretion; and
- (b) agrees that any assignment, transfer, mortgage, charge or encumbrance will not operate to release or discharge the Independent Certifier from any obligation or liability under this Contract.

12.5.2 For the purposes of this Section, an assignment will be deemed to have occurred where there is a change in effective control of the Independent Certifier after the date of this Contract, being a change for any reason in the person or persons controlling:

- (a) the composition of the board of directors;
- (b) the voting power of the board of directors;
- (c) any class of shareholders; or
- (d) more than half the issued shares in the capital of the Independent Certifier.

12.6 Governing Laws and Attornment

This Contract will be governed by and construed in accordance with the laws of the Province of British Columbia and the federal laws of Canada applicable therein without regard to conflicts of law principles that would apply a different body of law, and the CA Parties and the Independent Certifier hereby irrevocably submit and attorn to the exclusive jurisdiction of the courts of that Province and all courts competent to hear appeals therefrom with respect to any action, suit, proceeding or dispute in connection with this Contract.

12.7 Confidentiality

12.7.1 The Independent Certifier must ensure that:

- (a) except as required by law, neither it nor any of its officers, directors, members, employees, servants and agents disclose, or otherwise make public, any Contract Material or any other information or material acquired in connection with or during the performance of the Functions without the prior written approval of each of the CA Parties (which approval may be granted or withheld in the absolute and unfettered discretion of each CA Party); and
- (B) no Contract Material is used, copied, supplied or reproduced for any purpose other than for the performance of the Functions under this Contract.

12.7.2 The CA Parties may at any time require the Independent Certifier to give and to arrange for its officers, directors, members, employees, servants and agents engaged in the performance of the Functions to give written undertakings, in the form of confidentiality agreements on terms required by the CA Parties, relating to the non-disclosure of Contract Material, in which case the Independent Certifier must promptly arrange for such agreements to be made and delivered to the CA Parties.

12.8 Contract Material

12.8.1 The CA Parties and the Independent Certifier agree that the Independent Certifier does not and will not have any rights, including any Intellectual Property, in any Contract Material provided to the Independent Certifier or created or required to be created by any CA Party.

12.8.2 As between the CA Parties and the Independent Certifier, all title and ownership, including all Intellectual Property, in and to the Contract Material created or required to be created by the Independent Certifier as part of, or for the purposes of performing the Functions, is hereby assigned jointly to the CA Parties on creation, or where such title, ownership and Intellectual Property cannot be assigned before creation of the Contract Material, it will be assigned to the CA Parties on creation. In addition, to the extent that copyright may subsist in such Contract Material so created by the Independent Certifier, the Independent Certifier hereby waives all past, present and future moral rights therein and the Independent Certifier shall ensure that any agent or employee of the Independent Certifier shall have waived all such moral rights. The CA Parties acknowledge and agree that, as between themselves, title, ownership and other rights to the foregoing shall be governed by the Concession Agreement.

12.8.3 The Independent Certifier will do all such things and execute all such documents as reasonably requested by either of the CA Parties in order to confirm or perfect the assignment of Intellectual Property in the Contract Material referred to in Section 12.8.2.

12.9 Time of the Essence

Time will be of the essence of this Contract and of the transactions contemplated by this Contract.

12.10 Amendment

No change or modification of this Contract will be valid unless it is in writing and signed by each party to this Contract.

12.11 Severability

If any provision of this Contract shall be declared invalid, unenforceable or illegal by the courts of any jurisdiction to which it is subject, such provision may be severed and such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability or legality of the remaining provisions of this Contract.

12.12 Enurement

Subject to the restrictions on transfer contained in this Contract, this Contract will enure to the benefit of and be binding on the parties and their respective heirs, executors, administrators, successors and assigns.

12.13 Counterparts

This Contract may be executed in any number of counterparts and all counterparts taken together will constitute one and the same instrument.

IN WITNESS WHEREOF the Province, the Concessionaire and the Independent Certifier have executed this Contract.

**HER MAJESTY THE QUEEN IN
RIGHT OF THE PROVINCE OF
BRITISH COLUMBIA, by a duly
authorized representative of the Minister
of Transportation:**

JOHN DYBLE
Deputy Minister, Ministry of Transportation

THE CONCESSIONAIRE

**OKANAGAN LAKE CONCESSION LIMITED
PARTNERSHIP**

By: Its General Partner, Okanagan Lake Concession
Limited

Name:

Title:

[INDEPENDENT CERTIFIER]

**APPENDIX A
FUNCTIONS**

[NTD - Scope to be confirmed.]

FUNCTIONS

Without limiting the other provisions of this Contract and the Concession Agreement, the Independent Certifier shall provide the following services and perform the following functions:

- (a) Familiarize itself with the drawings and other Design Data, documentation and information related to the design, construction and completion of the Works and design and completion of the Decommissioning.
- (b) Review progress reports as necessary for the Independent Certifier to be and to keep itself informed as to the progress of the Works and Decommissioning.
- (c) Prior to issuing any Substantial Completion Certificate or Completion Certificate, consider the views, comments and submissions of the Province's Representative and the Concessionaire's Representative in relation to the satisfaction of the conditions for the issuance of the relevant Substantial Completion Certificate or Completion Certificate.
- (d) Upon receipt of notice from the Concessionaire given in accordance with the applicable provision of Section 13 of the Concession Agreement requesting the issuance of a Substantial Completion Certificate or Completion Certificate, as applicable, within the time periods set out in the applicable provision of Section 13 of the Concession Agreement visually inspect the Works and the Decommissioning **[technical teams to discuss what else is needed here]** to establish whether Substantial Completion or Completion, as applicable, has occurred and either:
 - (i) issue the relevant Substantial Completion Certificate or Completion Certificate, as the case may be, to the Province and the Concessionaire; or
 - (ii) notify the Concessionaire's Representative and the Province's Representative of its decision not to issue the relevant Substantial Completion Certificate or Completion Certificate, as the case may be, and state the reasons for such decision.
- (e) If the Independent Certifier serves a notice under clause (ii) of paragraph (d) of this Appendix and upon the Concessionaire issuing a notice to the Independent Certifier and the Province's Representative that such further works or other measures necessary or appropriate to remedy or remove the cause of the

Independent Certifier's refusal to issue the relevant Substantial Completion Certificate or Completion Certificate, as the case may be, have been completed, the Independent Certifier shall inspect such further works or measures within the time period set out in the relevant provision of Section 13 of the Concession Agreement and shall repeat the procedures in paragraph (d) of this Appendix until the issuance of the relevant Substantial Completion Certificate or Completion Certificate.

- (f) Provide advice on other matters that may arise under the Concession Agreement that both of the CA Parties may jointly require in writing.
- (g) Participate in and give the CA Parties and their counsel all reasonable cooperation, access and assistance (including providing or making available documents and information and witnesses for attendance at hearings and other proceedings) in connection with any proceedings pursuant to the Disputes Resolution Procedure relating to any of the Functions.

**APPENDIX B
FEE**

[NTD – To be completed. This should also include a fee schedule for Functions Variations]

**APPENDIX C
INDEPENDENT CERTIFIER PERSONNEL**

[NTD – To be completed.]