



THIS AGREEMENT is made under section 62 of the *Transportation Act* and is dated for reference May 1, 2011

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA, as
represented by the Minister of Transportation and Infrastructure

(the "Province")

AND

Southern Railway of British Columbia Limited
2012 River Road
New Westminster, British Columbia
V3M 6S3

(the "Licensee")

WHEREAS:

- A. The Land is a provincial public highway (as defined in the *Transportation Act*) and, in accordance with section 58 of the *Transportation Act*, the BCTFA holds all of the Province's right to and title in the soil and freehold of the Land.
- B. The Province may, pursuant to subsections 58(3) and 62(1) of the *Transportation Act* authorize any person to use or occupy a provincial public highway.
- C. The Licensee wishes to use and occupy the Land and the Province has agreed to permit it to do so in accordance with the terms and conditions of this Agreement.

For valuable consideration, the parties agree as follows:

ARTICLE 1 - DEFINITIONS

1.1 In this Agreement,

"Agreement" means this licence of occupation;

"BCTFA" means BC Transportation Financing Authority, a corporation continued under the
Transportation Act;

"Bridge" means the Alex Fraser Bridge (#91 Annacis Highway) and all associated infrastructure and improvements, including without limitation, all pilings, footings, roadwork, lighting, shoring, paving, and other structures and associated amenities;

"Commencement Date" means May 1, 2011;

"Fee" means the fee set out in Article 3;

"Improvements" includes anything made, constructed, erected, built, altered, repaired or added to, in, on or under the Land by the Licensee, and attached to it or intended to become a part of it by the Licensee, and also includes any clearing, excavating, digging, drilling, tunnelling, filling, grading or ditching of, in, on or under the Land by the Licensee, and excludes all infrastructure, amenities, structures, and improvements made, constructed, erected or built by or for the Province, including, without limitation, the Bridge;

"Land" means the land underneath the Alex Fraser Bridge (#91 Annacis Highway), described as Part of SRW Plan 70878 comprised of approximately 1.65 acres (0.66 ha) more or less shown outlined by bold dashed line on AECOM Drawing Southern Railway of BC Annacis Island Barge Slip Access Road, in Schedule A;

"Market Value of the Land" means the total actual value of the Land and improvements excluding the Bridge as set out, from time to time, on the assessment roll for the Land prepared by the British Columbia Assessment Authority and, if the Land is not included in the assessment roll, the value of the Land will be determined, from time to time, by us;

"Permit" means Ministry of Transportation and Infrastructure Permit Number 2009-04706;

"Realty Taxes" means all taxes, rates, levies, duties, charges and assessments lawfully levied or charged, at any time, by any competent governmental authority which relate to the Land, the Improvements or both of them but excluding the Bridge;

"Security" means the security referred to in section 6.4, as replaced or supplemented in accordance with sections 6.5 and 6.7; and

"Term" means the period of time set out in section 2.2.

ARTICLE 2 - GRANT AND TERM

- 2.1 On the terms and conditions set out in this Agreement, the Province grants the Licensee a licence of occupation over the Land for the use, occupation, and right of pass and repass for the Licensee, its employees, contractors, workmen, guests and invitees with or without vehicles, equipment and machinery and for the storage of materials, equipment, vehicles and machinery (including, without limitation, containers and trailers) and the installation, operation, and maintenance of an access road from Humber Place, placement of a temporary crew trailer, and for parking, loading, unloading, and storage and transportation purposes subject to the Permit, and the Use Restrictions set out in Schedule B, and the Licensee acknowledges that this Agreement does not grant it the exclusive use and occupancy of the Land.
- 2.2 The term of this Agreement commences on the Commencement Date and terminates on June 30, 2034, or such earlier date provided for in this Agreement.

ARTICLE 3 - FEE

- 3.1 During the first five years of the Term, you will pay to us a fee of \$17 payable in advance on the Commencement Date and each anniversary of the Commencement Date together with the tax imposed under Part IX of the *Excise Tax Act* (Canada) which is payable on that amount.
- 3.2 For each following five year period during of the term, you will pay to us the greater of the following amounts:
- (a) \$17 of the Market Value of the Land; and

- (b) the fee payable for the immediately preceding five year period of the Term;
payable in advance on each anniversary of the Commencement Date.
- 3.3 We will not later than 30 days before each fifth anniversary of the Commencement Date, give written notice to you specifying the Market Value of the Land and the amount payable by you under 3.2(a).
- 3.4 If we do not give notice to you under section 3.3, the Fee payable by you under 3.2(a) for the following five year period of the Term will be the same as the Fee payable by you for the preceding five years of the Term.

