

LICENCE OF OCCUPATION OF PROVINCIAL PUBLIC  
HIGHWAY

---

File No.: PS100724

---

THIS AGREEMENT is made under section 62 of the *Transportation Act* and is dated for reference December 9, 2008

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

**HARBOUR AUTHORITY OF DEEP BAY**, a federal corporation (Corp. No. 2616386)

(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*;

"**Commencement Date**" means, despite the date of execution of this Agreement, November 1, 2006;

"**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, and attached to it or intended to become a part of it, and also includes any clearing, excavating, digging, drilling, tunnelling, filling, grading or ditching of, in, on or under the Land;

**"Land"** means that part of the provincial public highway known as "Chrome Point Road" shown outlined by bold line on Schedule A and containing 0.149 hectares, more or less;

**"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;

**"Security"** means the security referred to in section 6.1 or 6.2, as replaced or supplemented in accordance with sections 6.3 and 6.5;

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

**"we", "us" or "our"** refers to the Province alone and never refers to the combination of the Province and the Licensee: that combination is referred to as **"the parties"**; and

**"you" or "your"** refers to the Licensee.

## ARTICLE 2 - GRANT AND TERM

2.1 On the terms and conditions set out in this Agreement, we grant you a licence of occupation over the Land for the purpose of a public parking lot and you acknowledge that this Agreement does not grant you the exclusive use and occupancy of the Land.

2.2 The term of this Agreement commences on the Commencement Date and terminates on October 31, ~~2011~~, or such earlier date provided for in this Agreement.

## ARTICLE 3 - FEE

3.1 On the Commencement Date and the first day of ~~each month~~ of the Term, you will pay to us \$250.00, together with the goods and services tax imposed under the *Excise Tax Act* (Canada) which is payable on that amount.

3.2 You acknowledge that we may, on written notice to you and in our sole discretion, change the Fee payable by you under this Agreement.

## ARTICLE 4 - COVENANTS

4.1 You must

- (a) pay, when due,
  - (i) the Fee to us 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 us, immediately upon demand, receipts or other evidence of the payment of Realty Taxes and all other money required to be paid by you 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, and
  - (ii) the provisions of this Agreement;
- (d) keep the Land and the Improvements in a safe, clean and sanitary condition satisfactory to us, and at our 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 you 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 us, or our authorized representatives, to enter on the Land at any time to inspect the Land and the Improvements;
- (j) indemnify and save us and our 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) your breach, violation or nonperformance 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 your entry upon, use or occupation of the Land, and
  - (iii) without limiting paragraph (ii), any environmental liability on or off the Land related to your 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 us immediately upon demand;
- (k) release us and our 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 your 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 us 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 your entry upon, use or occupation of the Land),
  - (ii) within 60 days, remove from the Land any Improvement you want to remove, if the Improvement was placed on or made to the Land by you or for you, 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 you, and that we, in writing, direct or permit you 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 our satisfaction, but if you are not permitted or directed 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 your right, interest and estate in the Land will be absolutely forfeited to us, and to the extent necessary, this covenant will survive the termination of this Agreement.

4.2 You will not permit any person to do anything you are restricted from doing under this Article.

## ARTICLE 5 - LIMITATIONS

5.1 You agree with us that

- (a) we are under no obligation to provide access or services to the Land or to maintain or improve existing access roads;
- (b) we may, without your consent, authorize other persons, including a Crown agency or ministry, to use and occupy the Land under section 62 of the *Transportation Act*;
- (c) you will make no claim for compensation, in damages or otherwise, in respect of an authorization granted by us under subsection (b),
- (d) all of your costs and expenses, direct or indirect, that arise out of any interference with your rights under this Agreement as a result of an authorization granted by us under subsection (b) will be borne solely by you;
- (e) you release and discharge us from all claims for loss or damage arising directly or indirectly out of any interference with your rights under this Agreement as a result of an authorization granted by us under subsection (b);
- (f) you release and discharge us from all claims for loss or damage arising directly or indirectly out of any interference with your rights under this Agreement as a result of a disposition made by us under subsection (b);

- (g) you 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 you may have in the Improvements ceases to exist and becomes our property upon termination of this Agreement, except where an Improvement may be removed under paragraph 4.1(l)(ii) or (iii) in which case any interest you may have in that Improvement ceases to exist and becomes our property if the Improvement is not removed from the Land within the time period set out in paragraph 4.1(l)(ii) or the time period provided for in the direction or permission given under paragraph 4.1(l)(iii); and
- (i) if, after the termination of this Agreement, we permit you to remain in possession of the Land and we accept money from you in respect of such possession, a tenancy from year to year will not be created by implication of law and you 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 - SECURITY AND INSURANCE**

- 6.1 On the Commencement Date, you will deliver to us security in the amount of \$0.00 which will
- (a) guarantee the performance of your obligations under this Agreement;
  - (b) be in the form required by us; and
  - (c) remain in effect until we certify, in writing, that you have fully performed your obligations under this Agreement.
- 6.2 Despite section 6.1, your obligations under that section are suspended for so long as you maintain in good standing other security acceptable to us to guarantee the performance of your obligations under this Agreement and all other dispositions held by you over other land of ours.
- 6.3 We may use the Security for the payment of any costs and expenses incurred by us to perform any of your obligations under this Agreement that are not performed by you and, if such event occurs, you will, within 30 days of that event, deliver further Security to us in an amount equal to the amount drawn down by us.
- 6.4 After we certify, in writing, that you have fully performed your obligations under this Agreement, we will return to you the Security maintained under section 6.1, less all amounts drawn down by us under section 6.3.
- 6.5 You acknowledge that we may, from time to time, notify you 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 you under this Agreement;
- and you will, within 30 days of receiving such notice, deliver to us written confirmation that the change has been made or the replacement or additional form of Security has been provided by you.
- 6.6 You must, without limiting your obligations or liabilities under this Agreement, at your expense, maintain during the Term
- (a) Comprehensive (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. 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 you and are not covered under the general liability policy, you will provide Protection and Indemnity insurance with limits of not less than \$2,000,000.00 for such vessels and will include four-fourths collision liability insurance,
- (c) if any licensed vehicles are owned, leased, rented or used by you in the performance of this Agreement, Automobile Liability Coverage with inclusive limits of not less than \$1,000,000.00 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 you 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 us by registered mail, which endorsements must be in terms comparable to those normally obtainable from insurers in the Province of British Columbia issuing comparable policies.

