

PERMIT TO CONSTRUCT, USE AND MAINTAIN WORKS UPON THE RIGHT-OF-WAY OF A PROVINCIAL PUBLIC HIGHWAY

PURSUANT TO TRANSPORTATION ACT AND/OR THE INDUSTRIAL ROADS ACT AND/OR THE MOTOR VEHICLE ACT AND/OR AS DEFINED IN THE NISGA'A FINAL AGREEMENT AND THE NISGA'A FINAL AGREEMENT ACT

BETWEEN:

The Minister of Transportation and Infrastructure

West Kootenay District
4th Floor – 310 Ward Street
Nelson BC V1L 5S4
Canada

("The Minister")

AND:

Regional District of Kootenay Boundary
202-843 Rossland Avenue
Trail BC V1R 4S8
Canada

("The Permittee")

WHEREAS:

- A. The Minister has the authority to grant permits for the auxiliary use of highway right of way, which authority is pursuant to the Transportation Act and the Industrial Roads Act, the Motor Vehicle Act, as defined in the Nisga'a Final Agreement and the Nisga'a Final Agreement Act.
- B. The Permittee has required the Minister to issue a permit pursuant to this authority for the following purpose:

The improvement and maintenance of the end of Kingsley Road provide a usable access to water for the public. Works to include providing a porta- poti, garbage pick-up, and providing signage and security.
- C. The Minister is prepared to issue a permit on certain terms and conditions:

ACCORDINGLY, the Minister hereby grants to the Permittee a permit for the Use (as hereinafter defined) of highway right of way on the following terms and conditions:

- 1. That the construction of the said works is carried out in conformity with all legislation applicable to the Permittee or specifications by regulatory bodies having jurisdiction over the Permittee, and that the Regional Director, Transportation of the Province of British Columbia, or any person appointed by the Regional Director, Transportation shall have free access to all parts of the works for the purpose of satisfying himself that the works are being carried out in accordance with such legislation or regulatory specifications as aforementioned.
- 2. The Permittee for whom these works are being constructed or maintained shall at all times indemnify and save harmless the Government of the Province of British Columbia against any loss sustained or damage done by the Permittee or its servants or agents for which by law the Permittee would be liable, except in cases where the loss or damage is attributable to the negligence of the Government, its servants or agents.
- 3. That after receiving notice in writing on the intention on the part of the Provincial Government to construct, extend, alter, or improve any public work, the Permittee being responsible for the maintenance of the works for which consent is hereby granted shall co-operate with the District Official, and within three (3) months from receipt of notice all works shall be completed in moving or altering such work to such new position or in such manner as may be necessitated by the

construction, extension, alteration, or improvement proposed to be carried out by the Provincial Government. The cost of all such work to be borne by the Permittee except in the case of cost sharing arrangement on pole relocations (refer to circular).

4. That while reasonable care will be taken on the part of the Provincial Government to do as little damage as possible to any private work in the carrying-out of the construction, extension, alteration, improvement, repair, or maintenance of public work adjacent thereto, the Provincial Government can accept no responsibility of any kind for such damage.
9. That this permit shall be in force only during such time as the said works are operated and maintained by the applicants or their assignees or successors in conformity with all legislation applicable to the Permittee or specifications by regulatory bodies having jurisdiction over the Permittee.
11. As a condition of this permit, the Permittee unconditionally agrees with the Ministry of Transportation and Infrastructure that the Permittee is the prime contractor for the purposes of the work described by this permit, at the work location described in this permit, and that the Permittee will observe and perform all of the duties and obligations which fall to be discharged by the prime contractor pursuant to the *Workers Compensation Act* and the *Occupational Health and Safety Regulation*.
12. The Permittee is advised and acknowledges that the following hazards may be present at the work location and need to be considered in co-ordinating site safety: overhead hazards, particularly electrical or telecommunications lines; buried utilities, particularly electrical, telecommunication, and gas lines; traffic, danger trees, falling rocks, and sharp or infectious litter.
13. The Permittee shall determine the location of highway right-of-way to ensure their permitted work is within Ministry jurisdiction. The Permittee is responsible for all trespass issues.
14. Should any survey monuments be disturbed or removed by the Permittee or his agents, they are to be replaced by a BC Land Surveyor at the expense of the Permittee.
15. The highway surface shall be restored and kept clear and clean of materials and equipment at the end of each day. Shoulders shall not be used to store materials and/or equipment.
16. Roadways, ditches, and right-of-way to be restored to their previous condition or better, to that which existed prior to the work(s), and to the satisfaction of the District Highways Manager or his/her representative.
17. Any works of the Permittee which cause damage to public roads will result in the Permittee being required to repair or compensate the Ministry of Transportation and Infrastructure for all costs incurred, to restore said public roads to its original condition or better, and to the satisfaction of the District Manager Transportation or his/her representative.
18. All Permittees, utilities and their contractors must follow standards and procedures set out in the Ministry's **Traffic Control Manual for Work on Roadways**.
 - a) The highway shall remain open to vehicular traffic at all times. At all times the Permittee must safeguard the traveling public.
 - b) Once disturbed, a roadway will be restored for vehicular traffic movement without delay.
 - c) All traffic control costs shall be borne by the Permittee.