ARTICLE 4 - COVENANTS

- 4.1 The Licensee must
- (a) pay, when due,
 - (i) the Fee to the Province at the address set out in Article 10,
 - (ii) the Realty Taxes, and
 - (iii) all charges for electricity, gas, water and other utilities supplied to the Land;
 - (b) deliver to the Province, immediately upon demand, receipts or other evidence of the payment of Realty Taxes and all other money required to be paid by it under this Agreement;
 - (c) observe, abide by and comply with
 - (i) all applicable laws, bylaws, orders, directions, ordinances and regulations of any competent governmental authority in any way affecting the Land and the Improvements, or their use and occupation,
 - (ii) any permit issued to the Licensee to construct, use and maintain works within the right of way of a provincial public highway, and
 - (iii) the provisions of this Agreement;
 - (d) keep the Land and the Improvements in a safe, clean and sanitary condition satisfactory to the Province, and at its written request, make the Land and the Improvements safe, clean and sanitary;
 - (e) not commit any wilful or voluntary waste, spoil or destruction on the Land or do anything on the Land that may be or become a nuisance or annoyance to an owner or occupier of land in the vicinity of the Land;
 - (f) use and occupy the Land only in accordance with and for the purposes set out in section 2.1;
 - (g) not construct, place or affix any Improvement on or to the Land except as necessary for the purposes set out in section 2.1;
 - (h) cut or remove timber on or from the Land
 - (i) only to address an unsafe condition or for the purposes set out in section 2.1, and

- (ii) in accordance with an agreement issued to it under the *Forest Act* to permit the harvest of Crown timber on the Land unless the minister responsible for the *Forest Act* permits the harvest of timber on the Land without the issuance of an agreement under the *Forest Act*;
- (i) permit the Province, or its authorized representatives, to enter on the Land at any time to inspect the Land and the Improvements; and to access and perform maintenance on the dyke or any part of the highway right of way, Highway #91, or the Bridge;
- (j) indemnify and save the Province and its servants, employees and agents (including the BCTFA and its officers, directors, employees, servants and agents) harmless against all claims, demands, actions, causes of action, losses, damages, fines, penalties, costs, expenses and liabilities, including fees of solicitors and other professional advisors, arising out of or in connection with
 - (i) the Licensee's breach, violation or non-performance of a provision of this Agreement,
 - (ii) any personal injury, bodily injury (including death) or property damage occurring or happening on or off the Land by virtue of its entry upon, use or occupation of the Land, and
 - (iii) without limiting paragraph (ii), any environmental liability on or off the Land related to its entry upon, use or occupation of the Land, including, without limitation, any contamination or any liability related to any toxic, hazardous, dangerous or potentially dangerous substances migrating from the Land,and the amount of all such losses, damages, fines, penalties, costs, expenses and liabilities will be payable to the Province immediately upon demand;
- (k) release the Province and its servants, employees and agents (including the BCTFA and its officers, directors, employees, servants and agents) from and against all claims, demands, actions, causes of action, losses, damages, fines, penalties, costs, expenses and liabilities arising out of or in connection with any environmental liability on or off the Land related to its entry upon, use or occupation of the Land, including, without limitation, any contamination or any liability related to any toxic, hazardous, dangerous or potentially dangerous substances migrating from the Land; and
- (l) on the termination of this Agreement,
 - (i) peaceably quit and deliver to the Province possession of the Land and, subject to paragraphs (ii) and (iii), the Improvements in a safe, clean and sanitary condition (including, without limitation, free of any environmental contamination related to its entry upon, use or occupation of the Land),
 - (ii) within 60 days, remove from the Land any Improvement the Licensee wants to remove, if the Improvement was placed on or made to the Land by or for it, is in the nature of a tenant's fixture normally removable by tenants and is not part of a building or part of the Land,
 - (iii) remove from the Land any Improvement that was placed on or made to the Land by or for the Licensee, and that the Province, in writing, directs or permits it to remove; and
 - (iv) restore the surface of the Land as nearly as may reasonably be possible to the same condition as it was on the Commencement Date, to the Province's satisfaction, but if the Licensee is not directed or permitted to remove an Improvement under paragraph (ii) or (iii), this paragraph will not apply to that part of the surface of the Land on which that

Improvement is located,

and all of its right, interest and estate in the Land will be absolutely forfeited to the Province, and to the extent necessary, this covenant will survive the termination of this Agreement.

- 4.2 The Licensee will not permit any person to do anything it is restricted from doing under this Article.

ARTICLE 5 - LIMITATIONS

- 5.1 The Licensee agrees with the Province that

- (a) the Province is under no obligation to provide access or services to the Land or to maintain or improve existing access roads;
- (b) the Province may, without the Licensee's consent, authorize other persons, including a Crown agency or ministry, to use and occupy the Land under section 62 of the *Transportation Act*;
- (c) the Licensee will make no claim for compensation, in damages or otherwise, in respect of an authorization granted by the Province under subsection (b);
- (d) all of the Licensee's costs and expenses, direct or indirect, that arise out of any interference with its rights under this Agreement as a result of an authorization granted by the Province under subsection (b) will be borne solely by the Licensee;
- (e) the Licensee releases and discharges the Province from all claims for loss or damage arising directly or indirectly out of any interference with its rights under this Agreement as a result of an authorization granted by the Province under subsection (b);
- (f) the Licensee releases and discharges the Province from all claims for losses or damages arising directly or indirectly out of any interference with its rights under this Agreement as a result of a disposition made by the Province under subsection (b);
- (g) the Licensee will not remove or permit the removal of any Improvement from the Land except as expressly permitted or required under this Agreement;
- (h) any interest the Licensee may have in the Improvements ceases to exist and becomes the Province's property upon termination of this Agreement, except where an Improvement may be removed under paragraph 4.1(i)(ii) or (iii) in which case any interest the Licensee may have in that Improvement ceases to exist and becomes the Province's property if the Improvement is not removed from the Land within the time period set out in paragraph 4.1(i)(ii) or the time period provided for in the direction or permission given under paragraph 4.1(i)(iii); and
- (i) if, after the termination of this Agreement, the Province permits the Licensee to remain in possession of the Land and the Province accepts money from it in respect of such possession, a tenancy from year to year will not be created by implication of law and the Licensee will be deemed to be a monthly tenant only subject to all of the provisions of this Agreement, except as to duration, in the absence of a written agreement to the contrary.