6.7 You must, under the insurance required to be maintained by you 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 us, on the Commencement Date, on the renewal of the insurance and at other times required by us,
  - (i) for all policies except Automobile Liability Insurance, a completed and executed certificate of insurance in a form acceptable to us (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 our request, deliver to us evidence that the insurance remains in force and effect by way of the originals or certified copies of all current insurance policies and endorsements.
- 6.8 You acknowledge and agree that, in the event of any third party loss or damage or any physical loss or damage to the Land (and your 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 us or the BCTFA or those for whom we and the BCTFA are legally obligated to indemnify against such claims.

#### ARTICLE 7 - ASSIGNMENT

- 7.1 You must not sublicense, assign, mortgage or transfer this Agreement, or permit any person to use or occupy the Land, without our prior written consent, which consent we may withhold in our sole discretion.
- 7.2 For the purpose of section 7.1, if you are a corporation, a change in control (as that term is defined in subsection 2(3) of the *Business Corporations Act*) will be deemed to be a transfer of this Agreement.
- 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, we may require you to meet certain conditions, including without limitation, that you provide to us 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 You agree with us that
  - (a) if you
    - (i) default in the payment of any money payable by you under this Agreement, or
    - (ii) fail 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 your default or failure continues for 60 days after we give written notice of the default or failure to you,
  - (b) if, in our opinion, you fail to make diligent use of the Land for the purposes set out in this Agreement, and your failure continues for 60 days after we give written notice of the failure to you;
  - (c) if you
    - (i) become insolvent or make an assignment for the general benefit of your creditors,
    - (ii) commit 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 you or you consent to the filing of the petition or a decree is entered by a court of competent jurisdiction adjudging you bankrupt under any law relating to bankruptcy or insolvency, or

- (iii) voluntarily enter into an arrangement with your creditors;
- (d) if you are a corporation,
  - (i) a receiver or receiver-manager is appointed to administer or carry on your business, or
  - (ii) an order is made, a resolution passed or a petition filed for your liquidation or winding up;
- (e) if you are a society, you convert into a company in accordance with the *Society Act* without our prior written consent;
- (f) if this Agreement is taken in execution or attachment by any person;

this Agreement will, at our option and with or without entry, terminate, and all of your right, interest and estate in the Land will be absolutely forfeited to us.

- 8.2 If the condition complained of in section 8.1 (other than the payment of any money payable by you under this Agreement) reasonably requires more time to cure than 60 days, you will be deemed to have complied with the remedying of it if you commence remedying or curing the condition within 60 days and diligently complete the same.
- 8.3 You agree with us that we may, on 60 days' written notice to you, terminate this Agreement if we or the BCTFA require the Land for any purpose.
- 8.4 You agree with us that you 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 our offices (or the offices of our authorized representative) in Nanaimo, British Columbia, and if we or our authorized representative have no office in Nanaimo, British Columbia, then our offices (or the offices of our authorized representative) that are closest to Nanaimo, British Columbia.
- 9.5 A dispute under this Agreement in respect of a matter within our sole discretion cannot, unless we agree, be referred to arbitration as set out in section 9.2.

#### ARTICLE 10 - NOTICE




- 10.1 Any notice required or permitted to be given by either party to the other 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 us

Ministry of Transportation  
3<sup>rd</sup> Flr – 2100 Labieux Road  
Nanaimo, British Columbia  
V9T 6E9  
Attention: Doug Beaumont  
Facsimile Number: (250) 751-3288

to you

Harbour Authority of Deep Bay  
RR#1, Site 160, Comp. 91  
Bowser, British Columbia  
V0R 1G0  
Attention: David Bartram, Chairman  
Facsimile Number: (250) ~~752-4331~~ 

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 required 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 us under this Agreement will be effected by hand, courier or prepaid regular mail to our 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 us 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 you from your obligation to observe and perform all the provisions of this Agreement on your part to be observed and performed unless we specifically release you from such obligation in our 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 your reasonable control, other than normal weather conditions, you are delayed in performing any of your 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

- (a) you give notice to us 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 your obligation; and
- (b) you diligently attempt to remove the delay.

11.6 You agree with us that

- (a) we are 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 you are solely responsible for all costs and expenses associated with your use of the Land and the Improvements for the purposes set out in this Agreement;
- (b) nothing in this Agreement constitutes you as an agent, joint venturer or partner of ours or the BCTFA or gives you any authority or power to bind us or the BCTFA in any way; and
- (c) any information regarding this Agreement or you 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 our favour and all of our 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 you or we, as the case may be, 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 you or we, as the case may be, have 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.

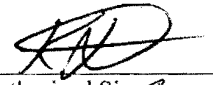
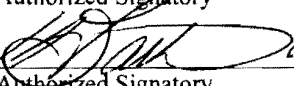
The parties have executed this Agreement as of the date of reference of this Agreement.

**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 **HARBOUR AUTHORITY OF DEEP BAY** by its authorized signatories

  
CHAIRMAN  
Authorized Signatory  
  
VICE CHAIRMAN  
Authorized Signatory