19. The Permittee shall obtain and maintain during the term of this permit and at the Permittee's own expense, liability insurance against third party claims arising as a result of the works consented to in this permit from the Permittee working within Ministry right-of-way. Such liability insurance shall have coverage limits of not less than TWO MILLION DOLLARS (\$2,000,000.00) for bodily injury, including death and property damage and shall 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, together with the employees, agents and servants of the Minister, hereinafter referred to as the Additional Named Insured as an Additional Named Insured."
The policy shall contain a cross liability clause and a clause giving notice of cancellation or material alteration to the Minister.
20. The Permittee is responsible for the operation and maintenance of Kingsley Road end as described above including any costs associated with the improvements, maintenance and operation.
21. Prior to initiating any works, the RDCK shall notify all adjacent land owners of the intent of this permit.
22. The Permittee will respond to all public concerns regarding the development, management, and operation activities that relate to the Kingsley Road end development.
23. Kingsley Road is an existing beach access currently used by the public. There are existing "no parking" signs adjacent to this road end. The Permittee shall monitor the effects of existing parking and propose a parking plan for ministry approval if changes to the existing signage/configuration are required.
24. The Ministry contact person is Michele Ihas, District Development Technician, West Kootenay District, 250-354-6526.
25. The RDCK contact person is John Maclean, CAO, 250-368-9148.

The rights granted to the Permittee in this permit are to be exercised only for the purpose as defined in Recital B on page 1.

Dated at Nelson, British Columbia, this 14th day of July, 2010.



On Behalf of the Minister

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- B. The Permittee has required the Minister to issue a permit pursuant to this authority for the following purpose:

The improvement and maintenance of the end of Johnson Road to provide a usable access to water for the public (pedestrian use only). Works to include surveying the area, cleaning up debris, protecting natural riparian area, improving pathway to the water, removing an abandoned waterline, and providing signage and security.
- C. The Minister is prepared to issue a permit on certain terms and conditions:

ACCORDINGLY, the Minister hereby grants to the Permittee a permit for the Use (as hereinafter defined) of highway right of way on the following terms and conditions:

1. That the construction of the said works is carried out in conformity with all legislation applicable to the Permittee or specifications by regulatory bodies having jurisdiction over the Permittee, and that the Regional Director, Transportation of the Province of British Columbia, or any person appointed by the Regional Director, Transportation shall have free access to all parts of the works for the purpose of satisfying himself that the works are being carried out in accordance with such legislation or regulatory specifications as aforementioned.
2. The Permittee for whom these works are being constructed or maintained shall at all times indemnify and save harmless the Government of the Province of British Columbia against any loss sustained or damage done by the Permittee or its servants or agents for which by law the Permittee would be liable, except in cases where the loss or damage is attributable to the negligence of the Government, its servants or agents.
3. That after receiving notice in writing on the intention on the part of the Provincial Government to construct, extend, alter, or improve any public work, the Permittee being responsible for the maintenance of the works for which consent is hereby granted shall co-operate with the District Official, and within three (3) months from receipt of notice all works shall

be completed in moving or altering such work to such new position or in such manner as may be necessitated by the construction, extension, alteration, or improvement proposed to be carried out by the Provincial Government. The cost of all such work to be borne by the Permittee except in the case of cost sharing arrangement on pole relocations (refer to circular).

4. That while reasonable care will be taken on the part of the Provincial Government to do as little damage as possible to any private work in the carrying-out of the construction, extension, alteration, improvement, repair, or maintenance of public work adjacent thereto, the Provincial Government can accept no responsibility of any kind for such damage.
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The policy shall contain a cross liability clause and a clause giving notice of cancellation or material alteration to the Minister.
20. The Permittee is responsible for the operation and maintenance of Johnson Road end as described above including any costs associated with the improvements, maintenance and operation.
21. Prior to initiating any works, the RDCK shall notify all adjacent land owners of the intent of this permit.
22. The Permittee will respond to all public concerns regarding the development, management, and operation activities that relate to the Johnson Road end development.
23. The Ministry contact person is Michele Ihas, District Development Technician, West Kootenay District, 250-354-6526.
24. The RDCK contact person is John Maclean, CAO, 250-368-9148.

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