ARTICLE 6 - INSURANCE AND SECURITY

- 6.1 The Licensee must, without limiting its obligations or liabilities under this Agreement, at its expense, maintain during the Term

- (a) Commercial General Liability Insurance including non-owned automobile and contractual liability insurance with inclusive limits of not less than \$5,000,000.00 for bodily injury, death or property damage arising from any one accident or occurrence which insurance policy will indemnify the named insureds under the policy for all sums which the insured may become liable to pay or pays for bodily injury, death or property damage or for loss of use, arising out of or resulting from the work or operations of the parties under this Agreement which must be endorsed as follows:

"It is understood and agreed that Her Majesty the Queen in Right of the Province of British Columbia as represented by the Minister of Transportation and Infrastructure (the "Province"), together with the employees, agents (including the BC Transportation Financing Authority and its officers, directors, employees, servants and agents), and servants of the Province (the "Additional Named Insureds"), are each added as an Additional Named Insured, in respect of liability arising from the work or operations of the insured and each Additional Named Insured, in connection with contracts entered into between the insured and the Additional Named Insured.

The Insurance as is afforded by this policy will apply in the same manner and to the same extent as though a separate policy had been issued to each insured. Any breach of a condition of the policy by any insured will not affect the protection given by this policy to any other insured without knowledge of the breach. The inclusion herein of more than one insured will not operate to increase the limit of liability under this policy.";

- (b) if vessels are owned, leased or rented or used in the performance of this Agreement by the Licensee and are not covered under the general liability policy, it will provide Protection and Indemnity insurance with limits of not less than \$5,000,000.00 for such vessels and will include four-fourths collision liability insurance,
- (c) if any licensed vehicles are owned, leased, rented or used by the Licensee in the performance of this Agreement, Automobile Liability Coverage with inclusive limits of not less than \$5,000,000.00 providing third party liability and accident benefits insurance for all such vehicles, and
- (d) if aircraft (including helicopters) are owned, rented, leased or used by the Licensee in the performance of this Agreement, third party liability coverage with inclusive limits of not less than \$5,000,000.00;

which, in the case of the policies of insurance described in subsections (a), (b) and (d), must include endorsements or provisions that they may not be cancelled, reduced, altered or materially changed without the insurer or insurers giving not less than 30 days' prior written notice to the Province by registered mail, which endorsements must be in terms comparable to those normally obtainable from insurers in the Province of British Columbia or Canada issuing comparable policies.

- 6.2 All insurance required to be maintained by the Licensee under this Agreement must be placed with insurers licensed to transact business in British Columbia or Canada and, the Licensee must, under the insurance required to be maintained by it under this Agreement,

- (a) pay all deductibles;
- (b) not exclude hazardous operations such as excavation, pile driving, shoring, blasting, under-pinning or demolition work or any other operation or work from insurance coverage;

- (c) deliver to the Province, on the Commencement Date, on the renewal of the insurance and at other times required by the Province,
 - (i) for all policies except Automobile Liability Insurance, a completed and executed certificate of insurance in a form acceptable to the Province (as of the Commencement Date, such form is entitled "Certificate of Insurance" and is numbered H-111), and
 - (ii) evidence of Automobile Liability Insurance in the form of a duly executed Insurance Corporation of British Columbia APV47 or APV250 form or a copy of the vehicle registration/insurance certificate;
 - (d) on the Province's request, deliver to the Province evidence that the insurance remains in force and effect by way of the originals or certified copies of all current insurance policies and endorsements.
- 6.3 The Licensee acknowledges and agrees that, in the event of any third party loss or damage or any physical loss or damage to the Land (and its associated apparatus, improvements or fixtures), the settlement or payment by the insurer of the subsequent claim will be made without the right of subrogation against the Province or the BCTFA or those for whom the Province and the BCTFA are legally obligated to indemnify against such claims.
- 6.4 On the Commencement Date, the Licensee will deliver to the Province security in the amount of \$20,000.00 which will
- (a) guarantee the performance of the Licensee's obligations under this Agreement;
 - (b) be in the form required by the Province; and
 - (c) remain in effect until the Province certifies, in writing, that the Licensee has fully performed its obligations under this Agreement.
- 6.5 The Province may use the Security for the payment of any costs and expenses incurred by the Province to perform any of the Licensee's obligations under this Agreement that are not performed by the Licensee and, if such event occurs, the Licensee will, within 30 days of that event, deliver further Security to the Province in an amount equal to the amount drawn down by the Province.
- 6.6 After the Province certifies, in writing, that the Licensee has fully performed its obligations under this Agreement, the Province will return to the Licensee the Security maintained under section 6.4, less all amounts drawn down by the Province under section 6.5.
- 6.7 The Licensee acknowledges that the Province may, from time to time, notify the Licensee to
- (a) change the form or amount of the Security; and
 - (b) provide and maintain another form of Security in replacement of or in addition to the Security posted by it under this Agreement;

and the Licensee will, within 30 days of receiving such notice, deliver to the Province written confirmation that the change has been made or the replacement or additional form of Security has been provided by the Licensee.

ARTICLE 7 - ASSIGNMENT

- 7.1 The Licensee must not sublicense, assign, mortgage or transfer this Agreement, or permit any person to use or occupy the Land, without the Province's prior written consent, which consent the Province may withhold in its sole discretion. Notwithstanding the foregoing, the Licensee shall be permitted to allow its contractors, workmen, guests and invitees to use the Land for the purposes set out in section 2.1.
- 7.2 For the purpose of section 7.1, if the Licensee is a corporation, a change in control (as that term is defined in subsection 2(3) of the *Business Corporations Act*) of the Licensee will be deemed to be a transfer of this Agreement; provided always that, notwithstanding section 7.1, the Province's consent to a change of control may not be unreasonably withheld or delayed.
- 7.3 Section 7.2 does not apply to a corporation if the shares of the corporation which carry votes for the election of the directors of the corporation trade on a stock exchange located in Canada.
- 7.4 Prior to considering a request for consent under section 7.1, the Province may require the Licensee to meet certain conditions, including without limitation, that it provides to the Province a "site profile", "preliminary site investigation" or "detailed site investigation" (as those terms are defined in the *Environmental Management Act*) for the Land and or other similar type of investigation of the Land.

ARTICLE 8 - CANCELLATION

- 8.1 The Licensee agrees with the Province that
- (a) if it
 - (i) defaults in the payment of any money payable by it under this Agreement, or
 - (ii) fails to observe, abide by and comply with the provisions of this Agreement (other than the payment of any money payable by you under this Agreement),and its default or failure continues for 60 days after the Province gives written notice of the default or failure to it,
 - (b) if, in the Province's opinion, it fails to make diligent use of the Land for the purposes set out in this Agreement, and its failure continues for 60 days after the Province gives written notice of the failure to it;
 - (c) if it
 - (i) becomes insolvent or makes an assignment for the general benefit of its creditors,
 - (ii) commits an act which entitles a person to take action under the *Bankruptcy and Insolvency Act* (Canada) or a bankruptcy petition is filed or presented against it or it consents to the filing of the petition or a decree is entered by a court of competent jurisdiction adjudging it bankrupt under any law relating to bankruptcy or insolvency, or
 - (iii) voluntarily enters into an arrangement with its creditors;
 - (d) if it is a corporation,
 - (i) a receiver or receiver-manager is appointed to administer or carry on its business, or

- (ii) an order is made, a resolution passed or a petition filed for its liquidation or winding up;
- (e) if it is a society, it converts into a company in accordance with the *Society Act* without the Province's prior written consent; or
- (f) If this Agreement is taken in execution or attachment by any person;

this Agreement will, at the Province's option and with or without entry, terminate, and all of the Licensee's right, interest and estate in the Land will be absolutely forfeited to the Province.

- 8.2 If the condition complained of in subsection 8.1(a) or (b) (other than the payment of any money payable by the Licensee under this Agreement) reasonably requires more time to cure than 60 days, the Licensee will be deemed to have complied with the remedying of it if the Licensee commences remedying or curing the condition within 60 days and diligently complete the same.
- 8.3 The Licensee agrees with the Province that the Province may, on 60 days' written notice to the Licensee, terminate this Agreement if the Province or the BCTFA requires the Land for any purpose.
- 8.4 The Licensee agrees with the Province that the Licensee may, on 60 days' written notice to the Province, terminate this Agreement.
- 8.5 The Licensee agrees with the Province that it will make no claim for compensation, in damages or otherwise, upon the lawful termination of this Agreement under section 8.1 or 8.3 or under subsection 62(5) of the *Transportation Act*.

ARTICLE 9 - DISPUTE RESOLUTION

- 9.1 If any dispute arises under this Agreement, the parties will attempt to resolve the dispute within 60 days of the dispute arising (or within such other time period agreed to by the parties) and, subject to applicable laws, provide candid and timely disclosure to each other of all relevant facts, information and documents to facilitate those efforts.
- 9.2 Subject to section 9.5, if a dispute under this Agreement cannot be resolved under section 9.1, the dispute will be resolved by arbitration conducted by a sole arbitrator appointed pursuant to the *Commercial Arbitration Act*.
- 9.3 The cost of the arbitration referred to in section 9.2 will be shared equally by the parties and the arbitration will be governed by the laws of the Province of British Columbia.
- 9.4 The arbitration will be conducted at the office of the Province in Victoria, British Columbia, and if the Province has no office in Victoria, British Columbia, then at the office of the Province that is closest to Victoria, British Columbia.
- 9.5 A dispute under this Agreement in respect of a matter within the Province's sole discretion cannot, unless it agrees, be referred to arbitration as set out in section 9.2.

ARTICLE 10 - NOTICE

- 10.1 Any notice or other document required or permitted to be given by either party to the other must be in writing and will be deemed to be given if mailed by prepaid registered mail in Canada or delivered to the address of the other as follows:

to the Province

BC Transportation Financing Authority
5A-940 Blanshard Street,
Victoria, BC V8W 3E6

Facsimile Number: (250) 356-6970
Attention: Land and Property Administrator

to the Licensee

Southern Railway of British Columbia Limited
2102 River Drive
New Westminster, BC V3M6S3

Facsimile Number: (604) 526-0914
Attention: Gary T Smith, P.Eng.
Director Engineering Services

or at such other address as a party may, from time to time, direct in writing, and any such notice will be deemed to have been received if delivered, on the day of delivery, and if mailed, 7 days after the time of mailing, except in the case of mail interruption in which case actual receipt is required.

- 10.2 In order to expedite the delivery of any notice or other document required or permitted to be given by either party to the other, a concurrent facsimile copy of any notice will, where possible, be provided to the other party but nothing in this section, and specifically the lack of delivery of a facsimile copy of any notice, will affect the deemed delivery provided in section 10.1.
- 10.3 The delivery of all money payable to the Province under this Agreement will be effected by hand, courier or prepaid regular mail to the Province's address specified in or otherwise established under section 10.1, or by any other payment procedure agreed to by the parties, such deliveries to be effective on actual receipt.

ARTICLE 11 - MISCELLANEOUS

- 11.1 No provision of this Agreement will be considered to have been waived unless the waiver is in writing, and a waiver of a breach of a provision of this Agreement will not be construed as or constitute a waiver of any further or other breach of the same or any other provision of this Agreement, and a consent or approval to any act requiring consent or approval will not waive or render unnecessary the requirement to obtain consent or approval to any subsequent same or similar act.
- 11.2 No remedy conferred upon or reserved to the Province under this Agreement is exclusive of any other remedy in this Agreement or provided by law, but that remedy will be in addition to all other remedies in this Agreement or then existing at law, in equity or by statute.
- 11.3 The grant of a sublicence, assignment or transfer of this Agreement does not release the Licensee from its obligation to observe and perform all the provisions of this Agreement on its part to be observed and performed unless the Province specifically releases the Licensee from such obligation in its consent to the sublicence, assignment or transfer of this Agreement.
- 11.4 This Agreement extends to, is binding upon and enures to the benefit of the parties, their heirs, executors, administrators, successors and permitted assigns.

- 11.5 If, due to a strike, lockout, labour dispute, act of God, inability to obtain labour or materials, law, ordinance, rule, regulation or order of a competent governmental authority, enemy or hostile action, civil commotion, fire or other casualty or any condition or cause beyond the Licensee's reasonable control, other than normal weather conditions, the Licensee is delayed in performing any of its obligations under this Agreement, the time for the performance of that obligation will be extended by a period of time equal to the period of time of the delay so long as the Licensee
- (a) gives notice to the Province within 30 days of the commencement of the delay setting forth the nature of the delay and an estimated time frame for the performance of its obligation; and
 - (b) diligently attempts to remove the delay.
- 11.6 The Licensee agrees with the Province that
- (a) the Province is under no obligation, express or implied, to provide financial assistance or to contribute toward the cost of servicing, creating or developing the Land or the Improvements and the Licensee is solely responsible for all costs and expenses associated with its use of the Land and the Improvements for the purposes set out in this Agreement;
 - (b) nothing in this Agreement constitutes the Licensee as an agent, joint venturer or partner of the Province or the BCTFA or gives its any authority or power to bind the Province or the BCTFA in any way; and
 - (c) any information regarding this Agreement or the Licensee may be disclosed or required to be disclosed under the *Freedom of Information and Protection of Privacy Act*, governmental policy or otherwise.
- 11.7 There are no warranties, representations, collateral agreements or conditions affecting this Agreement except as set out in this Agreement.

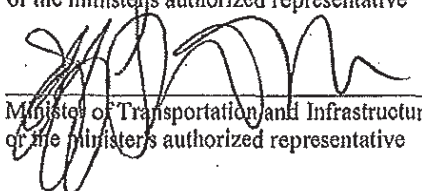
ARTICLE 12 - INTERPRETATION

- 12.1 In this Agreement, "person" includes a corporation, firm or association and wherever the singular or masculine form is used in this Agreement it will be construed as the plural or feminine or neuter form, as the case may be, and vice versa where the context or parties require.
- 12.2 The captions and headings contained in this Agreement are for convenience only and do not define or in any way limit the scope or intent of this Agreement.
- 12.3 This Agreement will be interpreted according to the laws of the Province of British Columbia.
- 12.4 Where there is a reference to an enactment of the Province of British Columbia or of Canada in this Agreement, that reference will include a reference to every amendment to it, every regulation made under it and any subsequent enactment of like effect and, unless otherwise indicated, all enactments referred to in this Agreement are enactments of the Province of British Columbia.
- 12.5 If any section of this Agreement, or any part of a section, is found to be illegal or unenforceable, that section or part of a section, as the case may be, will be considered separate and severable and the remainder of this Agreement will not be affected and this Agreement will be enforceable to the fullest extent permitted by law.
- 12.6 Each schedule to this Agreement is an integral part of this Agreement as if set out at length in the body of this Agreement.

- 12.7 This Agreement constitutes the entire agreement between the parties and no understanding or agreement, oral or otherwise, exists between the parties with respect to the subject matter of this Agreement except as expressly set out in this Agreement and this Agreement may not be modified except by subsequent agreement in writing between the parties.
- 12.8 Each party will, upon the request of the other, do or cause to be done all lawful acts necessary for the performance of the provisions of this Agreement.
- 12.9 All provisions of this Agreement in the Province's favour and all of its rights and remedies, either at law or in equity, will survive the termination of this Agreement.
- 12.10 Time is of the essence of this Agreement.
- 12.11 Wherever this Agreement provides that an action may be taken, a consent or approval must be obtained or a determination must be made then each party will act reasonably in taking such action, deciding whether to provide such consent or approval or making such determination; but where this Agreement states that a party has sole discretion to take an action, provide a consent or approval or make a determination, there will be no requirement to show reasonableness or to act reasonably in taking that action, providing that consent or approval or making that determination.

The parties have executed this Agreement as of the date of reference of this Agreement.

**SIGNED on behalf of HER MAJESTY THE
QUEEN IN RIGHT OF THE PROVINCE
OF BRITISH COLUMBIA** by the Minister of
Transportation and Infrastructure
or the minister's authorized representative


Minister of Transportation and Infrastructure
or the minister's authorized representative

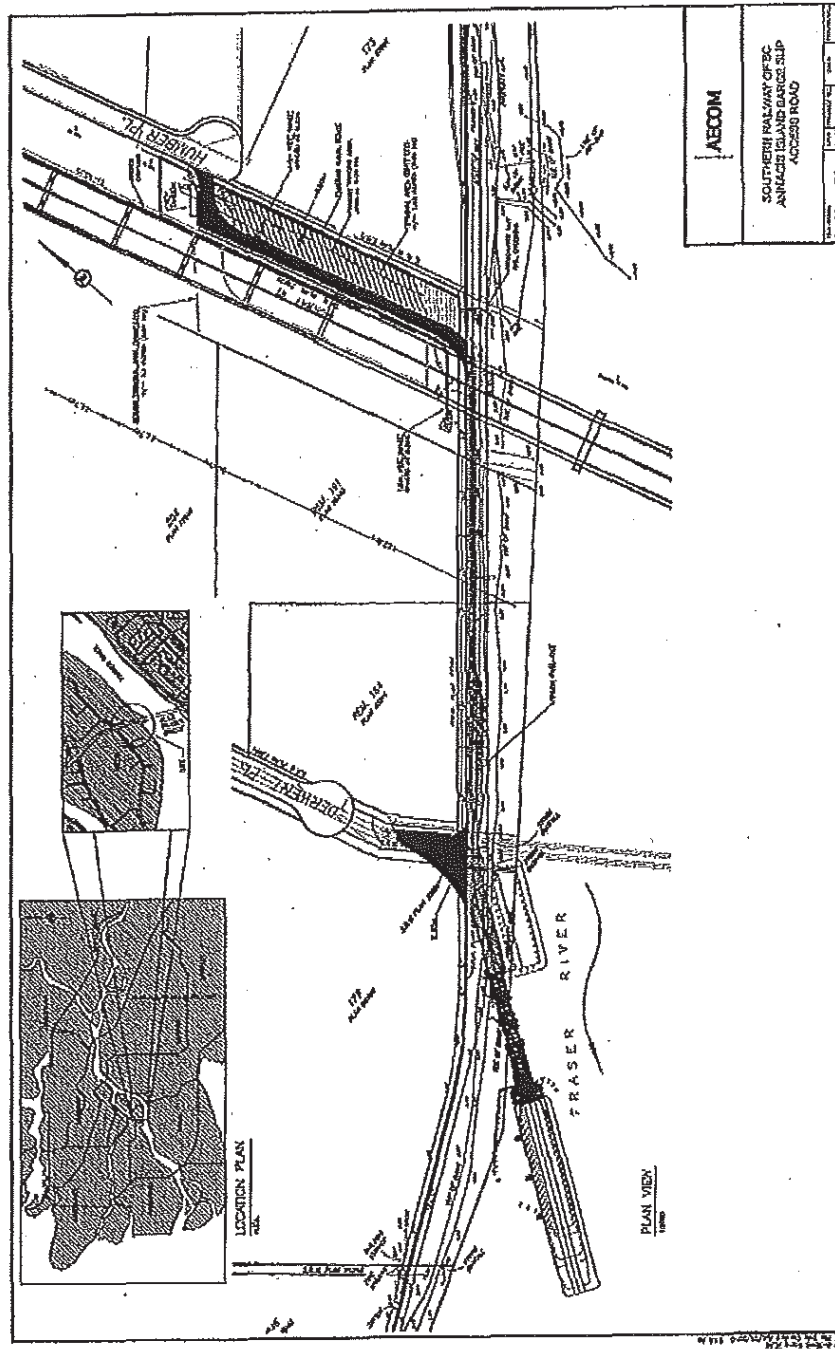
SIGNED on behalf of Southern Railway of British Columbia Limited
by its authorized signatories


Authorized Signatory


Authorized Signatory

SCHEDULE A

"Land" means the land (approx. 1.65 ac) shown outlined by bold dashed line on the following reduced plan, AECOM Drawing Southern Railway of BC Annacis Island Barge Slip Access Road:



**Schedule B
Use Restrictions**

**Ministry of Transportation and Infrastructure
Licence Area under Alex Fraser Bridge, Delta**

Subject to the terms and conditions of the Agreement, the Province grants the Licensee a licence of occupation over the Land subject to the following:

1. The Province has at all times the authority to exercise its rights and powers under the Transportation Act (SBC 2004), and the Commercial Transport Act (RSBC 1996), including the right to restrict type and weight of materials stored and stacked to limit ground loading;
2. The Licensee shall pay to have protective barriers designed and installed for all piers of Alex Fraser Bridge located within 3 metres of parked or moving vehicles or trailers, to prevent damage resulting from vehicle impact.
3. Upon request from the Province, the Licensee shall pay to have protective debris netting designed and installed under the structural components of Alex Fraser Bridge that are located over circulation and/or occupied areas, described in Schedule A of this Agreement, within a period of 180 days following written direction by the Province to do so.
4. Only materials that meet the definition of **Class 1 Commodity** (as defined by the National Fire Prevention Association [NFPA]) or **Limited Combustible** materials shall be stored under or adjacent to the structure. All other materials shall be stored with a minimum 6m horizontal clearance to the outer edges of the bridge deck;
5. Item 4 may be exempted provided the occupant installs and maintains an automatic fire suppression system (at the occupant's expense) acceptable to the ministry; and
6. The Province requires access to the structure components for inspection and/or maintenance. The occupants will provide site access to the Province and will, where the Province deems it necessary, remove any materials that restrict such access. Where removal of materials is required in **Non-Emergency** situations, the Province will provide 48 hours notice to the occupant.
7. All the above work to be done to the satisfaction of the District Official, Ministry of Transportation and Infrastructure.

BRITISH COLUMBIA HYDRO and POWER AUTHORITY

FILE: AX137F

Crossing Agreement

THIS INDENTURE made the 10th day of October
One Thousand Nine Hundred and Eighty-Six

BETWEEN:

BRITISH COLUMBIA HYDRO and POWER AUTHORITY, of
970 Burrard Street, in the City of Vancouver, Province
of British Columbia, Canada.
(hereinafter called "the Corporation")

OF THE FIRST PART

AND: MINISTRY OF TRANSPORTATION AND HIGHWAYS
309 - 6th Street
New Westminster, B.C.
V3L 3A7

OF THE SECOND PART

WHEREAS the Party of the Second Part has requested the Corporation to permit the Party of the Second Part to construct and use a 30 ft. private planked crossing over the Corporation's right of way, at, or near Mileage 1.73 Mainline "B" Annacis Island Branch at the point indicated in red and as specified on the plan No. CBA-Buckland Sketch attached hereto, for the purpose of providing access to and from the Pier Protection Works of the Party of the Second Part.

AND WHEREAS the Corporation has consented to the construction and use of such crossing upon the terms and conditions hereinafter contained:

NOW THEREFORE this agreement witnesseth that the parties hereto have agreed as follows:

1. The Corporation hereby grants to the Party of the Second Part permission to construct and use a 30 Ft. Private Planked crossing over the Corporation's right of way at the point indicated in red and as specified on the said plan attached hereto, suitable for the aforementioned purpose. The said crossing shall be constructed, graded and planked, to the satisfaction of the Engineer of the Corporation,

ANNACIS BRIDGE PROJECT

SUBJECT PROPOSED RAIL CROSSING AT N1

CONT. _____

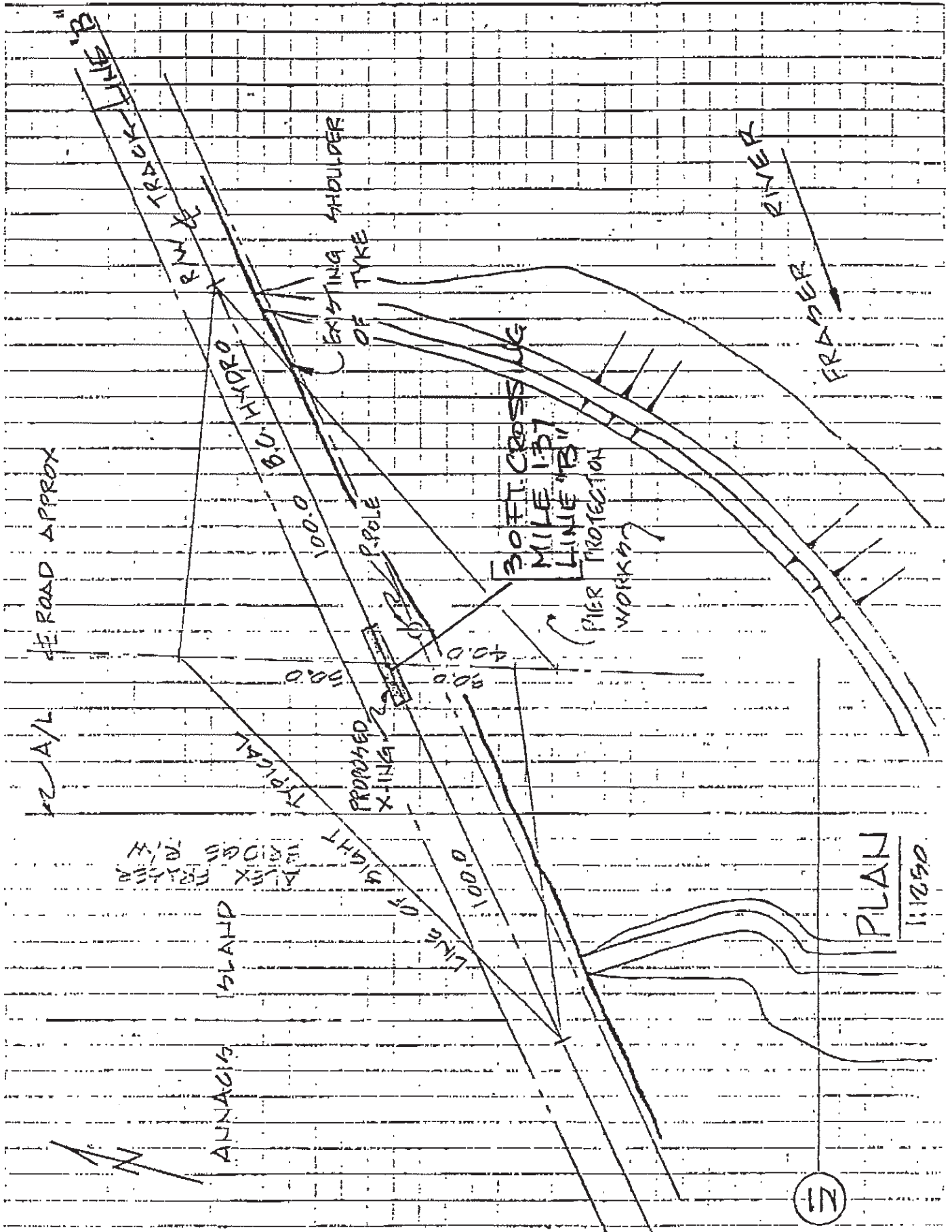
PAGE _____

CALCULATIONS BY JP/AR

DATE 26 Sept 19

CHECKED BY DEB

DATE _____



PLAN

1:1050



- 2 -

and the Party of the Second Part shall not use the said crossing until the approval of the said Engineer has been first had and obtained. The cost and expense of the said crossing and of any work incidental thereto shall be borne by the Party of the Second Part.

2. The Party of the Second Part shall during the continuance of these presents maintain the said crossing to the satisfaction of the Engineer of the Corporation and continuously keep closed the gates on each side of the said crossing except when it is in actual use, if gates are shown on or required by the said plan.

3. The Privilege hereby granted shall be so exercised as not to interfere in any way with the operation of the Corporation's line of railway and so as not to injure or cause to be injured the said line of railway or any part thereof, and the said crossing shall not be used for any purpose save that hereinbefore mentioned.

4. The Corporation shall not be liable for any injury, including injuries resulting in death, or loss that may at any time occur to any person, corporation or property whatsoever using or making use of the said crossing whether such injury be attributable to the negligence of the Corporation, its servants or agents or otherwise.

5. The Party of the Second Part covenants that he will:

(a) Assume all risk of injury (including death) to any person and of loss of or damage to any personal property whatsoever which such person or property may suffer, incur or sustain while on or using or making use of the said crossing or which may result from or arise out of the said crossing, or the construction, maintenance or use thereof, or the failure of the Party of the Second Part to comply with any of the terms and conditions of this agreement;

(b) At all times indemnify and save harmless the Corporation against and from all losses, costs, damages, actions, proceedings, claims and demands whatsoever (including, without limiting the generality of the foregoing, any award, settlement or judgment made under any statute for the protection of workmen) which may be brought against or made upon the Corporation or which it may pay, incur, sustain or be put to by reason of or on account of or arising out of any such injury, loss or damage as aforesaid;

in all cases whether such injury, loss or damage be caused by the negligence or default of the Corporation, its servants or agents or otherwise howsoever.

- 3 -

6. The Party of the Second Part shall not assign or transfer his interest under this agreement without first obtaining the written consent of the Corporation, and in the event of any breach of this stipulation the Corporation shall be at liberty to treat this agreement as terminated without notice being given to any party or person.

7. This agreement may be terminated by the Corporation at any time after the execution hereof without becoming liable to the Party of the Second Part for any damage or compensation by reason of such termination, upon giving ten days' notice to the Party of the Second Part, which notice shall be sufficiently given if mailed postage prepaid addressed, to the Party of the Second Part at

309 - 6TH STREET
NEW WESTMINSTER, B.C.
V3L 3A7

or if posted at the said crossing.

8. Upon the termination of this agreement whether by notice or otherwise, the Party of the Second Part shall at his own expense take up and remove the planks and other material used in the construction of the said crossing within one month after the termination of this agreement, and if this is not so done, then the Corporation may remove the said planks and material at the expense of the Party of the Second Part.

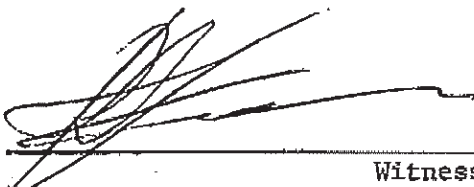
9. The Party of the Second Part shall pay to the Corporation annually the sum of Forty Dollars (\$40.00) for the privilege hereby granted.

10. Wherever the singular or the masculine is used in this Indenture, the same shall be deemed to include the plural or the feminine, or the body politic or corporate where the context or the parties so require.


11. This agreement shall enure to the benefit of and be binding upon the parties hereto and their respective executors, administrators, successors and assigns.

- 4 -

IN WITNESS WHEREOF the Parties hereto have executed these presents.

Signed and Delivered on behalf of the
Corporation in the Presence of:

WitnessSigned and Delivered by the Party
of the Second Part in the Presence
of:

WitnessBRITISH COLUMBIA HYDRO and
POWER AUTHORITYPer 

Vice-President, Rail OperationsMINISTRY OF TRANSPORTATION AND
HIGHWAYSPer MGEIsh